



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED

Asher Candy, Inc.	New Hyde Park, NY	1
Enloe Medical Center	Chico, CA	1
Plumbers Local 290 and Plumbing and Mechanical Contractors Association	Portland, OR	2
Richmond Electrical Services, Inc.	Richmond, VA	3
Roosevelt Memorial Medical Center	Culbertson, MT	4

OTHER CONTENTS

List of Decisions of Administrative Law Judges	4
Test of Certification Case	5

List of Unpublished Board Decisions and Orders in Representation Cases	5
<ul style="list-style-type: none">• Contested Reports of Regional Directors and Hearing Officers• Uncontested Reports of Regional Directors and Hearing Officers• Requests for Review of Regional Directors' Decisions and Directions of Elections and Decisions and Orders	

Press Releases ([R-2606](#)): Sheryl Josephson is Named Regional Attorney in NLRB's Denver, CO

Regional Office

([R-2607](#)): Dennis Boren is Appointed Regional Attorney in NLRB's Detroit, MI
Regional Office

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Asher Candy, Inc., and Sherwood Brands, Inc., LLC, a single employer (29-CA-26761; 348 NLRB No. 60) New Hyde Park, NY Oct. 24, 2006. The Board affirmed the administrative law judge's findings that Respondent Asher Candy and Sherwood Brands constitute a single employer. It also agreed that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide Bakery Workers Local 102 adequate notice of a layoff from, and closure of, Respondent Asher Candy and an opportunity to bargain concerning the effects of those decisions, and refusing to pay its employees severance and vacation pay consistent with the terms established by the Union's most recent collective-bargaining agreement with Respondent Asher Candy. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charge filed by Bakery Workers Local 102; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Brooklyn, May 24-25 and June 1-3, 2005. Adm. Law Judge Howard Edelman issued his decision Nov. 3, 2005.

Enloe Medical Center (20-CA-31806-1, 20-RC-17937, et al.; 348 NLRB No. 63) Chico, CA Oct. 23, 2006. The Board, in this supplemental decision and order, affirmed its prior decision reported at 345 NLRB No. 54 (2005), finding that the Respondent's e-mail message barring the placement of union literature in the employee breakroom was discriminatory on its face and, therefore violated Section 8(a)(1) of the Act. Accordingly, it ordered that Respondent take the action set forth in the earlier order. [\[HTML\]](#) [\[PDF\]](#)

Following issuance of the Board's prior decision, the Respondent filed a motion for reconsideration, contending that the violations found differed from those alleged in the complaint and were not fully and fairly litigated. On April 14, 2006, the Board issued an Order Granting Motion in Part and Denying Motion in Part, remanding the complaint allegation regarding the rule on placement of union literature to the judge to provide the Respondent an opportunity to introduce evidence and submit a brief concerning whether the rule was discriminatory on its face and, therefore, violated Section 8(a)(1). 346 NLRB No. 82.

On May 2, 2006, the judge issued an Order on Remand, stating that the Respondent had declined to offer any evidence and instead simply objected to the Board's remand order as improper. Because no further evidence was presented, the judge found that there was no basis for a supplemental decision. In reaffirming its earlier finding that the Respondent's e-mail message violated Section 8(a)(1), the Board noted that the record evidence remains unchanged because the Respondent failed to present evidence. It acknowledged that the violation found is not precisely the same as that alleged in the complaint, noting that the complaint referred to a no-solicitation rule and alleged that the rule was overly broad. The Board found however that the violation is closely related to the complaint allegation. It also held that the violation was fully litigated because the lawfulness of the rule was put in issue by the complaint, the e-mail containing the rule was introduced into evidence at the hearing, and the Respondent was provided an opportunity to introduce evidence concerning whether the rule was discriminatory on its face.

(Chairman Battista and Members Liebman and Schaumber participated.)

