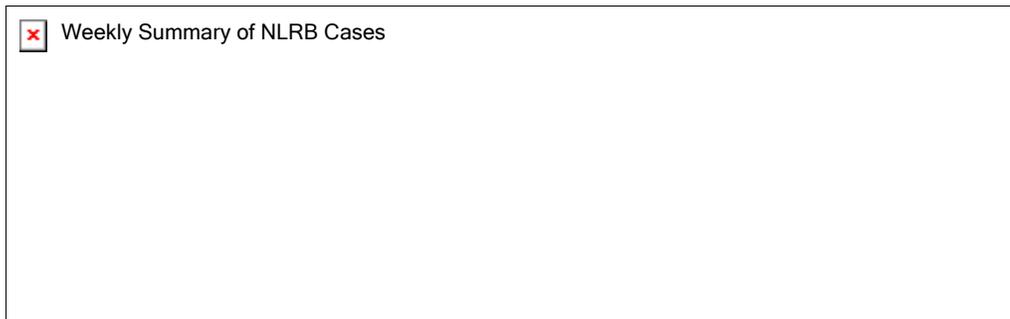


ABOUT THE WEEKLY SUMMARY

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.



[Index of Back Issues Online](#)

August 9, 2002

W-2855

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

[BP Exploration \(Alaska\), Inc.](#), Anchorage, AK
[California Pacific Medical Center](#), San Francisco, CA
[Central Plumbing Specialties, Inc.](#), Manhattan and Yonkers, NY
[E Center, Yuba Sutter Head Start](#), Maryville, CA
[McKesson Drug Company](#), Memphis, TN
[MFP Fire Protection, Inc.](#), Colorado Springs, CO
[Oil Capital Electric](#), Tulsa, OK
[Research Foundation of the City University of New York](#), New York, NY
[Shamrock Foods Co.](#), Phoenix, AZ
[Star, Inc. Lighting the Way](#), Norwalk, CT
[Summit Logistics, Inc.](#), Tracy, CA
[Tenneco Packaging, Inc.](#), Beech Island, SC
[Washoe Medical Center, Inc.](#), Reno, NV

OTHER CONTENTS

[List of Decisions of Administrative Law Judges](#)

[No Answer to Complaint Case](#)

[No Answer to Compliance Specification Case](#)

CORRECTION: In the July 26, 2002 issue (W-2853), substitute Member Bartlett for Member Cowen in the first sentence, last paragraph of the summary of *Franklin Hospital Medical Center d/b/a Franklin Home Health Agency*, 337 NLRB No. 132, on page 6.

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Shamrock Foods Co. (28-CA-15477-2; 337 NLRB No. 138) Phoenix, AZ July 30, 2002. The Board agreed with the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by, among other things, suspending and discharging employee Vincent D'Anella for engaging in misconduct during the course of his union solicitation and organizational activity. It decided that the judge, who based his finding on the absence of credible evidence that D'Anella had engaged in such misconduct, correctly cited *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964), and found that a Wright Line analysis is not applicable in this case since the Respondent's motive is not at issue: it is undisputed that the Respondent discharged D'Anella because of his conduct in the course of protected activity. [\[HTML\]](#) [\[PDF\]](#)

The Board found it unnecessary to pass on, and disavowed, the judge's additional discussion of Respondent's motivation or good faith in responding to the reports of D'Anella's misconduct. Having found that D'Anella's suspension and discharge violated Section 8(a)(1), the Board agreed with the judge that it was unnecessary to pass on whether the suspension and discharge also violated Section 8(a)(3), as alleged by the General Counsel.

While adopting the judge's findings that the Respondent (through night-shift Manager Shalley) violated Section 8(a)(1) by interrogating employee David Trujillo about whether D'Anella had asked Trujillo to sign a union card and by telling Trujillo to inform him if D'Anella asked Trujillo to sign a card in the future, Chairman Hurtgen and Member Bartlett did not agree that the Respondent created an impression, in the mind of Trujillo, that D'Anella's union activities were under surveillance. Member Liebman agreed with the judge that the Respondent, through Shalley's statements to Trujillo, created the impression that D'Anella's union activities were under surveillance. She stated: "[t]his finding is not cumulative, as the majority implies, because no other violation we have found involves the creation of an impression of surveillance, . . . Moreover, although the remedial order adopted by the majority prohibits actual surveillance by the Respondent, it does not prohibit all actions which could reasonably create an impression of surveillance."

