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

Index of Back Issues Online

October 11, 2002 W-2864

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

OTHER CONTENTS

Press Release:
(R-2461) NLRB Reports on Case Activity for FY 2002

Iron Workers Local 416 (Pacific Reinforcing Steel, Inc. and J.L. Davidson Co.) (31-CE-00216 (formerly 21-CE-00364), 31-CE-00217 (formerly 21-CE-00365); 338 NLRB No. 15) Santee, CA Sept. 30, 2002. The Board affirmed the administrative law judge's decision that the Union violated Section 8(e) of the Act by entering into, maintaining, and giving effect to agreements with Pacific Reinforcing Steel, Inc. and J.L. Davidson Co. containing picket line clauses which permit employees to refuse to cross any picket line established by any union, and thereby have the effect of causing the employees to agree not to handle or otherwise deal in the products of, or do business with, another employer or person. [HTML] [PDF]

(Members Liebman, Cowen, and Bartlett participated.)

Charges filed by Pacific Reinforcing Steel, Inc. and J.L. Davidson Co.; complaint alleged violation of Section 8(e). Adm. Law Judge Gerald A. Wacknov issued his decision March 26, 2002.

* * *

Pratt Towers, Inc. (29-CA-22657, et al.; 338 NLRB No. 8) Brooklyn, NY Sept. 30, 2002. The administrative law judge found that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to reinstate six striking employees unless they abandoned their support of Service Employees Local 32B-32J. Although Members Cowen and Bartlett agreed with the Respondent that the strikers forfeited the special *Laidlaw* reinstatement rights of strikers because they engaged in an unprotected strike, they found that the Respondent violated Section 8(a)(3) and (1) by indicating its willingness to hire these employees on conclusion of the strike and then unlawfully conditioning that employment on the former strikers' abandonment of the Union as their collective-bargaining representative. *Laidlaw Corp.,* 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970). Member Liebman, concurring, agreed with her colleagues in affirming the judge's unfair labor practice findings, but she wrote separately to explain her rationale. [HTML] [PDF]

(Members Liebman, Cowen, and Bartlett participated.)

Charges filed by Service Employees Local 32B-32J; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Brooklyn, July 15-Aug. 31, 1999. Adm. Law Judge Jesse Kleiman issued his decision Sept. 27, 2000.

* * *

Dattco, Inc. (34-CA-8596, 8658; 338 NLRB No. 7) Hartford, CT Sept. 27, 2002. Reversing the administrative law judge, the Board held that the Respondent is not a successor employer to Laidlaw, Inc. with respect to its Hartford, CT operations and that the Respondent did not violate Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union because the unit in which bargaining was requested was not an appropriate unit. [HTML] [PDF]

The Respondent operates nine terminals in eight cities and towns in Connecticut-one each in New Britain, Westport, Middletown, Hartford, Plainville, Avon, and Cheshire, and two in New Haven. Drivers are dispatched from the terminals to drive school, commuter, and charter routes in many adjacent towns. Civil Service Employees affiliates Local 760M demanded recognition as the representative of the Respondent's drivers and monitors and an attendant working at its Hartford terminal. The Board found that the Respondent rebutted the single-facility presumption and demonstrated that the Hartford terminal is not an appropriate unit standing alone.

For a number of years, Laidlaw provided general school bus transportation services for the city of Hartford. During the 1997-1998 school year, Laidlaw also provided school bus transportation for children in Hartford. On February 2, 1998, the Board

certified the Union as the exclusive bargaining representative of the school bus drivers and monitors at Laidlaw's Hartford facility. The Respondent acquired a facility in Hartford to use as a bus terminal in January 1998 and in May 1998 it was awarded the contract to provide school bus transportation for the upcoming 1998-1999 school year for children in Hartford. In August 1998, the Respondent began hiring school bus drivers and monitors, many of whom previously worked for Laidlaw. By late October, it had hired a representative complement of employees at the Hartford terminal, i.e., approximately 59 drivers and monitors. On October 23, 1998, the Union faxed its demand to the Respondent for recognition as the representative of the Hartford terminal. The Respondent refused, asserting that its Hartford terminal is a functionally integrated part of its statewide operations and is not an appropriate unit for bargaining.

(Members Liebman, Cowen, and Bartlett participated.)

Charges filed by Civil Service Employees affiliates Local 760M, SEIU; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Hartford, Sept. 28-30, 1999. Adm. Law Judge Raymond P. Green issued his decision Jan. 14, 2000.

