

National Labor Relations Board

Weekly Summary of NLRB Cases



Division of Information

Washington, D.C. 20570

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January 2, 2009

W-3189

CASES SUMMARIZED
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Chinese Daily News (21-CA-36178, et al.; 353 NLRB No. 66) Monterey Park, CA Dec. 22, 2008. The Board reversed the administrative law judge's findings and held that the Respondent violated Section 8(a)(1) of the Act when its attorney asked an employee union supporter during a deposition – which was taken in connection with the Respondent's defense of a class-action wage-and-hour lawsuit brought by some of its employees – whether the employee, who was a supportive declarant in the motion for class certification, had “vote[d] for the Union to win the election[.]” [\[HTML\]](#) [\[PDF\]](#)

Applying the test set forth in *Guess?, Inc.*, 339 NLRB 432 (2003), petition for review dismissed without prejudice, 2003 WL 22705744 (D.C. Cir. 2003), the Board assumed *arguendo* that the deposition question at issue was relevant to the litigation and that the questioning did not have an illegal objective. As to the final *Guess?* prong, however, the Board found that the employee's substantial Section 7 interest in maintaining the confidentiality of his election vote outweighed the Respondent's need for the information concerning his vote for the purpose of developing its defense to the lawsuit, i.e., that the class should not be certified because the plaintiffs would not act in the best interests of the class, and that one of the plaintiffs and the supportive declarants, including the employee, were biased against the Respondent because they were Union supporters. The Board therefore concluded that the deposition question regarding how the employee voted in the election constituted an unlawful interrogation.

The Board further adopted the judge's findings that the Respondent violated Section 8(a)(1) by promulgating and maintaining unlawful dress code and no-solicitation/distribution policies, and by instructing an employee to refrain from discussing terms and conditions of employment with his co-workers. As to the dress code policy, the Board found it unnecessary to pass on the judge's finding that that policy also violated Section 8(a)(3). In the absence of exceptions, the Board adopted the judge's recommended dismissal of the allegation that the Respondent's no-solicitation/distribution policy violated Section 8(a)(3). Additionally, in the absence of exceptions, the Board adopted the judge's recommended dismissal of the allegations that the Respondent violated Section 8(a)(3) and (1) by issuing a written warning to an employee and by refusing to assign that employee to certain shift rotations and assignments.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Communications Workers [CWA]; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Los Angeles, Oct. 1-4, 2007. Adm. Law Judge Lana H. Parke issued her decision Dec. 26, 2007.

Kingsbridge Heights Rehabilitation and Care Center (29-CA-27502; 353 NLRB No. 69) Bronx, NY Dec. 24, 2008. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) and (5) of the Act by failing to make timely payments to the Union's Funds, since June 2005, including failing to make any contributions to the Funds for various months, and including no payments to any of the Funds since August 2007. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by 1199 SEIU, United Health Care Workers East; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York, May 30 and June 8, 2006. Adm. Law Judge Steven Fish issued his decision July 30, 2008.

NYP Holdings, Inc., d/b/a The New York Post (2-CA-37729; 353 NLRB No. 67) Bronx, NY Dec. 24, 2008. The Board adopted the administrative law judge's dismissal of an allegation that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide the Union with copies of galleys showing newspaper deliveries made by nonunit employees. [\[HTML\]](#) [\[PDF\]](#)

The Union represents the Respondent's drivers, utility persons, dispatchers, machine operators, and clerks. In 2003, the Union and the Respondent entered into a collective-bargaining agreement that contained a memorandum of understanding ("MOU I") providing that up to 24,000 papers could be delivered by certain nonunit personnel. MOU I established a Circulation Growth Committee ("the Committee") consisting of three members appointed by the Respondent and 3 members appointed by the Union. MOU I required the Respondent to obtain galleys from its wholesalers showing the nonunit deliveries, and to provide those galleys to the Committee. MOU I did not address photocopying of the galleys. The Respondent allowed the Committee to review the galleys and to take notes, but not to photocopy them. The Union objected to the copying restriction.

In Jan. 2006, the parties executed a revised MOU ("MOU II"), increasing to 50,000 the number of papers that could be delivered by the nonunit personnel. MOU II stated that the Respondent would continue to provide galleys to the Committee and to a Union-designated unit employee to be known as the "Circulation Monitor." MOU II stated that review of the galleys would be done "[t]hrough the Committee." MOU II, like MOU I, was silent as to photocopying. Under MOU II, the Respondent continued to prohibit photocopying, and the Union continued to object to that restriction.

In April 2006, the Union's business representative asked the Respondent to furnish the Union with copies of the galleys. The Respondent refused the Union's request, contending that the galleys were to go only to the Committee and Circulation Monitor. The Union filed a grievance, alleging that it was being denied "free and unfettered access" to the galleys. The Union also filed an unfair labor practice charge, and the General Counsel issued a complaint, alleging that the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with copies of the galleys.

The judge dismissed the complaint. He concluded that the Union, by entering into MOU II, waived its statutory right to obtain the galleys outside the procedures set forth in MOU II. The Board adopted the judge's decision. In doing so, the Board did not rely on the Union's failure to seek changes to MOU I when it was renegotiated in 2006, or on the judge's finding that the MOU negotiations satisfied whatever obligation the Respondent had to seek an accommodation with the Union regarding the Respondent's claim that the galleys were

confidential. The Board also observed that the Charging Party appeared to contend that, at a minimum, the Respondent was statutorily required to provide copies of the galleys to the Committee and Monitor, if not to the Union's representatives outside the MOU procedures. The Board declined to pass on that theory, finding that the General Counsel did not clearly allege or litigate it.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Newspaper & Mail Deliverers' Union of New York and Vicinity; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York, Dec. 4, 2006. Adm. Law Judge Michael A. Marcionese issued his decision Feb. 2, 2007.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Heartland - University of Livonia, MI, LLC, d/b/a Heartland Health Care Center - University (SEIU Healthcare Michigan) Livonia, MI Dec. 22, 2008. 7-CA-51011; JD-66-08, Judge Paul Bogas.

Community Medical Center, Inc. (New York State Nurses Assn.) Toms River, NJ Dec. 29, 2008. 4-CA-34888, 35025, 4-RC-21199; JD-67-08, Judge Bruce D. Rosenstein.

PDK Investments, LLC (Electrical Workers [IBEW] Local 20) Balch Springs, TX Dec. 29, 2008. 16-CA-26292; JD(ATL)-44-08, Judge Michael A. Marcionese.

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.)

Agencia de Publicaciones de Puerto Rico, Inc. (United Industrial Workers Service, Transportation, Professional and Government Workers) (24-CA-10801; 353 NLRB No. 68) Cataño, PR Dec. 24, 2008. [\[HTML\]](#) [\[PDF\]](#)

**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 ORDER [that election held 6/11/07
is set aside in its entirety] REMANDING [case
to Regional Director for further action]**

*Trinity Transition Associates L.P. t/a Angela Jane Pavilion, Philadelphia, PA, 4-RC-21437,
Dec. 24, 2008 (Chairman Schaumber and Member Liebman)*

*(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)*

*Sunshine Media Printing, Inc., Tucson, AZ, 28-RC-6629, Dec. 23, 2008
(Chairman Schaumber and Member Liebman)*