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charge filed Teamsters Local 104; complaint alleged violation of Section 8(a)(1) and (3). Hearing in Phoenix, July 15 and 16, 1999. Adm. Law Judge William L. Schmidt issued his decision May 23, 2000.

* * *

Washoe Medical Center, Inc. (32-CA-17934-1, 18179-1; 337 NLRB No. 149) Reno, NV July 31, 2002. Chairman Hurtgen and Member Liebman found that the Respondent failed to present extraordinary circumstances warranting review of the Board's prior decision reported at 337 NLRB No. 32 (2001) (*Washoe I*), and denied the Respondent's motion for reconsideration. Member Cowen, dissenting, would grant the Respondent's motion, overrule the underlying decision, and dismiss the complaint. [\[HTML\]](#) [\[PDF\]](#)

In *Washoe I*, the Board found that the Respondent, an incumbent employer (i.e., a continuing employer, not a successor), violated Section 8(a)(5) and (1) of the Act by continuing to unilaterally set starting wage rates for newly hired employees after the Union's certification, without providing Operating Engineers Local 3 with advance notice and an opportunity to bargain.

In its motion, the Respondent raised for the first time the applicability of *Monterey Newspapers*, 334 NLRB No. 128 (2001), to this case and the contention that the Board's failure to apply that case here was a substantial and prejudicial error warranting reconsideration. The dispositive issue in *Monterey Newspapers* was the employer's right, as a successor employer pursuant to *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), to establish initial working conditions, including wage rates for new hires. In support of its motion, the Respondent also relied on *Oneita Knitting Mills*, 205 NLRB 500 (1973), and alleged that the

Board failed to address the Respondent's argument that the Union waived its bargaining rights with regard to starting rates of pay for new employees. The Board rejected the latter two arguments in Washoe I.

Member Cowen found that Washoe I is based upon an erroneous interpretation of Oneita to the extent that it makes it an unfair labor practice for an employer unilaterally to continue to follow an established policy and procedure, even one involving the exercise of some employer discretion, without changing the policy or procedure in any material way, after a union becomes the bargaining representative of the employer's employees. He added: "Moreover, to the extent that the panel majority in Washoe I suggests that no 'change' is necessary to prove that a respondent violated Sec. 8(a)(5) of the Act by unilaterally changing terms and conditions of employment, Washoe I constitutes an unwarranted departure from long-standing Board precedent without reasoning or explanation. In my view, this unexplained departure from precedent is itself an extraordinary circumstance justifying reconsideration."

The majority noted that Member Cowen would grant the Respondent's motion because he disagreed with the result previously reached and simply set forth his analysis of the facts and interpretation of applicable law, but that he did not contend that the Respondent has presented extraordinary circumstances warranting review of the original decision which is contrary to the Board's rules and why it did not address his discussion of the merits of this case.

(Chairman Hurtgen and Members Liebman and Cowen participated.)

* * *

California Pacific Medical Center (20-CA-28916; 337 NLRB No. 146) San Francisco, CA July 29, 2002. Affirming the administrative law judge's recommendation, the Board dismissed the complaint allegations that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally laying off unit employees and shifting work within the unit without prior notification to and bargaining with the Union over its decisions. The judge, citing *Allison Corp.*, 330 NLRB 1363, 1365 (2000), found that art. V, sec. 17 of the parties' collective-bargaining agreement was a "clear and unmistakable waiver" by the Union of its statutory right to bargain over the Respondent's decisions to lay off unit employees and to shift work within the unit. Therefore, the judge concluded that the Respondent did not violate Section 8(a)(5) by taking the unilateral actions at issue. [\[HTML\]](#) [\[PDF\]](#)

Chairman Hurtgen concurred in the result in *Allison Corp.* on the basis of his "contract coverage" analysis, and he adhered to that position here. 330 NLRB at 1365 fn. 13. Members Cowen and Bartlett did not participate in *Allison Corp.* and expressed no view regarding the correctness of that decision or the continued validity of the Board's "clear and unmistakable waiver" analysis in cases such as the instant matter. Nevertheless, they agreed with the judge's conclusion that the General Counsel failed to prove that the Respondent violated the Act as alleged. Because the same result is reached under both current Board law applying the "clear and unmistakable waiver" analysis and the Chairman's "contract coverage" analysis, Members Cowen and Bartlett found it unnecessary to decide in this case which approach is legally correct.

