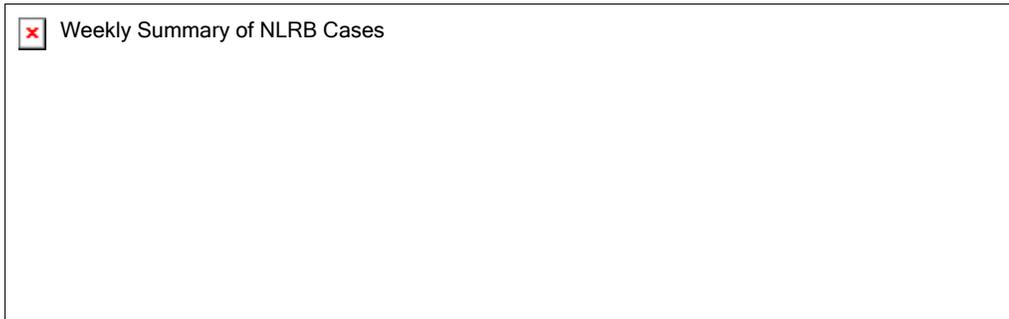


ABOUT THE WEEKLY SUMMARY

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.

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September 20, 2002

W-2861

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The Post-Tribune Co., A Div. of the Sun Times Co., a Subsidiary of Hollinger International Publishing, Inc. (13-CA-39228-1; 337 NLRB No. 192) Merrillville, IN Sept. 12, 2002. The Board reversed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act in January 2001 by unilaterally increasing the amount deducted from employees' paychecks for health insurance coverage, in order to pass on to employees a portion of a premium increase imposed by the Respondent's insurance carrier, without giving the Union notice and an opportunity to bargain. The Board concluded that the Respondent followed an established past practice and did not alter the status quo and, accordingly, dismissed the complaint. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Cowen, and Bartlett participated.)

Charge filed by Gary Newspaper Guild, TWG-CWA Local 34014; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Chicago on Oct. 5, 2001. Adm. Law Judge William N. Cates issued his decision Oct. 26, 2001.

* * *

Agar Supply Co., Inc. (1-RC-21417; 337 NLRB No. 191) Taunton, MA Sept. 6, 2002. Members Liebman and Bartlett adopted the Regional Director's recommendation that the challenge to the ballot of Robert Koch be overruled and that the ballot be opened and counted. Member Cowen dissented. The tally of ballots for the election held October 25, 2001 showed 59 for and 59 against the Petitioner (Teamsters Local 25), with 3 determinative challenged ballots. No exceptions were filed to the Regional Director's recommendation to sustain the challenges to two ballots. [\[HTML\]](#) [\[PDF\]](#)

The Petitioner maintained that Koch was a unit employee on workers' compensation at the time of the election and, therefore, was eligible to vote. Before his on-the-job injury on September 8, 2000, Koch was employed in the position of order selector in the warehouse. As a result of his injury, he was assigned to a nonunit position as a warehouse clerical. On about March 1, 2001, he ceased working and received workers' compensation benefits and remained in that status as of and after the date of the election.

The Employer argued that since Koch was not "qualified" to do unit work on the payroll eligibility date and since, based on the medical information then available, it was not "reasonably foreseeable" that he could ever perform unit work again, he was properly excluded from the *Excelsior* list. The Employer also argued that if Koch is to be considered an active employee, than he should still be deemed to be ineligible because his last period of work was in a nonunit position.

Contrary to Member Cowen, the majority agreed with the Regional Director that the Employer did not show that Koch was transferred to a nonunit position when he was temporarily assigned to light duty work as a warehouse clerical employee. Member Bartlett agrees with former Chairman Hurtgen's dissent in *Supervalu, Inc.*, 328 NLRB 52 (1999), that the appropriate test for determining the eligibility of an employee on sick leave is the "reasonable expectancy of return" test, the same test that is applied to employees laid off for economic reasons. Thus, he disagrees with the prevailing test set forth in *Red Arrow Freight Lines*, 278 NLRB 965 (1986), which presumes that an employee on sick leave is eligible to vote unless it is affirmatively shown that the employee has resigned or been discharged. In the absence of a three-Member Board majority to overrule *Red Arrow*, Member Bartlett joined in adopting the Regional Director's finding that, under the *Red Arrow* test, employee Koch was eligible to vote in the election.

In dissent, Member Cowen contended that as Koch most recently was employed in a nonunit position, he was ineligible to vote in the election. He would, therefore, sustain the challenge to Koch's ballot. In Member Cowen's view, *Red Arrow* is inapplicable to this situation and found it unnecessary to pass on its validity.

