



Weekly Summary of Cases

National Labor Relations Board

Week of October 25-29, 2010, W-3284

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Summarized Board Decisions

New York University (2-RC-23481; 356 NLRB No. 7) New York, NY, October 25, 2010.
[\[HTML\]](#) [\[PDF\]](#)

The Board granted Petitioner's request for review of the Regional Director's order dismissing the petition without a hearing. In the Order, the Board reversed the dismissal, reinstated the petition, and remanded it for hearing and the issuance of a decision by the Regional Director. The Petitioner sought to represent a unit of graduate students, and contended they are employed by New York University to provide teaching and research services. In dismissing the petition, the Regional Director cited *Brown University*, 342 NLRB 483 (2004), which held that graduate students performing such services at Brown University are not employees within the meaning of the Act. The majority, Members Craig Becker and Mark Pearce, stated that there are compelling reasons for reconsideration of the decision in *Brown University*. Member Hayes, dissenting, would deny Petitioner's request for review because the Regional Director's dismissal is consistent with Board precedent, and because Petitioner has set forth no compelling reason to reconsider any Board rule or policy.

Petitioner – GSOC/UAW. Members Becker, Pearce, and Hayes participated.

Southwest Regional Council of Carpenters Local 1506, et al. (31-CC-2115, 2117; 356 NLRB No. 11) Santa Monica, CA, October 27, 2010. [\[HTML\]](#) [\[PDF\]](#)

The Board found that the union did not violate the Act by displaying banners proclaiming a "labor dispute" at locations of employers not engaged in a primary labor dispute with the union. The Board relied on its recent decision in *Carpenters Local 1506 (Eliason & Knuth of Arizona)* dismissing identical allegations regarding similar conduct. Member Hayes dissented, reiterating the views stated in his joint dissent with former Member Schaumber in *Eliason & Knuth* that the display of banners was unlawful.

Charges filed by Held Properties, Inc. and The Laser Institute for Dermatology & European Skin Care. Administrative Law Judge Burton Litvack issued his decision April 2, 2004. Chairman Liebman and Members Becker, Pearce, and Hayes participated.

Humane Society for Seattle/King Count (The) (19-RC-15235.; 356 NLRB No. 13) Bellevue, WA, October 28, 2010. [[HTML](#)] [[PDF](#)]

The Board set aside an election where the petitioner prevailed because the Board found that a majority of the employees did not select the petitioner as their representative. The Board relied on the following in so finding: there was a strong showing of employee confusion over the identity of the organization seeking representative status, the identity of the organization was of particular importance to this group of voters, the petitioner only prevailed by two votes, and the confusion was created by the petitioner's own conduct.

Petitioner – Animal Control Officers Guild. Chairman Liebman and Members Becker and Pearce participated.

Watkins Security Agency of D.C., Inc. (5-RC-16491; 356 NLRB No. 12) October 28, 2010, Washington, DC. [[HTML](#)] [[PDF](#)]

The Board majority granted Service Employees International Union Local 32BJ's (Local 32BJ's) request for special permission to appeal the Regional Director's order denying Local 32BJ's motion to intervene. The Board remanded the case for a hearing and issuance of a decision to determine whether the petitioned-for unit employees enforce rules to protect property of a statutory employer or to protect the safety of persons on the premises of a statutory employer, and any other issues that the Regional Director may deem appropriate for determination. Member Hayes, dissenting, would grant the request for special permission to appeal and deny the appeal on the merits. In his view, the majority's reading of Section 9(b)(3) would lead to untenable results affecting unions that exclusively represent guard units and unions that admit only non-guards. The Board majority emphasized that the concerns identified by Member Hayes, which were not addressed in the papers, can be addressed based on an evidentiary record and after full briefing.

Petitioner – Federal Contract Guards of America (FCGOA). Members Becker, Pearce, and Hayes participated.

