



Weekly Summary of Cases

National Labor Relations Board

Week of December 27-31, 2010, W-3293

The *Weekly Summary* is provided for informational purposes only and is not intended to substitute for the opinions of the NLRB. Inquiries should be directed to the Office of Public Affairs at Publicinfo@nlrb.gov or 202-273-1991.

Summarized Board Decisions

Southside Medical Center, Inc. (10-CA-37919; 356 NLRB No. 58) Atlanta, GA, December 23, 2010. [[HTML](#)] [[PDF](#)]

The Board found that the employer violated the Act by unlawfully interrogating an employee concerning her attendance at a union meeting and her discussion of salaries with coworkers, and unlawfully discharged that employee for attending the union meeting. The Board ordered the employer to (1) cease and desist from unlawfully interrogating and discharging employees; (2) offer the discharged employee full reinstatement; (3) make the discharged employee whole for any loss of earnings and benefits resulting from the discrimination against her; (4) expunge its files of any reference to the discharged employee's unlawful termination and notify her in writing that it has done so; and (5) post a notice to employees. (The Board rejected the employer's contention that the discharged employee was a supervisor and managerial employee at the time of her interrogation and discharge.)

Charge filed by the American Federation of State, County and Municipal Employees, Local 1644. Administrative Law Judge Keltner W. Locke issued his decision April 22, 2010. Members Becker, Pearce, and Hayes participated.

Laborers' District Council of Ohio, Local 265 (9-CD-500; 356 NLRB No. 57) Cincinnati, OH, December 28, 2010. [[HTML](#)] [[PDF](#)]

In this jurisdictional dispute, the Board awarded the work to employees represented by the Laborers' District Council of Ohio, Local 265 rather than employees represented by the International Union of Operating Engineers, Local 18.

Charge filed by AMS Construction, Inc. and International Union of Operating Engineers, Local 18. Members Becker, Pearce, and Hayes participated.

Bebley Enterprises, Inc. (8-CA-38181; 356 NLRB No. 64) Toledo, OH, December 29, 2010. [\[HTML\]](#) [\[PDF\]](#)

The Board adopted the administrative law judge's finding that the respondent violated the Act by repudiating its collective bargaining agreement with the union, unilaterally ceasing contributions to the union's fringe benefit funds, unilaterally ceasing the deduction and remittance of union dues, and failing to furnish the union with requested relevant information. The Board adopted the judge's finding that the Respondent violated the Act by reducing an employee's work hours, changing his job classification, issuing him written discipline, and then discharging him. The Board also adopted the judge's finding that the respondent violated the Act by threatening employees with the loss of employment if they continued to support the union.

Charge filed by International Union of Painters and Allied Trades, AFL-CIO, Local 7 a/w International Union of Painters and Allied Trades. Administrative Law Judge Arthur J. Amchan issued his decision December 11, 2009. Chairman Liebman and Members Becker and Pearce participated.

Salon/Spa at Boro, Inc. (Cases 9-CA-45349, et al.; 356 NLRB No. 69) Springboro, OH, December 30, 2010. [\[HTML\]](#) [\[PDF\]](#)

In the absence of exceptions, the Board affirmed the administrative law judge's findings that the respondent violated the Act by interrogating employees, threatening an employee, and discharging two employees. In light of the General Counsel's limited exception to the proposed remedy, the Board modified the judge's recommended backpay remedy to include daily compound interest in accord with *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). It also modified the judge's recommended order to conform with the standard electronic notice-distribution language in accord with *J. Picini Flooring*, 356 NLRB No. 9 (2010). Member Hayes would not require electronic distribution of the notice for the reasons stated in his dissenting opinion in *J. Picini Flooring*.

Charges filed by Individuals. Administrative Law Judge Paul Buxbaum issued his decision October 18, 2010. Chairman Liebman and Members Pearce and Hayes participated.

300 Exhibit Services & Events, Inc. (28-CA-22347; 356 NLRB No. 66) Las Vegas, NV, December 30, 2010. [\[HTML\]](#) [\[PDF\]](#)

The Board found that the employer violated the Act by failing and refusing to recognize the union and to honor the terms of the collective-bargaining agreement the employer entered into with the union. The Board explained that the respondent recognized the union by its course of conduct in June and July 2008. During that period, the employer applied the union's collective-bargaining agreement's terms to its employees (e.g., the contractual requirements as to wages, benefits, and the grievance procedure). In addition, the employer's president and secretary treasurer acknowledged the employer's contractual relationship with the union to its payroll services company, Employco, in June/July 2008 email exchanges. The employer also was conspicuously silent when it failed to deny the existence of a contractual relationship after third-party beneficiary Western Conference of Teamsters Pension Trust Fund referred to the

collective-bargaining agreement between the employer and the union in a series of letters to the employer and mailed it reporting forms required by the agreement.