Plumbers Local 290 and Plumbing and Piping Industry Council, Inc. d/b/a Plumbing and Mechanical Contractors Association (36-CB-2456-1, et al., 32- CA-9572; 348 NLRB No. 61) Portland, OR Oct. 24, 2006. Chairman Battista and Member Schaumber found that it would not effectuate the purposes and policies of the Act to approve the parties' formal settlement stipulation. Therefore, they rejected the stipulation and remanded the proceeding to the Regional Director for further processing without prejudice to further settlement negotiations. Member Liebman dissented. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Schaumber found that the stipulation is deficient in two respects. They wrote:

First, the Regional Director's transmittal memo indicates that the parties have agreed that the Board 'would only seek enforcement if Respondents fail to comply with the Order.' However, there are no provisions in the stipulation memorializing the parties' agreement on this issue. Second, it is unclear what happens if the Respondents deny an allegation of noncompliance and maintain that a petition for enforcement should not be filed. There does not appear to be any mechanism to permit the Respondents to contest the claimed noncompliance. While it may well be that the parties have agreed to non-enforcement absent noncompliance and/or that the Respondents have agreed to accept a unilateral finding by the General Counsel of noncompliance, we would require these matters to be spelled out, in writing, in the stipulation itself.

Dissenting Member Liebman believes that the stipulation plainly effectuates the policies of the Act. She wrote:

[T]he Board has lost sight of its mission. The Board's role is not to reject a formal settlement stipulation based on an 'agreement' the parties chose not to include or on the absence of a 'mechanism' to resolve an irrelevant issue. Rather, the Board's goal is to promote the peaceful resolution of labor controversies. Believing that this all-party settlement plainly accomplishes that end, I must dissent from the majority's refusal to approve it.

The complaint alleges that Respondent Plumbers Local 290 violated Section 8(b)(1)(A) and (2) of the Act by, among other things, operating an exclusive hiring hall in an arbitrary and discriminatory manner and imposing unlawful conditions upon the right of registrants to inspect and/or copy records relating to the operation of the hiring hall and that Respondent Plumbing and Piping Industry Council, Inc. d/b/a Plumbing and Mechanical Contractors Association violated Section 8(a)(1) and (3) by implementing and maintaining arbitrary and discriminatory rules pertaining to the operation of the hiring hall.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by James R. Coleman, David L. Collinsworth, and Paul Sanders, Individuals; complaint alleged violation of Section 8(b)(1)(A) and (2) and Section 8(a)(1) and (3).

Richmond Electrical Services, Inc. (5-CA-31680; 348 NLRB No. 62) Richmond, VA Oct. 24, 2006. Chairman Battista and Member Schaumber reversed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing its final contract proposals before the parties had reached an impasse in bargaining and, accordingly, dismissed the complaint. Member Liebman dissented. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Schaumber found that the Respondent and Electrical Workers IBEW Local 666 had reached a bargaining impasse by Dec. 30, 2003 because wages were at an issue of such critical and overriding importance that the parties' impasse over wages justified the Respondent's belief that further bargaining would be futile. They explained that the considerable gulf between the parties' wage proposals proved to be an insurmountable obstacle to an agreement and that by the time the Respondent declared impasse on Dec. 30, 2003, it was reasonable to conclude that continuing bargaining would be fruitless. Further, the Union did not make any concession breaking the impasse after the Respondent's Dec. 30 declaration.

Member Schaumber also relied on the judge's finding that the parties were at impasse on the issues of unit scope and licensing.

Contrary to her colleagues, Member Liebman would find that the Respondent violated Section 8(a)(5) and (1). She found that as an initial matter, there was no breakdown in the overall negotiation process—until the Respondent abruptly pulled the plug on bargaining. Member Liebman wrote that there was much to negotiate but the Respondent acted prematurely when it short-circuited the bargaining process, saying: “There was no impasse when the Respondent implemented unilaterally new contract terms, and any impasse that might have existed was broken when the Union accepted the Respondent's proposal excluding foremen from the unit.”

