ABOUT THE WEEKLY SUMMARY

The Weekly Summary of NLRB cases, as the name implies, is a publication that summarizes each week all published NLRB decisions in unfair labor practice and representation election cases, except for summary judgment cases. It also lists all decisions of NLRB administrative law judges and direction of elections by NLRB regional directors. Links are established from the weekly summary index to the summaries and from the summaries to the full text of the decisions.

Weekly Summary of NLRB Cases

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August 2, 2002 W-2854

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

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Pinnacle Metal Products Co. f/k/a The Wilkie Co. (7-CA-42013, et al.; 337 NLRB No. 128) Muskegon, MI July 19, 2002. Chairman Hurtgen and Member Liebman agreed with the administrative law judge that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging, delaying reinstatement, and failing to make a valid offer of immediate reinstatement to bargaining unit employees who joined in an unfair labor practice strike that commenced on February 2, 1998, after the Union made an unconditional offer on April 30, 1999, to return to work; and Section 8(a)(5), (3), and (1) by unilaterally and

discriminatorily conditioning reinstatement consideration of the strikers upon the successful passing of a drug and alcohol abuse test without prior notice to or bargaining with Machinists Local Lodge 670, District Lodge 97. Member Cowen concurring and dissenting in part. [HTML] [PDF]

Chairman Hurtgen and Member Liebman found no ambiguity in the Union's April 30 offer of "an unconditional return to work" and that the Union made the offer on behalf of all striking employees. The majority agreed with the judge that the Respondent was not privileged to apply its drug testing policy to returning strikers because they did not fit within either class of employees covered by the drug testing policy, i.e., "employees returning from a leave of absence or layoff in excess of two (2) weeks." The majority, in agreement with Member Cowen, concluded that the Respondent discriminatorily applied to strikers a drug testing requirement that differed significantly from the terms of its final offer and, accordingly, violated the Act.

Member Cowen found that the Respondent was privileged to apply its drug testing policy to returning strikers, concluding that employees who have been on strike for over 12 months are reasonably encompassed within that policy. In agreeing with the judge that the Respondent did not actually apply the policy to returning strikers, he found that the Respondent instead imposed more onerous conditions on returning strikers. Member Cowen concluded, as did his colleagues, that the Respondent did not fulfill its obligation to reinstate striking employees who made an unconditional offer to return to work. But, he found that the Respondent reasonably interpreted the Union's offer as indicating that the employees who wished to return to work would show up on May 3 and he would limit the remedy to the 21 of 35 who actually showed up on that date.

(Chairman Hurtgen and Members Liebman and Cowen participated.)

Charges filed by Machinists Local Lodge 670, District Lodge 97; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Grand Rapids, Nov. 3-5, 1999 and April 10-11, 2000. Adm. Law Judge Thomas R. Wilks issued his decision Oct. 6, 2000.

* * *

Control Building Services, Inc. (29-CA-23217-1; 337 NLRB No. 137) Long Island, NY July 25, 2002. The Board affirmed the administrative law judge's finding that the Respondent discriminatorily discharged employee Eddie McDonald on October 28, 1999 in violation of Section 8(a)(1) and (3) of the Act. [HTML] [PDF]

The Respondent, in exceptions, contended that the judge erred in finding the violation because, inter alia, there is no evidence of antiunion animus against McDonald. Because the judge failed to expressly make a finding of antiunion animus, the Board explicitly made this finding, clarified the basis for adopting the judge's conclusion, and noted the following strong evidence for finding animus: (1) the pretextual nature of the ostensible reasons for McDonald's discharge; (2) the timing of McDonald's discharge; and (3) Respondent's unlawful surveillance of employees.

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charge filed by SEIU Local 32B-32J; complaint alleged violation of Section 8(a)(1) and (3). Hearing in New York City, May 23-25, 2001. Adm. Law Judge D. Barry Morris issued his decision Sept. 10, 2001.

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AAR Hermetic, a Division of AAR Allen Services, Inc. (29-CA-23951; 337 NLRB No. 127) Holtsville, NY July 18, 2002. Affirming the administrative law judge's recommendation, the Board dismissed the complaint allegation that the Respondent violated Section 8(a)(3) of the Act by refusing to offer employment to James Novotny, who worked as an electronic technician for the Respondent's predecessor, Honeywell Hermetic. The Board agreed with the judge's finding that there was no credible evidence that the Respondent harbored anti-Union animus and that it failed to hire Novotny because of his activities in support of Machinists Local 24. The judge found that Novotny was not hired because he told manager Colleen Quinn that he did not want to work for Respondent and that even in the absence of any union activity by Novotny, the Respondent would not have offered him a job. [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Cowen participated.)

