

# National Labor Relations Board



# Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED  
VISIT [WWW.NLRB.GOV](http://WWW.NLRB.GOV) FULL TEXT

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*Atlantic Structures Corp.* (5-CA-31460; 344 NLRB No. 13) Virginia Beach, VA Feb. 8, 2005. The Board granted the General Counsel's motion for summary judgment and held that the Respondent violated Section 8(a)(1) of the Act by statements made to employees; Section 8(a)(3) and (1) by discharging William Byer because he formed, joined and/or assisted Carpenters Local 613 and engaged in concerted activities; and Section 8(a)(5) and (1) by refusing to adhere to the terms and conditions of its collective-bargaining agreement with the Union and by bypassing the Union and dealing directly with unit employees regarding terms and conditions of employment. [\[HTML\]](#) [\[PDF\]](#)

On July 15, 2004, the administrative law judge approved an informal Board settlement agreement entered into by the Respondent, the Union, and the General Counsel. Among other things, the agreement required the Respondent to: (1) pay alleged discriminate William Beyer \$11,500 plus FICA contributions; (2) make whole, with interest, all unit employees for any losses they may have suffered as a result of the Respondent's failure to pay wage rates set forth in its collective-bargaining agreement with the Union; (3) make all fringe benefit contributions required by the collective-bargaining agreement, and make all unit employees whole for any expenses resulting from the Respondent's failure to make the pension and other fringe benefit contributions, with interest to the date of the payment, as required by the collective-bargaining agreement and the accompanying fringe benefit participation agreements; and (4) escrow with the Board \$25,000 to be used to make unit employees whole, with this amount due within 45 days of the signing of the agreement. To date, the Respondent has failed to comply with the settlement agreement in any manner. Accordingly, the General Counsel filed a motion for summary judgment with the Board.

(Chairman Battista and Members Liebman and Schaumber participated.)

General Counsel filed motion for summary judgment Nov. 24, 2004.

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*Delta Brands, Inc.* (32-RC-5055; 344 NLRB No. 10) Modesto, CA Feb. 7, 2005. Chairman Battista and Member Schaumber, contrary to the hearing officer, overruled the Union's (Machinists District Lodge 290, Local 1528) objections to an election conducted September 10, 2002, and certified the results of the election. The tally of ballots showed 8 for and 10 against, the Union. Member Liebman dissented. [\[HTML\]](#) [\[PDF\]](#)

At issue is whether the Employer maintained an unlawful rule (Rule 31) in its employee policy manual that restricted workplace solicitation. The hearing officer's initial recommendation was to set aside the election based on Rule 31. The Board thereafter remanded the case to the hearing officer to take additional evidence on the factual issue of whether Rule 31 had been disseminated to employees. In her supplemental report, the hearing officer reaffirmed her finding that the Employer had engaged in objectionable conduct as to Rule 31, which prohibits "[v]ending, soliciting, or collecting contributions for any purpose unless authorized by management." Accordingly, the hearing officer recommended that one of the Union's objections be sustained and that the election be set aside.

The majority maintained that the rule was not adopted in response to the union's organizing campaign, but that it was part of a 36-page handbook, and that only one employee

received the handbook during the critical period. They wrote: “[W]e have the mere presence of an overbroad rule in a much larger document, with no showing that any employee was affected by the rule’s existence, no showing of enforcement, and indeed no showing of any mention of the rule. . . . there is no showing that the mere existence of the rule could have affected the results of the election.” They said that the burden is on the objecting party to prove its objections, and without such a presumption, that burden is not satisfied here. The majority stated that their decision is supported by the approach followed in *Safeway, Inc.*, 338 NLRB 525 (2002).

In dissent, Member Liebman contended that under well-settled Board law, an employer’s mere maintenance of an unlawful rule is not only objectionable conduct, but also sufficient grounds to set aside an election. She said that as the Board has explained, “the maintenance of the rule, not its date of promulgation, enforcement, or the effects it had on employees’ specific conduct, is what is significant.” See *Pacific Beach Hotel*, 342 NLRB No. 30, slip op. at 2-3 (2004).

