

National Labor Relations Board

Weekly Summary

of

NLRB Cases



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CASES SUMMARIZED
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Regency Grande Nursing & Rehabilitation Center (22-CA-26231-S, 354 NLRB No. 93) Dover, NJ, Oct. 23, 2009. The Board adopted, with minor corrections, the administrative law judge's finding that the Respondent owed certain current and former employees \$74,852.71, plus interest, for dues and fees it deducted from their pay pursuant to union-security and dues-checkoff provisions in the Respondent's collective-bargaining agreement with Local 300S, Production Service & Sales District Council a/w United Food and Commercial Workers International Union. [\[HTML\]](#) [\[PDF\]](#)

In the underlying case (347 NLRB 1143), the Board found that the Respondent violated Section 8(a)(1),(2), and (3) of the Act by recognizing Local 300S, and entering into, maintaining and enforcing a collective-bargaining agreement containing union-security and dues-checkoff provisions at a time when Local 300S did not represent a majority of the Respondent's employees. The Board ordered the Respondent to make whole its present and former employees, except those who voluntarily joined Local 300S before the unlawful agreement was entered into on Jan. 8, 2004.

Following court enforcement of the Board's Order (265 Fed. Appx. 74 (3d Cir. 2008) the General Counsel instituted a compliance proceeding against the Respondent, seeking reimbursement for employees for fees and moneys deducted between Jan. 8, 2004 and Mar. 31, 2008, when the Respondent ceased making the deductions. At the compliance hearing, the parties stipulated that the employees listed on the compliance specification were employed by the Respondent during the relevant period, and that their listed gross back pay figures were accurate and correctly calculated. Based on this stipulation, the General Counsel took the position that no witnesses were necessary. The Respondent called one witness, a former Local 300S president, who provided no testimony or evidence as to any Respondent employees who had voluntarily joined it before Jan. 8, 2004. The former president did testify, however, over the General Counsel's objections, that although his current knowledge of the Local's finances was "minimal," based on his prior experience Local 300S would go bankrupt if the Respondent sought subrogation from it.

The General Counsel and Respondent each argued that the other bore the burden of proving that the claimants signed (or did not sign) Local 300S cards before Jan. 8, 2004. Citing *Freeman Decorating Co.*, 334 NLRB 1 (2001), enf. denied on other grounds 334 F.3d 27 (D.C. Cir. 2003), the judge found that the Respondent bore the burden of mitigation, and that it failed to establish that any of the claimed dues and fees were not owed. The judge also rejected the Respondent's argument that it would be unduly burdensome to assess its sole liability because Local 300S benefited from the deducted monies, noting that the Board and the court had previously rejected this argument. The judge also rejected the Respondent's argument that the award would be unduly burdensome because any attempt to seek subrogation from Local 300S would bankrupt that local. The judge found that the Respondent had not timely raised that defense and that, in any event, the record did not support it.

The Board adopted the judge's findings with minor corrections to his backpay computations, as urged by the General Counsel on cross-exception.

(Chairman Liebman and Member Schaumber participated.)

Adm. Law Judge Mindy E. Landow issued her supplemental decision May 28, 2009.

Unisys Corp. (7-RC-23167; 354 NLRB No. 92) Plymouth, MI, Oct. 20, 2009. The Board reversed the Regional Director's decision dismissing a petition for a self-determination election to ascertain whether production control assistant Gerald Sarna wishes to be included in the existing unit of the Employer's general production employees and electronic product technicians, or remain unrepresented. Applying the standard set forth in *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990), the Board found that Sarna shares a sufficient community of interest with the existing unit and that his employment interests are sufficiently identifiable and distinct from the Employer's other unrepresented employees to permit a self-determination election. [\[HTML\]](#)
[\[PDF\]](#)

Accordingly, the petition was reinstated and the case remanded to the Regional Director for further processing.

(Chairman Liebman and Member Schaumber participated.)

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Universal Fuel, Inc. (Machinists District Lodge 4) Patuxent River, MD, Oct. 20, 2009, 5-CA-34622, JD-49-09, Judge Eric M. Fine

E.A. Sween Co. (Teamsters Local 754) Woodridge, IL, Oct. 23, 2009, 13-CA-44945, 45106, JD-48-09, Judge Paul Buxbaum

UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

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

Hackley Visiting Nurse Services and Hospice, Inc., Muskegon, MI, 7-RC-23277, Oct. 23, 2009 (Chairman Liebman and Member Schaumber)

**DECISION AND ORDER REMANDING [proceeding
to Acting Regional Director for further appropriate action]**

20 River Court West Urban Renewal Co., Jersey City, NJ, 22-RC-13018, Oct. 22,
2009 (Chairman Liebman and Member Schaumber)

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

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

Promoco Manufacturing Co., West Haven, CT, 34-RC-02279, Oct. 22, 2009

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Jefferson Partners, LP, Overland Park, KS, 17-UD-138, Oct. 19, 2009

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

Avista Corp., Spokane, WA, 19-RC-15234, Oct. 22, 2009 (Chairman Liebman
and Member Schaumber)

**DECISION ON REVIEW [remanding proceeding to
Regional Director for further appropriate action]**

Council of Chapters of AAUP at University of Medicine and Dentistry of New Jersey,
Newark, NY, 22-RC-13014, Oct. 23, 2009 (Chairman Liebman and Member Schaumber)

*(In the following case, the Board denied
request for review of Decision and Direction
of Election (D&DE) of Regional Director)*

Mr. T Carting Corp., Glendale, NY, 29-RC-11798, Oct. 19, 2009
(Chairman Liebman and Member Schaumber)

Miscellaneous Board Decision and Order

**ORDER [granting Employer's request for review of
Regional Director's decision and order clarifying
bargaining Unit and denying Petitioner's request for review]**

NV Energy, Inc., Las Vegas, NV, 28-UC-243, Oct. 19, 2009 (Chairman Liebman and
Member Schaumber)
