

National Labor Relations Board

Weekly Summary of NLRB Cases



Division of Information

Washington, D.C. 20570

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April 4, 2008

W-3150

CASES SUMMARIZED
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AM Property Holding Corp., Maiden 80/90 NY LLC and Media Technology Centers, LLC, a single employer, a joint employer with Planned Building Services, Inc. (2-CA-33146-1, et al.; 352 NLRB No. 44) New York, NY March 27, 2008. The Board granted the General Counsel's motion for reconsideration and reversed its findings that: 1) Respondent Planned Building Services, Inc. (PBS) did not violate Section 8(a)(5) and (1) of the Act by failing and refusing to recognize Service Employees Local 32BJ as the bargaining representative of PBS maintenance employees at a building owned by Respondent AM Property Holding Corp. (AM) at 80-90 Maiden Lane in New York City; and 2) PBS did not violate Section 8(a)(2) and (1) by recognizing the United Workers of America (UWA) as those employees' representative at a time when the UWA did not have majority support. [\[HTML\]](#) [\[PDF\]](#)

In the underlying case, the General Counsel alleged and litigated two alternative theories for finding that PBS unlawfully recognized the UWA: (1) the recognition occurred at a time when PBS had an obligation, as a joint successor employer with AM, to recognize and bargain with Local 32BJ; and (2) the UWA did not have the support of an uncoerced majority of PBS employees at the time of recognition. The administrative law judge found that the recognition was unlawful based on the joint-successorship theory, and thus found it unnecessary to reach the theory that the UWA had no uncoerced majority support at the time of recognition. The Board reversed the judge's finding that PBS had a successorship obligation to bargain with Local 32BJ at the time it recognized the UWA. Relying on *American Red-Cross Missouri-Illinois Blood Services Region*, 347 NLRB No. 33 (2006), and *Teddi of California*, 338 NLRB 1032 (2003) the Board further found that it was precluded from considering whether the UWA had uncoerced majority support at the time of recognition because the General Counsel failed to raise a timely exception to the judge's failure to rule on that issue as required by Section 102.46(b) of the Board's Rules and Regulations. The Board therefore dismissed the allegation.

The Board found merit in the General Counsel's argument that *American Red Cross* and *Teddi of California* are inapposite, and that *Pay Less Drug Stores Northwest, Inc.*, 312 NLRB 972 (1993), is controlling. In *Pay Less Drug Stores*, the Board held that parties are not required to file exceptions to a judge's failure to rule on an alternative legal theory that had been litigated in order to preserve the underlying issue for review. The Board found that both *American Red Cross* and *Teddi of California* are distinguishable, as neither case involved a judge's failure to rule on an alternative legal theory. In light of its review of precedent, the Board reversed its earlier decision and found it was not necessary for the General Counsel to except to the judge's failure to reach the alternative legal theory to preserve the issue for review.

Based on its finding in the underlying case that PBS violated the Act by soliciting authorization cards for the UWA and by directing employees to meet with UWA representatives, the Board concluded that the UWA did not have the support of an uncoerced majority of employees at the time PBS granted recognition, and that the recognition was therefore unlawful.

The Board denied Local 32BJ's motion for reconsideration of its refusal to decide whether PBS individually was a successor to the previous cleaning contractor, and its refusal to grant special remedies.

(Chairman Schaumber and Member Liebman participated.)

Coastal International Security, Inc. (16-CA-23864; 352 NLRB No. 46) Fort Worth, TX March 28, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing the higher contractual wage rate of newly hired security officers to the lower federal minimum wage rate when they were in initial training sessions. [\[HTML\]](#) [\[PDF\]](#)

The Respondent employer is in the business of providing contract security guard services to federal agencies throughout the United States. This case pertains to the Respondent's provision of such services for the Federal Protective Services at several federal buildings located in the Fort Worth, TX area.

The judge found that security officers during their initial training were employees of the Respondent and were included in the bargaining unit represented by the United Government Security Officers International America, and its Local 2033. The judge rejected the Respondent's untimely attempt to remove the newly hired security officers from the unit and to unilaterally alter the scope of the bargaining unit during the contract term. The judge further found that the Respondent could not change the terms and conditions of employment of the security officers without notice to or bargaining with the Union.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Government Security Officers Local 2033; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Fort Worth on Oct. 18, 2007. Adm. Law Judge George Carson II issued his decision Dec. 6, 2007.

United Workers of America (2-CB-18037; 352 NLRB No. 45) New York, NY March 27, 2008. The Board granted the General Counsel's motion for reconsideration of its prior decision to dismiss allegations that Respondent United Workers of America (UWA) violated Section 8(b)(1)(A) of the Act by accepting recognition from Planned Building Services, Inc. (PBS) as the bargaining representative of PBS employees at 80-90 Maiden Lane in New York City, and by maintaining a collective-bargaining agreement covering those employees. Based on its finding in *AM Property Holding Corp.*, 352 NLRB No. 44 (2008), that PBS violated the Act by recognizing the UWA at a time when the UWA did not have the support of an uncoerced majority of PBS employees at 80-90 Maiden Lane, the Board concluded that the UWA likewise violated 8(b)(1)(A) by accepting recognition from PBS and maintaining the collective-bargaining agreement. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Universal Health Services of Rancho Springs, Inc. d/b/a Southwest Healthcare System, d/b/a Inland Valley Medical Center (California Nurses Association) Wildomar, CA March 26, 2008. 21-CA-37018, et al., 21-RD-2814; JD(SF)-12-08, Judge Gerald A. Wacknov.

Nevada Power Co. (Electrical Workers [IBEW] Local 396) Las Vegas, NV March 26, 2008. 28-CA-21258, et al.; JD(SF)-13-08, Judge John J. McCarrick.

Honeywell Electronic Materials a wholly-owned subsidiary of Honeywell International, Inc. (Operating Engineers Local 280) Spokane, WA March 26, 2008. 19-CA-30824, et al.; JD(SF)-14-08, Judge William G. Kocol.

NO ANSWER TO COMPLIANCE SPECIFICATION

(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 compliance specification.)

Seneca Falls Foods, LLC d/b/a Seneca Falls IGA (Food and Commercial Workers Local 1) (3-CA-26051; 352 NLRB No. 43) Seneca Falls, NY March 26, 2008. [\[HTML\]](#) [\[PDF\]](#)

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

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

DECISION AND CERTIFICATION OF REPRESENTATIVE

McCarthy Construction Co., Inc., Walled Lake, MI, 7-RC-23146, March 26, 2008

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

T. Frank McCall's, Inc., Chester, PA, 4-RD-2127, March 26, 2008

E.S.S. Co., Inc., West Berlin, NJ, 4-RC-21358, March 28, 2008

DECISION AND ORDER [remanding proceeding to Regional Director for further appropriate action]

O'Connor Woods Housing Corp. d/b/a O'Connor Woods, Stockton, CA, 32-RD-1536, March 26, 2008

***(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)***

Rising Development BPS, LLC, New York, NY, 2-RC-23250, March 26, 2008
(Chairman Schaumber and Member Liebman)