Charge filed by James Novotny, an individual; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Brooklyn on May 22, 2001. Adm. Law Judge Eleanor MacDonald issued her decision Sept. 26, 2001.

* * *

Budget Rent A Car Systems, Inc. (7-RC-22199, 22207; 337 NLRB No. 147) Southfield and Warren, MI July 26, 2002. The Board reversed the Regional Director's finding that the petitioned-for single-facility units at the Employer's Warren and Southfield stores in the Detroit, Michigan area are appropriate, and held that the petitioned-for stores have been merged into a larger unit. It remanded the proceeding to the Regional Director for further appropriate action. [HTML] [PDF]

The Employer operates five Detroit-area local market stores where it rents cars and trucks to the public. Teamsters Local 283 sought to represent all customer service coordinators, service agents, and mechanics at the Employer's Southfield store and a separate unit of all customer service coordinators and service agents at the Warren store. The five market stores are locally managed by three branch managers and each of the petitioned-for stores shares a branch manager with another of the five local market stores. The branch managers, having no authority to make decisions concerning hiring, merit wage increases, temporary or permanent transfers, authorization of overtime, terminations, or serious discipline, report to District Manager Elisa Bannon, who oversees operations at all five local market stores.

The Board determined that job functions, required skills, starting wages, benefits, the incentive bonus program, uniforms, and all other terms and conditions of employment are identical from store to store and job training of employees from all five stores is centralized at one location. Citing Waste Management Northwest, 331 NLRB 309 (2000) and New Britain Transportation Co., 330 NLRB 397 (1999), the Board wrote: "[t]o determine whether the single-facility presumption has been rebutted, the Board looks at such factors as the similarity of employee skills, functions and training, the distance between the facilities, the functional coordination in operations of the facilities, common supervision, centralized control of operations and labor, contact between employees at different facilities, employee interchange (particularly temporary transfers) between facilities, common wages, benefits, and terms and conditions of employment, and bargaining history, if any."

Here, the Board found that the evidence established that the Southfield and Warren stores have been so effectively merged into the other Detroit area local market stores, and are so functionally integrated with these stores, that they have lost their separate identities. Accordingly, contrary to the Regional Director, it held that the Employer has rebutted the single-facility presumption.

(Chairman Hurtgen and Members Liebman and Cowen participated.)

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Demco New York Corp. (3-CA-22798; 337 NLRB No. 135) East Syracuse, NY July 26, 2002. Agreeing with the administrative law judge, the Board held that the Respondent, by foreman William Grant, interrogated employee Paul Castor about his union membership, activities, and sympathies in violation of Section 8(a)(1) of the Act. The Board found that the totality of the circumstances established that Grant's questioning of Castor about Castor's union sentiment reasonably tended to interfere with, coerce, and restrain the exercise of Castor's Section 7 rights. [HTML] [PDF]

No exceptions were filed to the judge's findings that Grant is a statutory supervisor and agent of the Respondent within the meaning of Section 2(11) and 2(13), respectively.

(Chairman Hurtgen and Members Cowen and Bartlett participated.)

Charge filed by Electrical Workers IBEW Local 910; complaint alleged violation of Section 8(a)(1). Hearing at Syracuse on July 17, 2001. Adm. Law Judge Jesse Kleiman issued his decision Sept. 10, 2001.

* * *

Hanson Aggregates Central, Inc. (16-CA-20885-1, et al., 16-RC-10286; 337 NLRB No. 143) Houston, TX July 26, 2002. Members Liebman and Bartlett agreed with an administrative law judge's conclusions that the Respondent violated Section 8 (a)(3) and (1) of the Act by issuing disciplinary warnings to Jimmy Carriere and Frank Davault because of their union activities; and engaged in objectionable conduct, such as unlawful threats, solicitation of grievances, instructing Davault to remove a union button, and prohibiting others from wearing prounion insignia, that was sufficient to warrant setting aside an election held in Case 16-RC-10286. The case was remanded to the Regional Director to conduct a second election. [HTML] [PDF]