Southwest Regional Council of Carpenters and its Locals 1506 and 209 (31-CC-2126, et al.; 356 NLRB No. 16) Los Angeles, CA, October 29, 2010. [[HTML](#)] [[PDF](#)]

The Board found that the union did not violate the Act by displaying banners proclaiming a "labor dispute" at locations of employers not engaged in a primary labor dispute with the union. The Board relied on its recent decision in *Carpenters Local 1506 (Eliason & Knuth of Arizona)* dismissing identical allegations regarding similar conduct. Member Hayes dissented, reiterating the views stated in his joint dissent with former Member Schaumber in *Eliason & Knuth* that the display of banners was unlawful.

Charges filed by Held Properties, Inc. and Hilton Hotels Corporation. Administrative Law Judge Clifford H. Anderson issued his decision April 5, 2005. Chairman Liebman and Members Becker, Pearce, and Hayes participated.

Satellite Services, Inc. (21-CA-38670; 356 NLRB No.17) Riverside, CA, October 29, 2010. [\[HTML\]](#) [\[PDF\]](#)

The Board resolved remedial issues raised by the union stemming from the administrative law judge's findings that the employer, a contractor providing services to the U. S. Government, violated the Act by maintaining an overbroad no-solicitation/no-distribution rule in its handbook and by discharging an employee for engaging in union activities. The employer did not appeal those findings. The Board granted the union's request that the employer be ordered to post the Board's remedial notice on the employer's intranet system. The Board denied, however, the union's request that the employer be ordered to notify its government client of its unfair labor practices in this case. The Board also denied the union's request that the Board revise the judge's recommended Order to make clear that employees can distribute or solicit on government premises. The Board explained that no revision is necessary, because the employer has already adopted and communicated to its employees a new policy containing that clarification.

Charges filed by International Association of Machinists and Aerospace Workers, District Lodge 725, AFL-CIO. Administrative Law Judge Lana Parke issued her decision September 23, 2009. Chairman Liebman and Members Becker and Pearce participated.

KMS Refractories, Inc. d/b/a St. Charles Refractory (6-CA-36919; 356 NLRB No. 5) New Bethlehem, PA, October 26, 2010. [\[HTML\]](#) [\[PDF\]](#)

The respondent failed to file an answer to the complaint. Charge filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) AFL-CIO, CLC. Chairman Liebman and Members Becker and Hayes participated.

Decisions in cases involving prior rulings by two-member Board

The following cases involve prior rulings by the two-member Board, whose authority to act was rejected by the U.S. Supreme Court decision in *New Process Steel, LP* (June 17, 2010). The new decisions summarized here were reached by a three-member panel of the Board or by the full Board.

FedEx Home Delivery, an Operating Division of FedEx Ground Package Systems, Inc. (34-12735; 356 NLRB No. 10) Windsor, CT, October 29, 2010. [\[HTML\]](#) [\[PDF\]](#)

This is a refusal-to-bargain case in which the respondent contested the union's certification as bargaining representative in the underlying representation proceeding. Charge filed by International Brotherhood of Teamsters, Local 671. Chairman Liebman and Members Pearce and Hayes participated.

Unpublished Board Decisions in Representation Cases

Erie County/Erie County Medical Center (3-WH-5) Buffalo, NY, October 25, 2010. Certification of Representative as Bona Fide under Section 7(B) of the Fair Labor Standards Act of 1938. Petitioner – New York State Nurses Association.

Prison Health Services, Inc. (32-RC-5675) Santa Rita and Oakland, CA, October 29, 2010. The Board having reviewed the record in light of exceptions and briefs, adopted the Hearing Officer's findings and recommendations, found that the election should be set aside and a new election held. Petitioner – National Union of Healthcare Workers. Chairman Liebman and Members Pearce and Hayes participated.

Decisions of Administrative Law Judges

PACCAR, Inc. d/b/a Peterbilt Motors Company (26-CA-23225; JD(ATL)-23-10) Madison, TN. Charge filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and UAW, Local 1832. Administrative Law Judge Keltner W. Locke issued his decision October 28, 2010. [[HTML](#)] [[PDF](#)]

STA of Connecticut, Inc., a wholly owned subsidiary of Student Transportation of America, Inc. (34-CA-12620; JD(NY)-43-10) New London, CT. Charge filed by CSEA/SEIU, Local 2001. Administrative Law Judge Raymond P. Green issued his decision October 28, 2010. [[HTML](#)] [[PDF](#)]

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