(Chairman Hurtgen and Members Cowen and Bartlett participated.)

Charge filed by Healthcare Workers Local 250, SEIU; complaint alleged violation of Section 8(a)(1) and (5). Hearing in San Francisco on Feb. 20, 2001. Adm. Law Judge Gerald A. Wacknov issued his decision May 15, 2001.

* * *

STAR, Inc. Lighting the Way (34-RC-1820; 337 NLRB No. 151) Norwalk, CT July 31, 2002. Affirming the hearing officer's recommendation, the Board sustained the Union's Objection 4, set aside the election held between July 13 and 21, 2000, and directed a second election. The hearing officer found, with Board approval, that the Employer interfered with the election by announcing and distributing a fiscal year-end, cash bonus to unit employees approximately 2 weeks before the election. The Board also agreed that the Employer failed to establish that it had a past practice of paying such bonuses and, found that the bonus reasonably tended to interfere with the employees' free choice in the election. [\[HTML\]](#) [\[PDF\]](#)

The Employer contracts with the State of Connecticut to provide residential, employment, and other services to the mentally

handicapped. The Employer asserted its past practice was to pay bonuses when it experienced a surplus at the end of the fiscal year. However, the Board determined that when the Employer did grant bonuses in prior years, it did so in a significantly different manner with respect to amount, scope or eligibility, and timing. Assuming that cost-settling (having to return funds to the State) was a factor in the decision to pay bonuses in every year that surpluses existed, the Board found that it is not an exigency that would justify the different manner and timing of the payment of the 2000 bonus. It said ". . . the Employer was not required to pay the bonus before the end of the fiscal year on June 30. Thus the Employer could have waited until after the election period to announce and pay the bonus and still avoided returning funds to the State."

In absence of exceptions, the Board adopted the hearing officer's recommendation to overrule Objection 2 concerning conversations between or among supervisory House Managers, Executive Director Kate Benzhaf, and the Employer's attorney.

(Chairman Hurtgen and Members Liebman and Cowen participated.)

* * *

Summit Logistics, Inc. (32-CA-17642; 337 NLRB No. 145) Tracy, CA July 30, 2002. A Board majority of Chairman Hurtgen and Member Bartlett affirmed the administrative law judge's dismissal of the complaint alleging that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Gilbert Noriega on or about July 21, 1999, because he joined or assisted Teamsters Local 439 or because he attempted to obtain for himself and other employees, benefits under the collective-bargaining agreement between the Union and the Respondent. Member Liebman dissented. [\[HTML\]](#) [\[PDF\]](#)

The judge found that the General Counsel met his initial burden of persuasion that Noriega's protected concerted activity was a substantial and motivating factor in the Respondent's decision to terminate him. However, he also concluded, and the majority agreed, that the Respondent sustained its affirmative defense that it would have discharged Noriega at that time because of his inadequate performance even in the absence of his protected, concerted activity. In so concluding, the judge found it unnecessary to credit either Noriega's or department manager Tim Gomes' version of the conversation leading to Noreiga's discharge.

On July 21, Noriega discussed employee complaints about excessive work hours with someone from the California State Labor Commission and, thereafter, repeated what was told to him to Shop Steward Scott Donaldson. Donaldson subsequently approached Gomes and discussed Noriega's telephone call. About an hour after Donaldson's conversation with Gomes, Gomes called Noriega into his office to talk about Noriega's poor performance level. The judge held that, under either version of Gomes' and Noreiga's conversation: "Noriega in answering Gomes' request for an explanation of his low numbers told Gomes that he would not meet the performance standards because of the heavy work load within the Meat Department." He found that there was "a clear statement by Noriega that, in effect, so long as the work load was heavy, Noriega's performance would remain at the current level."

