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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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October 4, 2002 W-2863

CASES SUMMARIZED

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Aluminum Co. of America (26-CA-19014; 338 NLRB No. 3) Bauxite, AR Sept. 23, 2002. The Board found, contrary to the administrative law judge, that the Respondent lawfully discharged Craig Elliott on December 16, 1998, and dismissed the complaint. The judge found that the Respondent discharged Elliott in violation of Section 8(a)(3) and (1) of the Act because he engaged in the protected concerted activity of raising issues under a collective-bargaining agreement. The Board reasoned:

"Even assuming that Elliott was engaged in protected concerted activity during each of the incidents that precipitated his discharge, we find that the profane nature of his outbursts on each occasion removed the Act's protection." [HTML] [PDF]

(Members Liebman, Cowen, and Bartlett participated.)

Charge filed by Craig Elliott, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Little Rock on Nov. 3, 1999. Adm. Law Judge William N. Cates issued his decision Nov. 3, 1999.

* * *

Peck/Jones Construction Corp. (31-CA-24883; 338 NLRB No. 4) Los Angeles, CA Sept. 20, 2002. The Board affirmed the administrative law judge's dismissal of the complaint alleging that the Respondent violated Section 8(a)(1) of the Act when it denied two union business agents access to its construction site at the Los Angeles International Airport (LAX) on October 26, 2000. [HTML] [PDF]

Members Liebman and Bartlett agreed with the judge that the business agents failed to follow the Respondent's reasonable and nondiscriminatory sign-in rule that required visitors to sign in before entering the secured area and, therefore, the agents are not entitled to enforce their contractual right to access that might otherwise provide a basis for their claim. They found it unnecessary to pass on whether the Respondent's requirement that the union agents be escorted onto the jobsite is a reasonable access rule. Members Liebman and Bartlett concluded that, unlike the cases cited by the General Counsel, the Respondent's sign-in rule was not inconsistent with the access provisions of the Union's collective-bargaining agreement with the subcontractor, Washington Ironworks.

Member Cowen, concurring, found that the union agents were improperly on the premises because they failed to sign in, as the Respondent required, and because the union agents' conduct is not covered by the access provision of the Union's agreement with Washington Ironworks. He disagreed, however, with any implication that a general contractor's maintenance and/or enforcement *of any rule* that is inconsistent with the access provisions of a subcontractor's union contract is unlawful, and with prior cases to the extent that they can be read as supporting such a broad proposition. Member Cowen found it unnecessary to pass on these issues because this case does not concern the lawfulness of a rule that conflicts with a collective-bargaining agreement. He added that nothing in this decision, which involves unauthorized access to secure areas of LAX prior to the events of September 11, 2001, "should not be read as expressing any view about how the Board will evaluate union access questions arising under the Federally mandated heightened security restrictions now in place at airports throughout the nation."

(Members Liebman, Cowen, and Bartlett, participated.)

Charge filed by Iron Workers Local 433; complaint alleged violation of Section 8(a)(1). Hearing at Los Angeles, Aug. 6-7, 2001. Adm. Law Judge James L. Rose issued his decision Oct. 9, 2001.

* * *

Food and Commercial Workers Local 204 (11-CA-18090; 338 NLRB No. 6) Winston-Salem, NC Sept. 25, 2002. The Board dismissed the complaint, affirming the administrative law judge's conclusion that the Respondent did not lay off and fail to recall Belinda Shepard in violation of Section 8(a)(4), (3), and (1) of the Act because of her activities for the General Organizing Association and because of her cooperation with the NLRB during the investigation of an unrelated case. [HTML] [PDF]

The Board did not pass on the judge's finding that the General Counsel failed to satisfy his initial *Wright Line* burden of showing that animus against Shepherd's protected activities was a motivating factor in the Respondent's employment decision. Even assuming arguendo that the General Counsel established that animus against Shepherd's protected activities contributed to the Respondent's decision to lay her off, the Respondent demonstrated that the layoff was economically motivated and that it selected Shepherd for layoff based on seniority, the Board held. And, the Respondent met its burden under *Wright Line* to establish that it would have taken the same action against Shepherd even the absence of her protected activities. Member Cowen, in agreeing with his colleagues, noted that the evidence taken as a whole does not support even a prima facie case of

unlawful motivation.

(Members Liebman, Cowen, and Bartlett participated.)

Charge filed by Belinda Shepherd, an individual; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Winston-Salem, Nov. 13-14, 2001. Adm. Law Judge George Carson II issued his decision Jan. 2, 2002.

* * *

Iron Workers Local 1 (Advance Cast Stone Co.) (13-CD-610; 338 NLRB No. 13) Deerfield, IL Sept. 26, 2002. Relying on the Employer's collective-bargaining agreement with the Bricklayers, Employer preference and past practice, and economy and efficiency of operations, Members Cowen and Bartlett awarded the disputed work (assembling and dismantling of erection cranes and the erection of precast architectural materials within the territorial jurisdiction of Iron Workers Local 1) to employees of Advance Cast Stone Co., represented by Bricklayers Local 20. Members Cowen and Bartlett found a broad award appropriate, explaining "that work of the kind in dispute has been a continuous source of controversy involving the Employer in the Chicago area, that the controversy is likely to recur, and that the Iron Workers has a proclivity to engage in unlawful conduct as a means of obtaining the work." Member Liebman did not participate in the decision on the merits. [HTML] [PDF]

(Members Cowen and Bartlett participated.)