Member Liebman further wrote that her colleagues insist that their decision is “not a departure from established Board law.” She contended that the majority reallocates the burden of proof to the objecting party to show more than that the rule was maintained. In her view, no prior decision of the Board has ever required such a showing. Member Liebman found that the majority’s approach to this case seeks a way around controlling precedent. She would set aside the election because she found that the Employer’s rule was unlawful and because the maintenance of that rule reasonably tended to coerce employees.

(Chairman Battista and Members Liebman and Schaumber participated.)

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### **LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES**

*Corrections Corporation of America* (Security, Police and Fire Professionals and an Individual) San Ysidro, CA February 3, 2005. 21-CA-36223, 36225; JD(SF)-8-05, Judge James M. Kennedy.

*Phoenix Processor Limited Partnership* (an Individual) Seattle, WA February 4, 2005. 19-CA-28831; JD(SF)-10-05, Judge Lana H. Parke.

*Integrated Electrical Services, Inc. d/b/a Primo Electric* (Electrical Workers [IBEW] Local 24) Glen Burnie, MD February 10, 2005. 5-CA-31829; JD-10-05, Judge Eric M. Fine.

*Richard Lawson Excavating, Inc.* (Operating Engineers Locals 66, et al.) Pittsburgh, PA February 11, 2005. 6-CA-33928, 33929; JD-8-05, Judge Michael A. Rosas.

*Triumph Controls, Inc.* (UAW Local 1039) North Wales, PA February 11, 2005. 4-CA-32043, 32167; JD-6-05, Judge Benjamin Schlesinger.

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**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.)*

*Dynatech Specialty Services, Inc.* (Asbestos Workers Local 86) (26-CA-21827, 344 NLRB No. 16) Gordonsville, TN February 10, 2005. [\[HTML\]](#) [\[PDF\]](#)

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**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 issue that is litigable in this unfair labor practice proceeding.)*

*Mount Sinai Hospital* (New York State Nurses Association) (2-CA-36487-1, 344 NLRB No. 14) New York, NY February 7, 2005. [\[HTML\]](#) [\[PDF\]](#)

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**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS  
IN REPRESENTATION CASES**

*(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)*

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

*Food Bazaar*, New York, NY, 29-RC-10195, February 9, 2005 (Chairman Battista and Members Liebman and Schaumber)

*CCL Custom Manufacturing, Inc.*, Cumberland, RI, 1-RC-21826, February 10, 2005 (Chairman Battista and Members Liebman and Schaumber)

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*(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)*

**DECISION AND DIRECTION [that Regional Director open and count ballots]**

*American Red Cross, Southern Blood Services Region*, Valdosta, GA, 12-RC-9076, February 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

*Duane Reade, Inc.*, New York, NY, 2-RC-22903, February 7, 2005 (Chairman Battista and Members Liebman and Schaumber)

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

*Knight Protective Service, inc.*, Hyattsville, MD, 19-RC-15795, February 8, 2005  
(Chairman Battista and Members Liebman and Schaumber)

*Lee Kennedy Company, Inc.*, Boston, MA, 1-RC-21817, February 10, 2005 (Chairman Battista and Members Liebman and Schaumber)

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*(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)*

*Barton Protective Services*, Milwaukee, WI, 30-RC-06592, February 10, 2005  
(Chairman Battista and Members Liebman and Schaumber)

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*Miscellaneous Board Orders*

**ORDER [granting Employer's request for special permission to appeal Regional Director's administrative direction of a mixed manual/mail ballot election and denying the appeal on the merits]**

*Aquila, Inc.*, Lincoln, NE, 17-RD-1713, February 10, 2005 (Chairman Battista and Members Liebman and Schaumber)

**ORDER [denying Employer's motions to postpone the representation election now scheduled for February 11, 2005 until the Board rules on Carroll College's request for review]**

*Carroll College, Inc.*, Waukesha, WI, 30-RC-6594, February 10, 2005 (Chairman Battista and Members Liebman and Schaumber)

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*Cheney Construction, Inc.* (17-CA-22517; 344 NLRB No. 9) Manhattan, KS Feb. 4, 2005. In agreement with the administrative law judge, the Board held that the Respondent violated Section 8(a)(3) and (1) of the Act by failing and refusing to consider for hire and failing and refusing to hire three applicants because of their membership in, or support for Teamsters

Local 918, or any other labor organization, and by processing union supporters' employment applications differently from the application of other individuals. [\[HTML\]](#) [\[PDF\]](#)