Contrary to her colleagues, Member Liebman found that the judge's failure to resolve a credibility dispute between Noriega and Gomes precludes solving the instant proceeding at this time. She would remand the case to the judge "to resolve the conflicting testimony and how it bears on Gomes' atypical interaction with Noriega following his learning of Noriega's protected, concerted activities." Member Liebman asserted that Noriega's testimony clearly suggests that Gomes may have suddenly decided to discharge Noriega because he anticipated that Noriega would make further complaints to the "Labor Board."

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charge filed by Gilbert Noriega, an Individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing in Stockton on March 24, 2000. Adm. Law Judge Clifford H. Anderson issued his decision July 7, 2000.

* * *

E Center, Yuba Sutter Head Start (20-RC-17750; 337 NLRB No. 154) Maryville, CA July 31, 2002. The Board denied the Employer's request for review and/or motion for reconsideration of the Acting Regional Director's approval of the Petitioner's

request for withdrawal of its petition, with prejudice. An election held on May 31, 2002 showed that of approximately 104 eligible voters, 42 were for, and 48 were against, the Petitioner, with 8 determinative challenges. No objections to the election were filed, nor has any party otherwise claimed that the election is invalid. The amended report on challenged ballots and notice of hearing that issued on June 12, 2002 was withdrawn. [\[HTML\]](#) [\[PDF\]](#)

The Employer contended that approval of the Petitioner's withdrawal request is inconsistent with the purpose of the Act, allows the unlawful circumvention of Section 9(c)(3) of the Act, prejudicially affects the rights of the Employer, and disregards the agreement between the parties that the Union would concede the election to the Employer. The Employer requested, in pertinent part, that the Regional Director be ordered to open all of the challenged ballots, resolve the challenges, or approve the existing agreement between the parties to certify the election against the Union.

In denying the request for review and/or motion for reconsideration, the Board said:

The Act, however, does not permit circumvention of the election bar rule contained in Section 9(c)(3). Regardless of when the Petitioner, or any other labor organization, may file a subsequent election petition, Section 9(c)(3) mandates that "no election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall be held."

(Members Liebman, Cowen, and Bartlett participated.)

* * *

MFP Fire Protection, Inc. (27-CA-13246; 337 NLRB No. 155) Colorado Springs, CO July 31, 2002. The Board denied the General Counsel's motion to strike Respondent's answer and for summary judgment and remanded the proceeding to the Regional Director for hearing. The General Counsel sought summary judgment on the entire amended compliance specification, asserting that the Respondent's answer provided only general denials and failed to reveal the basis on which the Respondent disagreed with the amended specification's allegations. [\[HTML\]](#) [\[PDF\]](#)

The Board reasoned that while the Respondent's answer to the amended specification, considered in isolation, was deficient, the Respondent's amended answer to the original compliance specification was attached to its response to the Board's Notice to Show Cause why the General Counsel's motion should not be granted and must be considered. On further examination of the two documents, the Board concluded that the allegations of the amended specification are substantially the same as the allegations of the original compliance specification. It construed the Respondent's response to the Notice to Show Cause, with the attached amended answer to the original compliance specification, as an amended answer to the amended compliance specification. Given that the Respondent has filed a valid answer to the original compliance specification, and that the allegations of the original compliance specification are substantially the same as the allegations of the amended compliance specification, the Board found that it would be inappropriate to grant the General Counsel's motion for summary judgment.

The Board's decision and order in the underlying unfair labor practice proceeding is reported at 318 NLRB 840 (1995). The U.S. Court of Appeals for the Tenth Circuit enforced the Board's order on December 3, 1996.

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

General Counsel filed motion to strike Respondent's answer and for summary judgment on February 15, 2001.