* * *

Steelworkers Local 7912 (U.S. Tsubaki, Inc., Automotive Div.) (1-CB-9680; 338 NLRB No. 5) Chicopee, MA Sept. 25, 2002. Members Cowen and Bartlett, with Member Liebman dissenting, affirmed the administrative law judge's finding that the Respondent violated Section 8(b)(3) of the Act when it refused the Employer's request, on and after June 20, 2000, to negotiate a collective-bargaining agreement for a unit of automotive division employees at the Employer's Chicopee, MA facility. The Employer had relocated the employees in 1996 from its Holyoke, MA facility, where they had been represented by the Union as part of a larger bargaining unit. The Board found in an underlying decision pursuant to a unit clarification petition filed by the Employer, that the relocated employees constituted a separate appropriate unit in which the Union retained its representative status. *U.S. Tsubaki, Inc.,* 331 NLRB 327 (2000). [HTML] [PDF]

The Employer filed the unit clarification petition in February 1997 after the Union rejected its initial request to bargain for a separate contract. The Regional Director dismissed the petition in May 1997 and, while the Employer's request for review of the Regional Director's decision was pending before the Board, the parties executed a new collective-bargaining agreement, effective from October 1, 1997 to September 30, 2001, covering the original Holyoke unit, including the relocated Chicopee employees. During the contract negotiations and after the Board issued its decision on review reversing the Regional Director and clarifying the original unit by finding a separate Chicopee unit appropriate, the Respondent refused the Employer's requests to bargain for separate units. The Union asserts that it had no obligation to bargain for a separate contract covering the newly clarified Chicopee unit until the 1997-2001 contract expired.

Members Cowen and Bartlett wrote in finding no merit to the Respondent's exceptions to the judge's decision: "We hold that when the Board finds a group of relocated employees to be a separate appropriate unit, an existing collective-bargaining agreement covering those employees in their original bargaining unit does not apply, absent explicit agreement by the employer and union that it should continue to apply. There was no such agreement here." The majority explained that, in deciding this issue of first impression, it relied on "precedent establishing and applying unit clarification principles in the context of a group of employees relocated to another facility from an existing bargaining unit."

Member Liebman would hold the Employer to its agreement and find that the Union did not unlawfully refuse to bargain separately in the Chicopee unit. She said the object of the National Labor Relations Act "is best promoted by giving effect to the parties' agreement. My colleagues apparently would agree, but only if the agreement is clear and unequivocal in stating that it will continue to apply, notwithstanding the Board's subsequent unit clarification. I see no basis, either in the Board's earlier decisions or in the policies of the Act for imposing this requirement."

(Members Liebman, Cowen, and Bartlett participated.)

Charge filed by U. S. Tsubaki Inc.; complaint alleged violation of Section 8(b)(3). Hearing at Boston on April 16, 2001. Adm. Law Judge Raymond P. Green issued his decision May 9, 2001.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Teamsters Local 662 (W.S. Darley & Company) Chippewa Falls, WI September 23, 2002. 18-CB-4111-1; JD-101-02, Judge William J. Pannier III.

Gaukler Storage Company (an Individual) Detroit, MI September 20, 2002. 7-CA-44733; JD-90-02, Judge Paul Buxbaum.

Allied Mechanical Services, Inc. (Plumbers Local 357) Kalamazoo, MI September 24, 2002. 7-CA-44304, et al.; JD-104-02, Judge Arthur J. Amchan.

Chugach Management Services, Inc. (Electrical Workers [IBEW] Local 558) Huntsville, AL September 24, 2002. 10-CA-32024; JD(ATL)-55-02, Judge Keltner W. Locke.

IBM Corporation (Individuals) Winston-Salem, NC September 25, 2002. 11-CA-19324-1, et al.; JD(ATL)-57-02, Judge George Carson II.

Flying Foods Group, Inc. (Hotel Employees & Restaurant Employees Local 355) Miami, FL September 24, 2002. 12-CA-21462; JD(ATL)-50-02, Judge John H. West.

Fairfield Tower Condominium Association & Fairfield Presidential Management Corp., Joint Employers (Service Employees Local 32B-32J) Brooklyn, NY September 24, 2002. 29-CA-24243; JD(NY)-54-02, Judge Howard Edelman.

Royal Bed Frame, Inc. (Amalgamated Industrial Local 76B, Electrical Workers IBEW) Brooklyn, NY September 24, 2002. 29-CA-248947; JD(NY)-55-02, Judge Raymond P. Green.

Alle-Kiski Medical Center (Food & Commercial Workers Local 23) Natrona Heights, PA September 24, 2002. 6-CA-32356(1)(2); JD-103-02, Judge Earl E. Shamwell Jr.

Genesis Health Ventures d/b/a Salmon Brock Nursing & Rehabilitation Center, Inc. (New England Health Care Employees District 1199) Glastonbury, CT September 27, 2002. 34-CA-9721; JD(NY)-58-02, Judge D. Barry Morris.

* * *

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 answer the complaint.)

Oceania Towel & Linen Service, Inc. (UNITE) (29-CA-24552; 338 NLRB No. 10) Staten Island, NY September 26, 2002.