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Electrical Workers IBEW Local 666; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Richmond on July 26, 2004. Adm. Law Judge David L. Evans issued his decision Sept. 27, 2004.

Roosevelt Memorial Medical Center (27-CA-17564, et al.; 348 NLRB No. 64) Culbertson, MT Oct. 26, 2006. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by coercively interrogating employees regarding their intention to strike, and violated Section 8(a)(5) and (1) by unilaterally implementing its final contract proposals concerning grievance/arbitration procedures, strikes, dues, checkoff, and terms of the agreement. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Schaumber reversed the judge's finding that the Respondent unlawfully solicited employees to decertify AFSCME, Montana State Council 9, disparately enforced its no-solicitation rule, and unlawfully reduced the work hours of intended strikers after the Union cancelled an impending strike.

Unlike her colleagues, Member Liebman would find that the Respondent unlawfully cut the customary hours of six employees who said that they *would* strike—but it left intact the hours of unit employees who planned to work despite the strike, as well as the hours of temporary and per diem employees hired as strike replacements. She contended that because the Respondent's scheduled reduction in the hours of work of the would-be strikers was inherently destructive of their Section 7 rights, and because the Respondent has failed to provide a legitimate and substantial business justification of its scheduling, she would find that it violated Section 8(a)(3) and (1).

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by AFSCME, Montana State Council 9; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Culbertson, April 16-17, 2002. Adm. Law Judge Thomas M. Patton issued his decision Dec. 16, 2002.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Ferguson Enterprises, Inc. (Teamsters Local 162) Portland, OR Oct. 23, 2006. 36-CA-9878, et al.; JD(SF)-54-06, Judge John J. McCarrick.

Hanson Aggregates BMC, Inc. (Operating Engineers Local 542) Penns Park, PA Oct. 23, 2006. 4-CA-33330, et al.; JD-77-06, Judge Bruce D. Rosenstein.

United States Postal Service (Mailhandlers Local 317, an Individual, Postal Professional Nurses, and Letter Carriers Branch 404) Birmingham, AL Oct. 20, 2006. 10-CA-34974(P), et al.; JD(ATL)-38-06, Judge John H. West.

Longshoremen Local 1402 (Eller Maritime Services, LLC) (an Individual) Tampa, FL Oct. 25, 2006. 12-CB-5579; JD(NY)-47-06, Judge Joel P. Biblowitz.

TEST OF CERTIFICATION

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

Computer Sciences Raytheon (Electrical Workers [IBEW] Local 2088) (12-CA-25106; 348 NLRB No. 65) Port Canaveral, FL Oct. 27, 2006. [\[HTML\]](#) [\[PDF\]](#)

**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 ORDER [overruling Employer's Objection 6]

Bloomfield Health Care Center, Bloomfield, CT, 34-RC-2172, Oct. 26, 2006
(Members Schaumber, Kirsanow, and Walsh)

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

DECISION AND CERTIFICATION OF REPRESENTATIVE

Citizens Telecommunications of Montana d/b/a Frontier Communications of Montana, Libby and Troy, MT, 19-RC-14870, Oct. 24, 2006 (Chairman Battista and Members Kirsanow and Walsh)

Arbor Drugs, Inc., Grosse Point Woods, MI, 7-RC-23020, Oct. 24, 2006 (Chairman Battista and Members Kirsanow and Walsh)

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

Roger Carter Corp., Kinston, NC, 11-RC-6629, Oct. 24, 2006 (Chairman Battista and Members Kirsanow and Walsh)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

*Grand Sierra Operating Group Corp. d/b/a Grand Sierra Resort and Casino, Reno, NV,
32-RC-5446, Oct. 27, 2006 (Chairman Battista and Members Kirsanow and Walsh)*

***(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)***

*E.I. DuPont de Nemours and Co., Inc., Tonawanda and Buffalo, NY, 3-UC-514, Oct. 26, 2006
(Chairman Battista and Members Kirsanow and Walsh)*