* * *

Research Foundation of the City University of New York (26-RC-8187 (formerly 2-RC-21706); 337 NLRB No. 152) New York, NY July 31, 2002. Reversing the Regional Director, the Board found that the Employer, a not-for-profit educational corporation, is an employer, not a political subdivision under Section 2(2) of the Act; and reinstated the representation petition filed by UAW Local 2110. It affirmed the Regional Director's finding that a unit of the Employer's employees in all outreach programs limited to the Bronx Community College (BCC) campus of the City University of New York (CUNY) is an appropriate unit. [\[HTML\]](#) [\[PDF\]](#)

The Employer is responsible for the postaward fiscal administration of grants and contracts (sponsored programs) awarded by public and private entities to units of CUNY, a large, multicampus public university located throughout the City of New York. The parties stipulated that CUNY is exempt from the Board's jurisdiction under Section 2(2). The petitioned-for program employees provide education, training, counseling, and other outreach services to welfare recipients and underprivileged individuals in the community. The Employer contended that either a multicampus unit limited to three outreach programs, or a unit of all the Employer's employees on the BCC campus of CUNY, is appropriate. The Professional Staff Congress of the City University of New York was permitted to intervene because it has a contractual relationship with the Employer (representing clericals at the Employer's central office) and with CUNY (representing instructional employees).

The Board applied the test set forth in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600, 604-605 (1971), under which a finding of political subdivision status requires proof that an employer is either created directly by the state, so as to constitute departments or administrative arms of the government, or is administered by individuals who are responsible to public officials or to the general electorate. It held, contrary to the Regional Director, that the evidence failed to support a finding that the Employer is an exempt political subdivision under either prong of the test. After examining the four criteria of single employer status, the Board also found, contrary to the Regional Director, that the Employer and CUNY do not constitute a single employer.

The Board agreed with the Regional Director that the single-facility presumption has not been rebutted and that a unit of all outreach programs on the BCC campus, excluding all other programs employees, is an appropriate unit.

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

* * *

McKesson Drug Company (26-CA-18721; 337 NLRB No. 139) Memphis, TN July 31, 2002. The Board affirmed the administrative law judge's conclusions that the Respondent violated Section 8(a)(1) and (4) of the Act by its suspension and discharge of employee Walter Hammond because he filed an unfair labor practice charge, and that the Respondent's discharge of Hammond on June 16, 1998, was "intertwined" with his prior suspension on June 9. It clarified that Hammond's suspension and discharge each constituted a separate, independent violation of Section 8(a)(1) and (4) and that the Respondent's insistence that Hammond sign a Disciplinary Action and Last Chance Agreement in order to avoid discharge constituted an independent violation of Section 8(a)(1). [\[HTML\]](#) [\[PDF\]](#)

The Respondent argued that it would have suspended Hammond even if he had not filed the unfair labor practice charge, as he was suspended solely because of alleged drug use. The Board noted, in rejecting this contention, that the Respondent initiated its action against Hammond fully 3 months after the initial accusation by former employee Jackson that Hammond, as well as other employees, used drugs. Even when the Respondent decided to take action, it still delayed another 17 days before interviewing any of the accused employees. Second, there is no evidence in the record to support the Respondent's contention that Hammond violated its drug policy. Further, the Board noted that Hammond denied having used drugs at all and that the Respondent suspended him without waiting for the results of his drug test (which were negative).

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charge filed by Teamsters Local 667; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing in Memphis, April 5 and July 24, 2000. Adm. Law Judge Pargen Robertson issued his decision Sept. 29, 2000.

* * *

Central Plumbing Specialties, Inc. (34-CA-8296; 337 NLRB No. 153) Manhattan and Yonkers, NY July 31, 2002. Chairman Hurtgen and Member Bartlett found, contrary to the administrative law judge and dissenting Member Liebman, that the General Counsel failed to establish a prima facie case that the Respondent's discharge of employee Celso Rodriguez violated Section 8(a)(3) of the Act and dismissed the complaint, stating: "Admittedly, Rodriguez engaged in union activity and was discharged. However, we find insufficient evidence to support any finding or inference that the Respondent either had knowledge of Rodriguez' union activities, harbored antiunion animus toward him, or that any such animus played a role in his

discharge." In defense, the Respondent claimed that it discharged Rodriguez based on his bad attendance, the Respondent's suspicions that he was involved in office thefts, the fact that he was not a good employee because he fooled around, and because he was illiterate. [\[HTML\]](#) [\[PDF\]](#)