Chairman Hurtgen, concurring in part, affirmed the judge's unfair labor practice findings. He agreed with his colleagues that Production Manager Lee Surface unlawfully instructed Davault to remove a union button and issued him two disciplinary warnings, and that the conduct was not effectively repudiated, but he did not rely on the "stringent" standard of Passavant Memorial Area Hospital, 237 NLRB 138 (1987). See his partial dissent in Webco Industries, 327 NLRB 172, 174 (1998), enfd. 217 F.3d 1306 (10th Cir. 2000). In Webco, the Chairman held that although the Respondent unlawfully suspended an employee, it promptly revoked the suspension and gave her full backpay, which obviated the necessity for a remedial provision. Here, in contrast, he noted that less than 1 month after the incident, Sales Supervisor Mike Leathers committed virtually the same unfair labor practice by directing employee Chris Harris to remove union insignia from his hardhat. Thus, notwithstanding the Respondent's purported retraction of the unlawful instruction to Devault, the Respondent continued to maintain an unlawful prohibition against wearing union insignia.

Member Bartlett found no need in this case to decide whether the Board should adhere to the standard for effective repudiation of misconduct set forth in Passavant since he agreed with his concurring colleague that the Respondent's recidivist misconduct precludes finding effective repudiation in any event.

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charges filed by Teamsters Local 988; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Houston, July 9-12 and Aug. 22, 2001. Adm. Law Judge George Carson III issued his decision Nov. 30, 2001.

* * *

Michael's Painting, Inc., and Painting L.A., Inc. (31-CA-23358; 337 NLRB No. 140) Van Nuys, CA July 26, 2002. The Board affirmed the administrative law judge's finding that the Respondents violated Section 8(a)(1) and (3) of the Act by interrogating employees, interfering with lawful picketing activity, and threatening to close its business, and by discharging and conditioning the release of the paychecks of employees Jose Lainez, Alejandro Duenas, Carlos Vega, Martin Vega, and Saul Romero upon the presentation of immigration related documents, because of their activities on behalf of Painters District 36. The Board also affirmed the judge's finding that Michael's Painting (MP) and Painting L.A. (PLA) constitute alter egos, and that the Respondents had a twofold purpose in establishing PLA-to continue operating their painting business without the substantially higher insurance premiums that would have been charged MP and to rid themselves of those employees who had picketed MP in support of claims for higher wages and Union recognition. [HTML] [PDF]

In March 1998, a union organizing campaign involving the Respondents' employees became common knowledge. The Respondents retaliated by committing unfair labor practices in an effort to thwart the organizing drive. Following the commencement of the Respondents' unlawful course of conduct, on March 31, the Union gained the support of a majority of the employees based on a showing of authorization cards.

The Board noted that the Respondents' multiple violations of Section 8(a)(1) and the discharge of five employees in violation of Section 8(a)(3) constituted an unlawful scheme to defeat the Union and deprive the employees of their statutory rights. It held that a bargaining order is necessary and appropriate and, in addition to the usual remedies for the violations found, ordered the Respondent to bargain with the Union, consistent with the principles of NLRB v. Gissel Packing Co., 395 U.S. 575 (1969). Concluding that the conduct of a fair election in the future would be unlikely, the Board wrote: "employees' wishes are better gauged by an old card majority than by a new election." Charlotte Amphitheater Corp. v. NLRB, 82 F.3d 1074, 1078 (D.C. Cir. 1996).

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charge filed by Painters District 36; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing in Los Angeles, May 5-7 and 12-14, 1999. Adm. Law Judge Jay R. Pollack issued his decision July 10, 2000.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Baker Machining, Inc. (PACE Local 6-0677) Grand Haven, MI July 15, 2002. 7-CA-44128; JD-72-02, Judge Robert A. Pulcini.

Mine Workers (Apogee Coal Company d/b/a Arch of West Virginia) Charleston, WV July 23, 2002. 9-CB-10626; JD(ATL)-41-02, Judge George Carson II.

Janton Industries, Inc., Designcore, Ltd. (an Individual) Brooklyn, NY July 23, 2002. 29-CA-24653; JD(NY)-46-02, Judge Eleanor MacDonald.

United States Postal Service (Letter Carriers Branch 1037) Amarillo, TX July 25, 2002. 16-CA-21217, et al.; JD(ATL)-37-02, Judge Lawrence W. Cullen.

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NO PROPER (TIMELY) ANSWER

(In the following case, the Board granted the General Counsel's motion for summary judgment on the ground that the document the Respondent filed did not constitute a proper (timely) answer to the complaint.)

Michael J. Vorkapic, Inc., et al. (Illinois District Council No. 1, Bricklayers) (13-CA-39163; 337 NLRB No. 126) Geneva, IL July 19, 2002.