(Members Liebman, Cowen, and Bartlett participated.)

* * *

Coinmach Laundry Corp. (29-RC-9876; 337 NLRB No. 193) Syosset, NY Sept. 12, 2002. Members Liebman and Cowen denied the Intervenor's (Teamsters Local 966) request for review of the Regional Director's Decision and Direction of Election as raising no substantial issues warranting review. [\[HTML\]](#) [\[PDF\]](#)

The issues presented for review were: (1) whether the Board wished to reconsider its holding in *Alto Plastics Mfg. Corp.*, 136 NLRB 850 (1962), and find that the hearing officer erred in ruling that certain subpoenaed documents allegedly necessary to show that Petitioner's (Local 729, Coalition of Democratic Employees) officers have criminal records are relevant, and (2) whether the Regional Director correctly found that the Intervenor was not prejudiced by the hearing officer's refusal to permit the Intervenor to inquire about possible fronting by the Petitioner, and by the hearing officer's leading of a witness.

The Intervenor argued that its case was unfairly prejudiced when the hearing officer ruled that certain subpoenaed items were irrelevant and when the Regional denied the Intervenor's special appeal with regard to this ruling. Additionally, the Intervenor contended that the hearing officer wrongfully precluded it from pursuing certain lines of questioning. The Intervenor said that the subpoenaed documents were necessary (1) because "documents showing any records of criminal convictions of the officers of Local 729 . . . [are] relevant," and (2) "to show that Local 729 is an organization which is fronting for a labor organization which is not qualified to represent the employees of the Employer." The Regional Director determined that the instant case is similar to *Alto Plastics*, above, in which the Board was faced with rival claims by petitioning and intervening unions.

The Petitioner sought to represent a unit of all employees, excluding all guards, supervisors, office employees, foremen, salesmen, executives, dispatchers, laundry room attendants, security employees, coin counters, and porters while Local 966 intervened on the basis of its collective-bargaining agreement with the Employer encompassing the petitioned-for unit. The parties stipulated that the unit sought by the Petitioner is appropriate but the Intervenor disagreed on the issue of whether the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The Regional Director concluded that the Petitioner is a labor organization and directed an election.

Member Bartlett concurred with his colleagues' denying the Intervenor's request for review. However, he disagreed with *Alto Plastics* to the extent it holds that the criminal records of, or judicial determinations of fraudulent conduct by, union officers and representatives cannot be considered relevant either to whether an organization is a labor organization within the meaning of the Act or to whether such organization may be appropriately certified by the Board. See *Harrah's Marina Hotel*, 267 NLRB 1007 (1983). He found that the Intervenor failed to make a sufficient threshold showing that this was a relevant and necessary inquiry in this case. Accordingly, Member Bartlett held that the hearing officer and the Regional Director properly refused to permit the Intervenor to inquire into the issue.

(Members Liebman, Cowen, and Bartlett participated.)

* * *

Electrical Workers (IBEW) Local 98 (Swartley Brothers Engineers, Inc.) (4-CD-1079; 337 NLRB No. 187) Lansdale, PA Sept. 12, 2002. The Board determined that the employees of Swartley Brothers Engineers who are unrepresented by any labor organization are entitled to perform the installation of 200 amp single phase services, conduits, and the wires therein, for power, telephones, and ground conductors within Philadelphia, Bucks, Chester, Delaware, and Montgomery Counties, Pennsylvania. It granted Swartley Brothers' request for a broad, areawide award that encompasses the five counties. [\[HTML\]](#) [\[PDF\]](#)

Electrical Workers Local 98 opposed a broad award and asserted that any award should be limited to the work at the 23rd Street project that gave rise to the instant dispute. In granting a broad award in a jurisdictional determination, the Board requires evidence that (1) the disputed work has been a source of controversy in the relevant geographic area and that disputes may recur; and (2) the charged party has the proclivity to engage in wrongful conduct in order to obtain work similar to that in dispute. *Bricklayers (Sesco, Inc.)*, 303 NLRB 401 (1991).

Citing other recent cases before the Board involving Local 98, the Board noted that the record in this case supports the conclusion that Local 98 has a proclivity to engage in wrongful conduct in order to obtain disputed work and that this case met the test for the issuance of a broad areawide award. It further noted that in 2001, the U.S. Court of Appeals for the Third Circuit issued a consent order which prohibits Local 98 from violating Section 8(b)(4)(i) and (ii)(B) of the Act. On July 1, 2002, the Board decided to pursue civil contempt proceedings against both Local 98 and Della Vella as a result of the conduct underlying the dispute in the instant case. The Board has now determined that Local 98's conduct in the instant case is in direct contempt of the Third Circuit's 2001 consent order, and will pursue civil contempt proceedings accordingly.