Dissenting Member Liebman agreed with the judge that the General Counsel has shown that union activity was a motivating factor in the Respondent's action against Rodriguez. She noted these factors, among others. Rodriguez, who was fired shortly after engaging in union activity, had never been disciplined before; indeed, he had received bonuses and pay raises. The Respondent told Rodriguez that he was being fired for missing work on a day that he was particularly needed, but Bobby Flores, the colleague who assigned Rodriguez work, told Rodriguez that he was being fired for going to a union meeting. The Respondent's co-owner, Warren Frankel, denied to Rodriguez and another employee that union activity played any part in the discharge, but Frankel also asked the co-worker, rhetorically, if he thought it was fair for someone else to seek to run the Respondent's business. Member Liebman agreed with the judge, particularly in light of the Respondent's numerous asserted pretextual reasons for discharging Rodriguez, that the Respondent failed to show that it would have fired him for reasons other than his union activity.

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charge filed by Teamsters Local 456; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Hartford, July 7-9, 1999. Adm. Law Judge Raymond P. Green issued his decision Oct. 18, 1999.

* * *

Oil Capital Electric (17-CA-17290, 17418; 337 NLRB No. 150) Tulsa, OK July 31, 2002. The Board reversed the administrative law judge's findings that the Respondent violated the Act and dismissed the complaint in its entirety. The judge found that the Respondent violated Section 8(a)(3) when it refused to hire 21 union applicants who appeared en masse at the Respondent's office to apply for jobs and when it refused to hire seven union applicants who individually sought to apply for jobs at various times, and Section 8(a)(1) when it interrogated union applicant Gary Stottlemyre II about his and others' union activities. Member Liebman, dissenting in part, would adopt the judge's finding that the Respondent unlawfully interrogated Stottlemyre, given the nature of the questions asked and the setting in which they were posed. [\[HTML\]](#) [\[PDF\]](#)

On June 7, 2000, the Board remanded this case to the judge for further consideration in light of its decision in *FES* (A Division of Thermo Power), 331 NLRB 9 (2000), setting forth the framework for analysis of refusal-to-hire and refusal-to-consider allegations. In reversing the judge's finding that the Respondent unlawfully refused to hire the 21 applicants who applied en masse, the Board found that the General Counsel failed to show that 20 applicants had relevant experience or training, one of the three critical elements of a discriminatory refusal-to-hire violation, and failed to establish with respect to the 21st applicant a separate critical element, i.e., that antiunion animus contributed to the adverse employment action. The Board concluded that the record did not support the judge's conclusion that the Respondent's decisions not to hire six other applicants was unlawfully motivated and that the General Counsel failed to establish the critical element of an available opening for the seventh applicant, Stottlemyre.

The alleged unlawful interrogation occurred when Stottlemyre went to the Respondent's facility to seek employment and spoke to company president James Lewis. Lewis said that Stottlemyre's name sounded familiar to him and asked if Stottlemyre's father was a union member. Later in the conversation, Lewis asked Stottlemyre why the Union was not helping him. Chairman Hurtgen and Member Bartlett found, under all the circumstances, that the Respondent's questioning of Stottlemyre was not coercive. They pointed out that there is no background of discrimination given the reversal of the judge's 8(a)(3) findings, including his finding that the Respondent unlawfully refused to hire Stottlemyre. Further, there is no showing of employer hostility to union activity. Chairman Hurtgen and Member Bartlett said the first question "represented little more than idle curiosity prompted by Lewis' recognition of the name." They found the second question was "aimed only at ascertaining why the Union was not helping Stottlemyre secure work."

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Adm. Law Judge John H. West issued his supplemental decision Feb. 21, 2001.

* * *

BP Exploration (Alaska), Inc. (19-CA-26791; 337 NLRB No. 141) Anchorage, AK July 29, 2002. The Board adopted the administrative law judge's finding that the Respondent did not violate Section 8(a)(5) and (1) of the Act by refusing to provide copies of certain "confidential" reports requested by the Union that were subject to the attorney-client privilege. It stated: [\[HTML\]](#) [\[PDF\]](#)

Applying the balancing-of-interests test set forth in *Detroit Edison*, we find (1) that the Respondent has established a strong confidentiality interest with respect to the reports; (2) that this interest clearly outweighs the Union's asserted need for the reports themselves (as distinct from the information contained in them); and (3) that, given the Union's insistence on disclosure of the reports, the Respondent discharged its obligations under the Act by offering to provide the Union with certain information contained in the reports, an accommodation the Union categorically rejected.