Charge filed by Teamsters, Chauffeurs, Warehousemen and Helpers, Local 631 affiliated with International Brotherhood of Teamsters and Southwest Regional Council of Carpenters and its Local 1780. Administrative Law Judge John McCarrick issued his decision November 27, 2009. Members Becker, Pearce, and Hayes participated.

Sidhal Industries, LLP (29-CA-29608, 29637; 356 NLRB No. 67) Hempstead, NY, December 30, 2010. [[HTML](#)] [[PDF](#)]

The Board adopted the administrative law judge's finding that the respondent failed to comply with the terms of a Board settlement agreement, and, as provided in the settlement agreement, deemed true the allegations of the complaint. The Board modified the judge's recommended remedy for a discriminatee to provide that the backpay period commence on the date of the unlawful discrimination, with any amounts already paid deducted from the respondent's backpay liability, rather than the date of the regional director's approval of the settlement agreement, which was selected by the judge.

Charges filed by Local 813, International Brotherhood of Teamsters. Administrative Law Judge Steven Davis issued his decision April 26, 2010. Chairman Liebman and Members Pearce and Hayes participated.

New England Confectionary Company (1-CA-45240, 45404; 356 NLRB No. 68) Revere, MA, December 30, 2010. [[HTML](#)] [[PDF](#)]

The Board found that the employer, a candy producer, did not violate the Act when its HR generalist solicited signatures for a decertification petition, promised employees benefits if they rejected the union, and interfered with a witness's testimony. The Board concluded that the HR generalist did not possess apparent authority when she engaged in the conduct and, accordingly, the employer was not responsible for her actions. The Board also found that the employer violated the Act when its Plant Manager told an employee that he could not pay the employee more because of the union's contract and that "it would be a different story if we didn't have a union."

Charges filed by Bakery, Confectionary, Tobacco Workers & Grain Millers International Union, Local 348. Administrative Law Judge Ira Sandron issued his decision January 29, 2010. Chairman Liebman and Members Becker and Pearce participated.

Austal USA, LLC (15-CA-18547, et al.; 356 NLRB No. 65), Mobile, AL, December 30, 2010. [[HTML](#)] [[PDF](#)]

The Board found that the employer violated the Act by discharging an employee because of union activities. The Board also found that the employer committed numerous other violations

of the Act in the context of a union organizing drive. In addition, the Board found that the election results should be thrown out, and a new election scheduled, because of the employer's conduct. In finding that the election should be set aside, the Board noted that to the extent that *Super Operating Corp.*, 133 NLRB 240, 241 fn. 4 (1961) is inconsistent with later Board cases holding that in a combined unfair labor practice/representation proceeding the Board has authority to set aside an election based on unfair labor practices that were not specifically alleged as objectionable conduct, it has been effectively overruled.

Charges filed by Sheet Metal Workers International Association Union, Local 441. Administrative Law Judge John H. West issued his decision September 30, 2009. Chairman Liebman and Members Becker and Pearce participated.

Divi Carina Bay Resort (24-CA-10700; 356 NLRB No. 60) St. Croix, VI, December 30, 2010. [[HTML](#)] [[PDF](#)] ***Grapetree Shores, Inc. d/b/a Divi Carina Bay Resort***

The Board found that the employer violated the Act by announcing an improved 401(k) plan 2 days before a representation election because the improved plan was not an existing benefit at the time of the announcement.

Charge filed by Virgin Islands Workers Union. Administrative Law Judge Paul Bogas issued his decision February 8, 2008. Chairman Liebman and Members Becker and Hayes participated.

Southern New England Telephone Company (The) (34-CA-12131, et al.; 356 NLRB No. 62) New Haven, CT, December 30, 2010. [[HTML](#)] [[PDF](#)]

The Board found that the employer violated the Act by refusing to provide the union with requested disability information (scripts and form letters); refusing to participate in a conference call with the union concerning disability benefits; refusing to provide the union with requested workers' compensation benefit information since December 29, 2008; and discontinuing the union's access to Sedgwick CMS representatives relating to workers' compensation issues and claims.

Charges filed by Local 1298, Communications Workers of America, AFL-CIO. Administrative Law Judge Wallace H. Nations issued his decision December 2, 2009. Chairman Liebman and Members Becker and Pearce participated.

Hunts Point Multi-Service Center (2-CA-39806; 356 NLRB No. 59) Bronx, NY, December 28, 2010. [[HTML](#)] [[PDF](#)]

The Acting General Counsel sought a default judgment in this case on the ground that the respondent failed to file an answer to the complaint. By failing and refusing to execute the agreement, the respondent has failed and refused, and is failing and refusing to execute the collective-bargaining agreement negotiated by the parties, and the respondent thereby has been engaging in unfair labor practices within the Act.