* * *

Baptist Hospital of East Tennessee (10-CA-33684; 338 NLRB No. 26) Knoxville, TN Sept. 30, 2002. The Board denied the Respondent's motion for summary judgment on the ground that it raises genuine issues of material fact, which would better be resolved after a hearing before an administrative law judge. Member Cowen, dissenting, would grant the Respondent's motion on the ground that the issues presented in this case are merely matters of contract interpretation and enforcement that are best left to the parties' dispute resolution procedures. The complaint alleges that the Respondent unilaterally changed its earned time policy as applied to the inpatient radiology unit by assigning employees to holiday work schedules without regard to employee preference or seniority and that the unilateral change was contrary to the terms of the parties' collective-bargaining agreement in violation of Section 8(a)(5) and (1) and Section 8(d) of the Act. [HTML] [PDF]

In a separate concurring opinion, Member Bartlett noted that in denying the Respondent's motion, he agreed that the pleadings raise genuine issues of material fact that warrant a hearing. He wrote: "However, I agree with my dissenting colleague that 8(a)(5) allegations of the type raised in this case present issues of contract interpretation that Congress and the Supreme Court have indicated are meant primarily for resolution through the parties' own agreed-upon dispute resolution procedures, i.e., contractual grievance and arbitration systems, or in the absence of applicable procedures for arbitrable resolution, Section 301 of the Act. Thus, in my view, the Board should sua sponte stay its hand and defer further processing of such allegations until after the parties have exhausted the possibility of resolving their contractual dispute through these alternative dispute resolution procedures."

(Members Liebman, Cowen, and Bartlett participated.)

Charge filed by Office and Professional Employees Local 179; complaint alleged violation of Section 8(a)(1) and (5). Respondent filed motion for summary judgment August 30, 2002.

* * *

Denver Newspaper and Graphic Communications Local 22 (Rocky Mountain News) (27-CB-4053-1, et al.; 338 NLRB No. 21) Denver, CO Sept. 30, 2002. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by causing the denial of overtime opportunities to Charging Party Wayne Jerome Scott because he was delinquent in paying union imposed fines. Finding merit in the General Counsel's exceptions, the Board modified the dates in judge's decision when Scott was unlawfully denied overtime opportunities to include the week of April 29, 2000; and it held, unlike the judge, that the Respondent violated Section 8(b)(1)(A) by filing an internal union charge against Scott in retaliation for his filing of a charge against the Respondent. In addition to the judge's remedy, the Board ordered the Respondent to remove from its records any reference to the internal union charge, filed on October 17, 1999, against Scott, for filing unfair labor practices charges with the Board against the Union and to notify Scott in writing that it has done so and that the Respondent will not use the charge against him in any way. [HTML] [PDF]

(Members Liebman, Cowen, and Bartlett participated.)

Charges filed by Wayne Jerome Scott, an individual; complaint alleged violation of Section 8(b)(1)(A) and (2). Hearing at Denver. Adm. Law Judge James L. Rose issued his decision Jan. 22, 2002.

* * *

JCR Hotel, Inc. (17-CA-20622; 338 NLRB No. 27) Jefferson County, MO Sept. 30, 2002. The Board agreed with the administrative law judge that the Respondent discharged Patsy M. Wilson in violation of Section 8(a)(1) of the Act because it believed that she had concertedly encouraged employees to walk out of work in protest of working conditions. The Board noted that despite the Respondent's contentions to the contrary, the judge credited the testimony of all the Respondent's witnesses regarding the problems they had working with Wilson, saying: "Specifically, the judge indicated that several former and present employees credibly testified concerning Wilson's abrasive manner when dealing with her coworkers. The judge found, however, that Wilson was discharged at least in part for engaging in concerted activity, and that she would not have been discharged in the absence of that activity." [HTML] [PDF]

(Members Liebman, Cowen, and Bartlett participated.)

Charge filed by Patsy M. Wilson, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Columbia on Nov. 30, 2000. Adm. Law Judge Albert A. Metz issued his decision Feb. 9, 2001.

* * *

Roman, Inc. (4-CA-30461; 338 NLRB No. 24) Berlin, NJ Sept. 30, 2002. Affirming the administrative law judge's decision, the Board held that the Respondent violated Section 8(a)(1) of the Act by interrogating employee-applicant Bernard Griggs concerning his union activities and telling him that it had changed its decision to hire him because of those activities; and violated Section 8(a)(3) by failing to hire Griggs. [HTML] [PDF]

The Respondent did not specifically except to the judge's legal reasoning or conclusions, but it did except to some of his credibility determinations and evidentiary rulings and, accordingly, implicitly contested the factual basis for the judge's conclusions. The Board rejected the Respondent's arguments, including its contention that the judge improperly admitted into evidence a statement made by the Respondent's counsel in a letter to the Regional Director dated July 18, 2001 that was part of settlement negotiations. The Board noted that the letter was a position statement made during the course of the investigation, not part of settlement negotiations, and therefore was admissible. Members Cowen and Bartlett believe the Board should reexamine, with the assistance of amici briefing, current Board precedent that a party's position statement that it provides during the course of the Region's investigation is admissible as evidence.

