



# National Labor Relations Board

## Weekly Summary of NLRB Cases

Division of Information

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*Bashas' Inc., d/b/a Bashas', Food City, and AJ's Fine Foods* (28-CA-21048, et al.; 352 NLRB No. 56) Chandler, AZ April 30, 2008. The Board adopted the administrative law judge's finding that Section 10(b) of the Act time bar precluded consideration of the complaint allegation that the Respondent made improper unilateral changes to employee health benefits. Applying *Redd-I*, 290 NLRB 1115 (1988), the Board found that the General Counsel's unilateral change allegation was not factually related to its withdrawal of recognition allegation, and that the Respondent did not assert similar defenses to the two allegations. [\[HTML\]](#) [\[PDF\]](#)

The Board found it unnecessary to pass on whether the legal theories of the two allegations were related under *Redd-I*. The Board also found it unnecessary to pass on the judge's finding that the Respondent's direct dealing with employees about transfers from two closing stores was lawful due to past practice. The Board found that, under the particular circumstances of this case, a finding of direct dealing would not materially alter the remedy. The Respondent was already required to bargain over the effects of its decision to close two stores.

The Respondent did not except to the judge's findings that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union, by unilaterally introducing the U-Scan self-service registers, and by failing to bargain with the Union about the effects of its decision to close two stores.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Food and Commercial Workers Local 99; complaint alleged violations of Section 8(a)(5) and (1). Hearing at Phoenix on July 24-26, 2007. Adm. Law Judge William G. Kocol issued his decision Oct. 10, 2007.

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*Crowne Plaza Hotel* (3-CA-25953; 352 NLRB No. 55) Rochester, NY April 30, 2008. The Board granted in part and denied in part the General Counsel's motion for summary judgment on the complaint allegations that several rules in the Respondent's employee handbook violate Section 8(a)(1) of the Act. The rules found unlawful address the following kinds of employee activity: solicitation and distribution, supplying statements or information to the press, leaving work area without authorization, walking off the job, and "insightful" (i.e., inciteful) actions. The rules found lawful address the following employee activity: off-duty use of hotel facilities and discussing company business or work difficulties in front of guest. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Unite HERE Rochester Regional Joint Board; complaint alleged violation of Section 8(a)(1). General Counsel filed motion for summary judgment Dec 27, 2006.

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*Essex Valley Visiting Nurses Assn. and New Community Corp. and New Community Health Care, Inc.* (22-CA-24770; 352 NLRB No. 61) East Orange, NJ April 30, 2008. The Board adopted the administrative law judge's supplemental decision, finding that the employees at issue made reasonable efforts to mitigate their losses during the backpay period and that the judge properly denied the Respondents' motion to dismiss the compliance specification in its entirety. [\[HTML\]](#) [\[PDF\]](#)

The Board also found that the judge properly concluded that the named Respondents constituted a single employer under Board law. In adopting the judge's decision in this regard, the Board approved the judge's decision to draw certain adverse inferences consistent with the Board's decision in *Bannon Mills, Inc.*, 146 NLRB 611 (1964). In approving the judge's application of adverse inferences, Chairman Schaumber distinguished the instant case from *McAllister Towing & Transportation Co.*, 341 NLRB 394 (2004), a case in which he dissented in relevant part.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Health Professional and Allied Employees Local 5122; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Newark, Oct. 11 and 20, 2006. Adm. Law Judge Mindy E. Landow issued her supplemental decision Jan. 19, 2007.

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*Frye Electric, Inc.* (25-CA-30270; 352 NLRB No. 53) Indianapolis, IN April 28, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees Thomas Fosnight and Dennis Hensley because of their protected union activities. The Board dismissed an allegation that the Respondent violated Section 8(a)(1) by interrogating employees, finding that the record was unclear as to whether the Respondent's statement to an employee was an inquiry that amounted to an interrogation. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Electrical Workers IBEW Local 481; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Indianapolis on July 23, 2007. Adm. Law Judge Paul Buxbaum issued his decision Oct. 19, 2007.

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*Gelita USA Inc.* (18-CA-18406, 18-RC-17500; 352 NLRB No. 59) Sergeant Bluff, IA April 30, 2008. The Board adopted the findings of the administrative law judge that the Respondent, Gelita USA Inc., violated Section 8(a)(1) of the Act by threatening employees that they would receive no job protection if they engaged in an economic strike on behalf of the Union, interrogating employees about their union sympathies, and promising to remedy a staffing problem in its laboratory if employees would abandon their pursuit of Union representation. The Board also adopted the judge's finding that the Respondent violated Section 8(a)(3) and (1) by accelerating the termination date of employee Heidi Young because of her protected activity. [\[HTML\]](#) [\[PDF\]](#)

The Board sustained the Union's objections to a representation election held at the Respondent's facility on May 31, 2007, which were coextensive with the unfair labor practice charges. The Board further directed that Young's ballot be opened and counted, and remanded Case 18-RC-17500 to the Regional Director for action consistent with its Direction.