(Members Liebman, Cowen, and Bartlett participated.)

* * *

Electrical Workers (IBEW) Local 98 (Total Cabling Specialists, Inc.) (4-CD-1071-1; 337 NLRB No. 188) Exton, PA Sept. 12, 2002. The Board determined that the employees of Total Cabling Specialists, Inc. represented by Communications Workers Local 13000 rather than those represented by Electrical Workers Local 98 are entitled to perform voice and data cable work at the Public Ledger Building in Philadelphia, PA, and wherever the jurisdictions of Local 13000 and Local 98 coincide. In making its award, the Board relied on the existing collective-bargaining contract between Local 13000 and the Employer, and the Employer's preference and past practice of assigning the work. [\[HTML\]](#) [\[PDF\]](#)

Local 13000 requested a broad work award covering all telecommunications work and data cabling work, assigned by any employer wherever the geographic jurisdictions of Local 98 and Local 13000 coincide. In order for a broad award to be appropriate, the Board requires (1) that there be evidence that the disputed work has been a continuous source of controversy in the relevant geographic area and that similar disputes may recur, and (2) that the charged party has a proclivity to engage in unlawful conduct in order to obtain work similar to the work in dispute. *Foley Construction Co.*, 316 NLRB 360, 363 (1995).

Local 13000 cited two cases decided by the Board where Local 98's activities were directed at an employer in Philadelphia that had a collective-bargaining agreement with CWA District 13. In both cases, the Board awarded a broad work award in favor of employees represented by District 13 because the evidence indicated an ongoing dispute regarding telecommunications work and Local 98's proclivity to take unlawful action in order to obtain the work in dispute. As the evidence indicates an ongoing dispute regarding the voice and data cabling work in the Philadelphia region and a likelihood that the dispute may recur in the future, the Board found a broad award to be appropriate.

(Members Liebman, Cowen, and Bartlett participated.)

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Big Sky Locators, Inc. (Electrical Workers [IBEW] Local 396) Las Vegas, NV August 27, 2002. 28-CA-17698; JD(SF)-63-02, Judge Gerald A. Wackov.

United States Postal Service (Postal Workers Local 739) Waco, TX September 6, 2002. 16-CA-21403, et al; JD(ATL)-52-02, Judge Lawrence W. Cullen.

St. Barnabas Medical Center (New Jersey Nurses Union, a/w Communications Workers of Local 1091) Newark, NJ September 10, 2002. 22-CA-23092; JD(NY)-52-02, Judge Jesse Kleiman.

Double D Construction Group, Inc. (Iron Workers Local 272) Miami, FL September 10, 2002. 12-CA-21951, 12-RC-8709; JD(ATL)-54-02, Judge Keltner W. Locke.

The Earthgrains Co. (an Individual) Fort Payne, AL September 11, 2002. 10-CA-33181; JD(ATL)-49-02, Judge Margaret G. Brakebusch.

Schenkel's All Star Dairy, LLC (Indiana Joint Board, RWDSU Council, UFCW) Huntington, IN September 11, 2002. 25-CA-27642-1, 27696-1; JD-98-02, Judge Eric M. Fine.

Providence Journal Co. (Providence Newspaper Guild, TNG-CWA Local 31041) Pawtucket, RI September 12, 2002. 1-CA-37763, et al.; JD-96-02, Judge William g. Kocol.

Caritas Good Samaritan Medical Center (Hospital Workers [SEUI] Local 767) Brockton, MA September 12, 2002. 1-CA-39471; JD-97-02, Judge Earl E. Shamwell Jr.

Georgia Power Co. (Electrical Workers [IBEW] Local 84) Atlanta, GA September 12, 2002. 10-CA-33361; JD(ATL)-51-02, Judge Pargen Robertson.

Hilton Hotels Corp. d/b/a Embassy Suites, San Francisco Airport North (Hotel & Restaurant Employees Local 340) South San Francisco, CA September 10, 2002. 20-CA-30191-1, et al.; JD(SF)-68-02, Judge James M. Kennedy.

D.D.S. Roofing and Maintenance, L.L.C (Roofers Local 30) Philadelphia, PA September 13, 2002. 4-CA-30743; JD-65-02, Judge Paul Buxbaum.