(Members Liebman, Cowen, and Bartlett participated.)

Charge filed by Allied Craftworkers Local 1 of Pennsylvania and Delaware; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Philadelphia on Dec. 17, 2001. Adm. Law Judge William G. Kocol issued his decision Feb. 7, 2002.

* * *

Calyer Architectural Woodworking Corp. (29-CA-24762; 338 NLRB No. 33) Brooklyn, NY Sept. 30, 2002. Members Liebman and Bartlett held that the administrative law judge properly granted the General Counsel's motion for summary judgment and concluded that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees because they engaged in union or other concerted activities and coercively interrogating employees about union support or union activities. Member Cowen, dissenting, would reverse the judge's ruling and remand the case for hearing because the General Counsel never filed a motion for default summary judgment with the Board as contemplated by Section 102.24(a) and (b) of the Board's Rules and Regulations. [HTML] [PDF]

The Respondent argued that summary judgment was improper, despite its failure to answer the complaint because it ultimately appeared pro se at the hearing and was prepared at that time to defend against the allegations of the complaint.

Members Liebman and Bartlett said that while proceeding pro se, the Respondent failed to file any document, timely or untimely, that could reasonably be construed as denying the complaint's allegations and that the Respondent failed to show good cause for failing to do so. They held that merely being unrepresented by counsel does not constitute good cause for the failure to file a timely answer, and the other explanations proffered by the Respondent are also insufficient.

Contrary to the dissent's view, Members Liebman and Bartlett noted that the Board's Rules and Regulations permit the judge to entertain and rule on Motion for Summary Judgment, default or otherwise. Section 102.35(a)(8), states an administrative law judge has the authority, without qualification, to "dispose of procedural requests, motions, or similar matters, including . . . motions for summary judgment . . . ." Section 102.24(a) states that motions made at the hearing are to be made to the administrative law judge either in writing or orally on the record.

Member Bartlett believes that although neither the Act nor the Board's Rules and Regulations require it, the best practice for regional offices to follow in future cases, when dealing with pro se respondents that have failed to timely answer the complaint, would be both (1) to send a "warning letter" to the respondent notifying it that summary judgment will be sought if an answer is not filed, *and* (2) to attempt to contact the respondent by telephone in order to repeat the obligation to file answer and to clarify any possible misunderstanding about what will satisfy this obligation.

(Members Liebman, Cowen, and Bartlett participated.)

Charge filed by the Carpenters New York District Council; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Brooklyn on May 13, 2002. Adm. Law Judge Raymond P. Green issued his decision June 3, 2002.

* * *

United International Investigative Services, Inc. (21-CA-35019; 338 NLRB No. 28) Anaheim, CA Sept. 30, 2002. The Board majority of Members Liebman and Bartlett agreed that the Respondent's June 17, 2002 pro se letter raises genuine issues of material fact that warrant denial of the General Counsel's Motion for Summary Judgment and accordingly remanded the case for a hearing before an administrative law judge. The General Counsel's complaint, issued on May 29, 2002, alleged that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing employee terms and conditions of employment and by failing to give the Union notice and an opportunity to bargain over the effects of its decision to cease operations. [HTML] [PDF]

Member Bartlett, in a concurring opinion, noted his position in *Baptist Hospital of East Tennessee,* 338 NLRB No. 26 (2002), where he stated that "the Board should *sua sponte* defer processing 8(a)(5) contract-breach allegations until after the parties have exhausted the possibility of resolving their contractual dispute through their own agreed-upon dispute resolution procedures, i.e., contractual grievance and arbitration systems, or, in the absence of applicable procedures for arbitrable resolution, Section 301 of the Act."

In dissent, Member Cowen, while agreeing that the Respondent's pro se letter was an acceptable answer to the complaint and that the General Counsel's motion should be denied, would find that the complaint fails to allege any cognizable violation of the Act and would resolve this case by dismissing the complaint.

(Members Liebman, Cowen, and Bartlett participated.)

Charge filed by National Union of Security Officers and Guards; complaint alleged violation of Section 8(a)(1) and (5). General Counsel filed Motion for Summary Judgment July 1, 2002.