(Chairman Schaumber and Member Liebman participated.)

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*Metro Mayaguez, Inc., d/b/a Hospital Pavia Perea* (24-CA-10505; 352 NLRB No. 60) Mayaguez, PR April 30, 2008. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) and (5) of the Act by implementing unilateral changes in employees' terms and conditions of employment. The Board adopted the judge's finding that the Respondent was a "perfectly clear" successor. It found no merit to the Respondent's contention that to constitute a "perfectly clear" successor, an employer must hire all of the former employees. The Board noted that the parties stipulated that the Respondent employed a majority of the former employees when it assumed operations and did not inform employees of an intention to set initial terms and conditions of employment. The Board also adopted the judge's finding that the Respondent violated Section 8(a)(1) by promulgating and maintaining an overly broad no-solicitation/no-distribution rule. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Unidad Laboral De Enfermeras (OS) Y Empleados De La Salud; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Mayaguez on Dec. 29, 2006. Adm. Law Judge William N. Cates issued his decision April 30, 2007.

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*Machinists District Lodge 776* (16-CD-153; 352 NLRB No. 57) Fort Worth, TX April 30, 2008. This case involves a jurisdictional dispute under Section 10(k) of the Act and awards the work in dispute to employees of the Lockheed Martin Aeronautics Co. represented by Machinists District Lodge 776 ("IAM") rather than Electrical Workers IBEW Local 20. The work in dispute concerns "[t]he maintenance on two, 20-ton air conditioning units in Building 8, Bay 2 data center at the Employer's Fort Worth, Texas facility." The Board awarded the work in dispute to the employees represented by the IAM based on the factors of employer preference, current assignment, and past practice. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

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*Operating Engineers Local 150* (33-CB-4215; 352 NLRB No. 54) Pontiac, IL April 30, 2008. The Board found that the Respondent Union, in dispatching a member to a worksite, violated Section 8(b)(1)(A) and (b)(2) of the Act, and its duty of fair representation, by departing from the nondiscriminatory referral procedure established in its collective-bargaining agreement. The

Board agreed with the administrative law judge that the Union's business agent, on the basis of his own subjective opinion of who should be referred, insisted on referring a particular member when other qualified members were listed ahead of that applicant on the Union's out-of-work list. Because this was contrary to the Union's referral criteria, and the departure was not necessary for the Union's effective performance of its representational duties, the business agent's action was unlawful. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by an Individual; complaint alleged violation of Section 8(b)(1)(A) and (b)(2). Hearing at Peoria, Oct. 1-2, 2007. Adm. Law Judge John H. West issued his decision Dec. 13, 2007.

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### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Electrical Workers IBEW Local 15* (Commonwealth Edison Co.) Chicago, IL April 28, 2008. 13-CB-18622; JD-21-08, Judge Michael A. Rosas.

*Morse Operations, Inc. d/b/a Sawgrass Auto Mall, and d/b/a Ed Morse* (Machinists and an Individual) Miami, FL April 30, 2008. 12-CA-25466, et al.; JD(ATL)-11-08, Judge William N. Cates.

*Greensburg Mfg., LLC* (Auto Workers) Greensburg, IN April 30, 2008. 25-CA-30467; JD-25-08, Judge David I. Goldman.

*AMF Graphics* (Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers Local 4-107) Moonachie, NJ May 1, 2008. 22-CA-28055; JD(NY)-16-08, Judge Howard Edelman.

*New Process Steel, LP* (Machinists District Lodge 34) Butler, IN May 1, 2008. 25-CA-30470; JD-26-08, Judge David I. Goldman.

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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.)***

*General Business Supply, d/b/a Tech Valley Printing Inc.* (New York Typographical Union, CWA Local 14156) (3-CA-26521; 352 NLRB No. 58) Watervliet, NY April 30, 2008. [\[HTML\]](#) [\[PDF\]](#)

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

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

**DECISION AND DIRECTION OF SECOND ELECTION**

*Stampede Meat, Inc.*, Bridgeview, IL, 13-RC-21655, April 29, 2008 (Chairman Schaumber and Member Liebman)

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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)*

*Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino*, Mashantucket, CT, 34-RC-2251, April 30, 2008 (Chairman Schaumber and Member Liebman)

*Nyack Hospital*, Nyack, NY, 2-RC-23255, April 30, 2008 (Chairman Schaumber and Member Liebman) **[also denied request to stay election]**

*OMNISEC International Hospital Security Services, Inc.*, Chantilly, VA, 5-RC-16209, May 2, 2008 (Chairman Schaumber and Member Liebman)

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