Charge filed by District Council 1707, AFSCME, AFL-CIO. Members Becker, Pearce, and Hayes participated.

Hatcher Press, Inc. (20-CA-3695; 356 NLRB No. 61) San Carlos, CA, December 29, 2010. [\[HTML\]](#) [\[PDF\]](#) ***Hatcher Trade Press, Inc. d/b/a Hatcher Press, Inc.***

The Acting General Counsel sought default judgment in this case on the ground that the respondent failed to file an answer to the compliance specification, despite having been advised of the filing requirements. In the absence of good cause for the respondent's failure to file an answer, the Board deem the allegations in the case to be admitted as true, and granted the Acting General Counsel's motion for default judgment. The Board also concluded that the net backpay due discriminatees was as stated in the compliance specification and ordered the respondent to pay those amounts, plus interest accrued to the date of payment.

Charge filed by International Brotherhood of Teamsters, Local 853. Chairman Liebman and Members Becker and Pearce participated.

Unpublished Board Decisions in Representation Cases

Tac Transport, LLC (22-RC-13160) South Plainfield, NJ, December 29, 2010. Decision and order remanding proceeding to Regional Director for further appropriate action. Petitioner – Teamsters, Local 125.

Ashland Facility Operations LLC, d/b/a Ashland Nursing and Rehabilitation Center (5-RC-16580) Ashland, VA, December 29, 2010. Decision and order remanding proceeding to Regional Director for further appropriate action. Petitioner – United Food and Commercial Workers International Union, Local 400.

Santa Rosa Memorial Hospital (20-RC-18241) Santa Rosa, CA, December 29, 2010. The Board having reviewed the record in light of exceptions and briefs, adopted the Administrative Law Judge's findings and recommendations found that a certification of representative should be issued. Petitioner – National Union of Healthcare Workers. Chairman Liebman and Members Pearce and Hayes participated.

Sheraton Anchorage Hotel (19-RD-3877) Anchorage, AK, December 30, 2010. Order denying employer's request for review of the Regional Director's determination to hold the petition in abeyance pending resolution of the outstanding unfair labor charges and affirming Regional Director. Petitioner – UNITE-HERE! Local 878. Chairman Liebman and Members Becker and Pearce participated.

Decisions of Administrative Law Judges

DTG Operations, Inc. d/b/a Dollar Rent A Car and Thrifty Car Rental (28-CA-23059, et al.; JD(SF)-55-10) Las Vegas, NV. Decision and order transferring proceeding to NLRB. Charges filed by Individuals. Administrative Law Judge Jay R. Pollack issued his decision December 27, 2010. [[HTML](#)] [[PDF](#)]

French American School of the Pacific Northwest, d/b/a Portland French School (36-CA-10711; JD(SF)-56-10) Portland, OR. Decision and order transferring proceeding to NLRB. Charge filed by Associated French School Employees, American Federation of Teachers – Oregon, American Federation of Teachers, AFL-CIO. Administrative Law Judge William G. Kocol issued his decision December 27, 2010. [[HTML](#)] [[PDF](#)]

Ozburn-Hessey Logistics, LLC (26-CA-23675 et al.; JD(ATL)-30-10) Memphis, TN. Decision and order transferring proceeding to NLRB. Charges filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFKL-CIO-CLC. Administrative Law Judge John H. West issued his decision December 27, 2010. [[HTML](#)] [[PDF](#)]

UNITE HERE (Boyd Tunica, Inc. d/b/a Sam's Town Hotel and Gambling Hall Tunica) (26-CB-5146; JD(ATL)-31-10) Tunica, MS. Bench decision and certification and order transferring proceeding to NLRB. Charge filed by an Individual. Administrative Law Judge Keltner W. Locke issued his decision December 28, 2010. [[HTML](#)] [[PDF](#)]

International Brotherhood of Teamsters, Local 391 (United Parcel Service) (11-CB-4150; JD(ATL)-29-10) Winston Salem, NC. Decision and order transferring proceeding to NLRB. Charge filed by an Individual. Administrative Law Judge William N. Cates issued his decision December 28, 2010. [[HTML](#)] [[PDF](#)]

Alton H. Piester, LLC (11-CA-21531; JD(SF)-57-10) Newberry, SC. Supplemental decision and order transferring proceeding to NLRB on backpay. Charge filed by an Individual. Administrative Law Judge Mary Miller Cracraft issued her supplemental decision December 30, 2010. [[HTML](#)] [[PDF](#)]

First Transit, Inc. (15-CA-19494; JD-73-10) Baton Rouge, LA. Decision and order transferring proceeding to NLRB. Charge filed by an Individual. Administrative Law Judge Arthur J. Amchan issued his decision December 30, 2010. [[HTML](#)] [[PDF](#)]

To have the NLRB's Weekly Summary of Cases delivered to your inbox each week, please [subscribe here](#).