* * *

United Operations, Inc. (18-RC-16744; 338 NLRB No. 18) Plymouth, MN Sept. 30, 2002. In this Decision on Review and Order, the Board majority of Members Liebman and Cowen reversed the Regional Director's Dec. 12, 2000 decision that the smallest appropriate unit sought by the Petitioner must include all field service employees and dismissing the petition. Instead, the majority found that the HVAC (heating, ventilation, and air conditioning technicians) constitute a readily identifiable and

functionally distinct group of highly skilled and licensed employees, with common interests distinguishable from the Employer's other field service employees. It concluded the HVAC technicians are a readily identifiable group with common interests, distinct skills and training, distinct job functions, and perform distinct work with little overlap. [HTML] [PDF]

Dissenting Member Bartlett would agree with the Regional Director that the petitioned-for unit of the Employer's HVAC technicians is not an appropriate unit. He said the only appropriate unit is one that includes all of the Employer's field service employees, i.e., the building services employees, the policers, *and* the HVAC techs," adding:

The field service employees all go on service calls and are commonly dispatched by the Employer. They all report to the Employer's office to pick up work orders and supplies, and to complete any necessary paperwork. They have the same work rules and fringe benefits.

(Members Liebman, Cowen, and Bartlett participated.)

* * *

IHS at West Broward, et al. (12-CA-20937, et al.; 338 NLRB No. 25) Plantation, FL Sept. 30, 2002. This case involves the sale of four skilled nursing facilities, each of which was operated by one of the four Respondents. The complaint alleged that each Respondent failed and refused to bargain over the effects of the sale of its facility. The General Counsel sought summary judgment because the Respondents have admitted all allegations in the complaint. [HTML] [PDF]

The Board found that West Broward, Pinecrest, and North Miami violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with 1115, Florida Division of 1199, SEIU concerning the effects on unit employees of the sale of their facilities, and that Fountainhead violated Section 8(a)(5) and (1) by failing and refusing to bargain with Charging Party UNITE Local 2000 concerning the effects on unit employees of the sale of Fountainhead's facility.

The Board ordered the Respondents to bargain with the respective Unions over the effects of selling their facilities on their employees, and to pay backpay to the employees in a manner similar to that required in *Transmarine Navigation Corp.,* 170 NLRB No. 389 (1968). It stated:

Thus, each Respondent shall pay its employees backpay at the rate of their normal wages when last in that Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the sale of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union, or (4) the Union's subsequent failure to bargain in good faith, but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date of the sale of the Respondent's facility to the time the employees secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.

In a concurring opinion, Member Bartlett said he had "doubts as to whether the *Transmarine* remedy represents a permissible exercise of the Board's remedial authority under Section 10(c) of the Act." He stated:

> I agree with the objectives and desirability of a meaningful remedy in the circumstances addressed by *Transmarine.* It may well be that, absent some economic compulsion, a wrongdoing employer will have little reason to engage in bargaining about the effects of a sale, closing, or relocation of operations that took place years ago. Nevertheless, the Board remains constrained to fashion an appropriate remedy within the defined limits of its statutory authority. The need for a more effective remedy may require action by Congress.

(Members Liebman, Cowen, and Bartlett participated.)

Charges filed by 1115, Florida Division of 1199, SEIU and UNITE Local 200; complaint alleged violation of Section 8(a)(1) and (5). General Counsel filed motion for summary judgment February 19, 2002.

* * *

Sheet Metal Workers Local 33 (Daimler-Chrysler Corp. and Ford Motor Co.) (8-CB-8858, 9003; 338 NLRB No. 17) Perrysburg, OH Sept. 30, 2002. The majority of Members Cowen and Bartlett, affirming the administrative law judge, ordered the Respondent union to rescind unlawful fines imposed on Ronald Apple, Brain Thomas, Thomas Whitcomb, and Robert Wilhite. The judge had found that the Respondent violated Section 8(b)(1)(A) of the Act by fining them for their conduct in working for nonsignatory employers -- because the formula that the Respondent utilized to calculate the fines included periods of time after they had resigned their union memberships. [HTML] [PDF]

In dissent, Member Liebman, citing *Newspaper Guild Local 3 (New York Times),* 272 NLRB 338 (1984), would permit the Respondent, at the compliance stage of this proceeding, "to demonstrate a reasonable method of apportioning the fines imposed on Apple, Thomas, Whitcomb, and Wilhite between preresignation conduct (a lawful basis for the fines) and postresignation conduct (an unlawful basis)."

(Members Liebman, Cowen, and Bartlett participated.)

