

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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October 25, 2002

W-2866

CASES SUMMARIZED

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[Abell Engineering & Mfg. Inc.](#), Indianapolis, IN

[Plumbers Local 123](#), Tampa, FL

[Wake Electric Membership Corp.](#), Wake Forest, Zebulon, Oxford, Louisburg, and Youngsville, NC

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Wake Electric Membership Corp. (11-CA-18297, 11-RC-6322; 338 NLRB No. 32) Wake Forest, Zebulon, Oxford, Louisburg, and Youngsville, NC Sept. 30, 2002. Members Cowen and Bartlett concluded that, contrary to the administrative law judge and dissenting Member Liebman, a remedial bargaining order pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), is not warranted in this case, explaining: [\[HTML\]](#) [\[PDF\]](#)

The judge's unfair labor practice findings that we adopt involve soliciting and promising to remedy grievances, promising benefits if employees ceased their support for the Union, polling employees to determine whether they would ask the Union to withdraw its election petition, telling employees that their union activities would damage

their relationships with other electric cooperatives and cause the latter to discontinue helping employees during emergencies, telling employees that it would be futile to select the Union, threatening employees with unspecified reprisals, threatening employees with discharge, creating an impression of surveillance of union activities, and accelerating the resignation dates of four employees and granting them severance pay. Thus, the Respondent's violations do not include discharge or other adverse actions against union supporters, the closing of a plant, or threat of plant closure, which are the more typical 'hallmark' violations found in cases warranting *Gissel* bargaining orders.

The majority sustained the Union's objections that parallel the unfair labor practices found and set aside the election held in Case 11-RC-6322 on March 31, 1999, which the Union lost 18 to 8. Having found that a *Gissel* bargaining order is not warranted, the majority reversed the judge's findings that the Respondent violated Section 8(a)(5) by failing and refusing on February 18, 1999 to recognize and bargain with the Union as the representative of the unit employees and by unilaterally changing its policy concerning acceleration of resignation dates and granting severance pay on March 24, 1999 "because at that time the Respondent was not obligated to bargain with the Union." *Fiber Glass Systems*, 278 NLRB 1255, 1256 (1986).

Member Liebman, dissenting in part, would affirm the judge's recommended bargaining order and his finding that the Respondent violated Section 8(a)(5) by refusing to bargain with the Union and by making unilateral changes in the unit employees' working conditions. She said the Respondent's unfair labor practices, which included three separate threats to discharge employees for engaging in union activities and granting significant benefits to employees shortly before the election, are "considered 'hallmark' violations of Section 8(a)(1), which will normally support the issuance of bargaining order." Member Liebman noted these violations were accompanied by other unlawful actions, some of which were committed by high management officials and were directed at nearly all employees, and that the unlawful conduct did not end with the election.

(Members Liebman, Cowen, and Bartlett participated.)

Charge filed by Electrical Workers IBEW Local 553; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Wake Forest, Sept. 27-29, 1999. Adm. Law Judge Howard I. Grossman issued his decision Feb. 2, 2000.

* * *

Plumbers Local 123 (Florida Maintenance & Construction) (12-CD-322; 338 NLRB No. 41) Tampa, FL Oct. 11, 2002. The Board decided that employees of Florida Maintenance & Construction, who are represented by Iron Workers Local 397 and Carpenters Local 1000, are entitled to perform this work. [\[HTML\]](#) [\[PDF\]](#)

The installation of a testing system for piping process involved in the eventual operation of the new power generating facility under construction at the Payne Creek Power Plant, including installing metal, plastic and copper pipes up to 300' in length, through which water, oils and compressed air will travel; and the installation as part of an ongoing system at Cargill Fertilizer, of replacement pipes and processed piping running from the pumps to various vessels or tanks, including welding metal pipe up to 24" in diameter and up to 300' in length.

The Board limited its award to the controversy at the jobsite that gave rise to this proceeding, rejecting the Employer's request for a broader award assigning the dispute work to employees represented by the Ironworkers and Millwrights. In so doing, the Board noted that the dispute at the Payne Creek site is the first substantiated controversy arising over the disputed work, that a previous 8(b)(4)(D) charge against the Plumbers as to this same site was dismissed, and that the record does not establish that the Plumbers Union is likely to engage in unlawful conduct at future job sites in pursuit of similar work.

(Members Liebman, Cowen, and Bartlett participated.)

* * *

Abell Engineering & Mfg. Inc. (25-CA-25966, 26263; 338 NLRB No. 42) Indianapolis, IN Oct. 18, 2002. The Board reversed the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act when it discharged employee Richard Gist for attempting to persuade fellow employee David Bautista to quit the Respondent for a position with

another employer, at which membership in Sheet Metal Workers Local 20 was contractually required. Based on his finding that the discharge was unlawful, the judge held that the Regional Director's revocation of a settlement agreement resolving allegations of earlier violations was permissible, and that the Respondent had committed a number of the presettlement violations alleged. [\[HTML\]](#) [\[PDF\]](#)

In exceptions, the Respondent argued that Gist's attempt to persuade Bautista to quit the Respondent's employ was disloyal conduct that deprived him of protection, whether or not his other activities were protected, and that the settlement agreement was not properly revoked and should be reinstated. The Board held that Gist's conduct exceeded the protections of the Act and the facts presented are analogous to those in *Clinton Corn Processing*, 194 NLRB 184 (1971), and distinguishable from those in cases where the Board found that the protection of the Act was not lost. Finding the discharge did not constitute a valid basis for the revocation of the settlement agreement, the Board reinstated the settlement agreement in Case 25-CA-25966 and dismissed the consolidated complaint.

(Members Liebman, Cowen, and Bartlett participated.)

Charges filed by Sheet Metal Workers Local 20; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Indianapolis, June 7 and 8, 1999. Adm. Law Judge C. Richard Miserendino issued his decision Sept. 13, 1999.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Seven Seventeen HB Buffalo Corp. d/b/a Adams's Mark Hotel Buffalo (Operating Engineers Local 17-17S) Buffalo, NY September 27, 2002. 3-CA-22667, et al.; JD-99-02, Judge C. Richard Miserendino.

Homer D. Bronson Company (Auto Workers [UAW] Region 9A and an Individual) Winsted, CT October 10, 2002. 34-CA-9499, et al.; JD(NY)-60-02, Judge Michael A. Marcionese.

Super Foodtown, Inc. (Food & Commercial Workers Local 1500) West Babylon, NY October 10, 2002. 29-CA-24666, 24864; JD(NY)-56-02, Judge Steven Davis.

Accel, Inc. (Food & Commercial Workers Local 1059) Delaware, OH October 10, 2002. 8-CA-33013; JD-112-02, Judge Paul Bogas.

The Second Shift Inc. d/b/a Jobsite Staffing and Jobsite Personnel Inc., a Single Employer (Electrical Workers [IBEW] Local 756) Altamonte Springs, FL October 10, 2002. 12-CA-17521; JD(ATL)-60-02, Judge Keltner W. Locke.

Ferguson Enterprises, Inc. d/b/a EPPCO, Ferguson Enterprise (Teamsters Local 559) Newington, CT October 16, 2002. 34-CA-9556; JD-111-02, Judge Wallace H. Nations.

Alfredo's Foreign Cars, Inc. d/b/a Larchmont Chrysler Jeep (Auto Workers [UAW] Local 259) Larchmont, NY October 11, 2002. 2-CA-33705-1; JD(NY)-61-02, Judge Eleanor MacDonald.