(Chairman Hurtgen and Members Liebman and Cowen participated.)

Charge filed by PACE Local 8-369; complaint alleged violation of Section 8(a)(1) and (5). Hearing in Anchorage on April 17, 2001. Adm. Law Judge James M. Kennedy issued his decision June 26, 2001.

* * *

Pactiv Corp. d/b/a Tenneco Packaging, Inc. (11-CA-18425, 18442; 337 NLRB No. 142) Beech Island, SC July 29, 2002. The Board affirmed the administrative law judge's finding that the Respondent did not violate Section 8(a)(3) and (1) of the Act by contacting the local sheriff on July 29, 1999, about employee Gary McClain, who reportedly had been engaging in threatening behavior. The judge found that the General Counsel failed to show that McClain's union activity was a motivating factor in the Respondent's decision to take that action. The judge further found that the Respondent established that it would have taken the same action even in the absence of McClain's union activity. He also found that the Respondent did not violate Section 8(a)(3) and (1) by conditioning McClain's reinstatement upon his submitting to an exam by a company-designated psychiatrist. The judge found that this condition was consistent with its preexisting short-term disability policy and past practice. [\[HTML\]](#) [\[PDF\]](#)

Member Liebman joined Chairman Hurtgen and Member Cowen in dismissing the complaint, but in a concurring opinion expressed her view that workplace violence cases need to be analyzed carefully and on a case-by-case basis. She stated:

Workplace violence is a serious problem. But as a justification for employer actions that may infringe employees' rights under the Act, the need to protect employees from the threat of violence is not fundamentally different from other, recognized managerial interests. As in this case, it may be a legitimate rationale. In other cases, it may simply offer a plausible pretext for antiunion measures.

(Chairman Hurtgen and Members Liebman and Cowen participated.)

Charges filed by Operating Engineers Local 470; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Aiken, March 27-30, 2000. Adm. Law Judge George Carson II issued his decision June 9, 2000.

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Nurses United for Improved Patient Healthcare, AFT (VNA Corporation d/b/a Visiting Nurse Services of Health Midwest) Kansas City, MO July 25, 2002. 17-CB-5596, 17-RC-12040; JD(SF)-52-02, Judge James L. Rose.

Fuji Foods US, Inc. (Food & Commercial Workers Local 7) Denver, CO July 29, 2002. 27-CA-17596, 17633; JD(SF)-20-02, Judge Thomas Michael Patton.

Ducommun Aerostructures (Auto Workers [UAW]) Gardena, CA July 29, 2002. 21-CA-34474, 34673, 21-RC-20333; JD(SF)-55-02, Judge Lana Parke.

Buckeye Electric Co. (Electrical Workers [IBEW] Local 1105) Dayton, OH July 31, 2002. 9-CA-39021; JD-79-02, Judge Earl E. Shamwell Jr.

Air Contact Transport, Inc. (an Individual) Lorton, VA July 31, 2002. 5-CA-29322; JD-80-02, Judge Karl H. Buschmann.

Ryder Truck Rental, Inc. d/b/a Ryder Transportation Services (Machinists District Lodge 90) Indianapolis, IN August 2, 2002. 25-CA-27551-1, 27705-1; JD-78-02, Judge Eric M. Fine.

* * *

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Commercial Steel Corp. d/b/a Riverview Steel Corp. (Steelworkers Local 14693) (6-CA-32175; 337 NLRB No. 148) Glassport, PA July 30, 2002.

* * *

NO ANSWER TO COMPLIANCE SPECIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the compliance specification.)

Quality Color Graphics, Inc. and American Heatset East Printing, Inc. (Graphic Communications Workers Local 72) (29-CA-23263, et al.; 337 NLRB No. 144) Bohemia, NY July 29, 2002.