Charges filed by Brian J. Thomas, and Bradford D. Zelasko, individuals; complaint alleged violation of Section 8(b)(1)(A). Hearing at Cleveland on June 30, 2000. Adm. Law Judge William G. Kocol issued his decision Aug. 30, 2000.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

JPH Management, Inc., d/b/a Mid-Wilshire Health Care Center (Health Care Workers Local 399, Service Employees) Los Angeles, CA September 26, 2002. 31-CA-25336; JD(SF)-78-02, Judge Gerald A. Wackov.

Community Health Systems, Inc. d/b/a Mimbres Memorial Hospital and Nursing Home (Steelworkers District 12, Subdistrict 2) Deming, NM September 24, 2002. 28-CA-17777; JD(SF)-77-02, Judge Thomas M. Patton.

Operating Engineers Local 370 (an Individual) Spokane, WA September 24, 2002. 19-CA-27935; JD(SF)-76-02, Judge James M. Kennedy.

Boghosian Raisin Packing Co., Inc. (Teamsters Local 616) Fowler, CA September 20, 2002. 32-CA-19165; JD(SF)-75-02, Judge John J. McCarrick.

Wal-Mart Stores, Inc. (Food & Commercial Workers International) Las Vegas, NV September 24, 2002. 28-CA-16831, et al.; JD(SF)-74-02, Judge Albert A. Metz.

Madison Industries, Inc. (Iron Workers District Council of California and Vicinity) Los Angeles, CA September 26, 2002. 21-CA-34759, 34927; JD(SF)-71-02, Judge Jay R. Pollack.

Rood Trucking Company, Inc. (Postal Workers Pittsburgh Metro Area) Mineral Springs, OH October 1, 2002. 3-CA-23514; JD-102-02, Judge Bruce D. Rosenstein.

Chartwells, Compass Group, USA, Inc. (AFSCME Local 1000) Oneonta, NY October 1, 2002. 3-CA-23533; JD(NY)-59-02, Judge Joel P. Biblowitz.

The Kroger Co., d/b/a K.B. Specialty Foods Co. (Food & Commercial Workers Local 700) Greensburg, IN September 30, 2002. 25-CA-27730, et al.; JD-106-02, Judge Margaret M. Kern.

Pro-Spec Painting, Inc. (Painters District Council 711) Philadelphia, PA October 1, 2002. 4-CA-31034, 31050; JD-105-02, Judge Robert A. Giannasi.

Jon Bohnenkemper, d/b/a South State Builders (Sheet Metal Workers Local 20) Jasper, IN October 2, 2002. 25-CA-27989-1; JD-107-02, Judge Arthur J. Amchan.

Fineberg Packing Co., Inc. (an Individual) Memphis, TN October 3, 2002. 26-CA-20287; JD(ATL)-56-02, Judge Margaret G. Brakebusch.

Sprint/United Management Co. (an Individual) Overland Park, KS September 30, 2002. 17-CA-21603; JD(SF)-73-02, Judge Mary Milller Cracraft.

Iron Workers Local 433 (an Individual) Los Angeles, CA September 30, 2002. 21-CB-12858; JD(SF)-65-02, Judge William L. Schmidt.

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NO ANSWER TO COMPLIANCE SPECIFICATION

(In the following cases, 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.)

Adair Express L.L.C. (Teamsters Local 396) (31-CA-24291, 24484; 338 NLRB No. 11) Van Nuys, CA September 26, 2002.

L.S.F. Transportation, Inc. a/k/a L.S.F. Trucking, Inc. (Teamsters Local 142) (13-CA-33256, et al.; 338 NLRB No. 9) Hammond, IN September 26, 2002.

Geneva B. Scruggs Community Healthcare Center Inc. (AFSCME Local 1000) (3-CA-22591; 338 NLRB No. 12) Buffalo, NY September 27, 2002.

Alamo Rent-A-Car (Teamsters Local 665) (20-CA-29022, et al.; 338 NLRB No. 14) San Francisco and Burlingame, CA September 27, 2002.

Phillips & Sons Masonry & Construction, Inc. (Laborers Local 543) (9-CA-39029; 338 NLRB No. 19) Orma,WV September 30, 2002.

* * *

NO ANSWER TO COMPLAINT

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

Oregon Excavating, Inc. (Operating Engineers Local 701) (36-CA-9026-1; 338 NLRB No. 20) Clackamas, OR September 30, 2002.

Wanex Electrical Services, Inc. (Electrical Workers [IBEW] Local 313) (5-CA-30202; 338 NLRB No. 16) New Castle, DE September 30, 2002.

* * *

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondent has not raised any representation issues that are litigable in the unfair labor practice proceeding.)

Palmer Donavin Manufacturing Co., and P-D Mid-West Transport, Inc. (Teamsters Local 377) (8-CA-33323; 338 NLRB No. 23) Warren, OH September 30, 2002.