

# National Labor Relations Board



## Weekly Summary of NLRB Cases

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Press Release (([R-2605](#)): Arly Eggertsen is Appointed Regional Attorney in NLRB's Chicago, IL

Regional Office

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*The Budd Co.* (9-CA-38113; 348 NLRB No. 85) Shelbyville, KY Dec. 6, 2006. The Board reversed the administrative law judge and dismissed the complaint allegations that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing a rule banishing radios from the plant. Contrary to the judge, the Board found that the Respondent was privileged by the collective-bargaining agreement to unilaterally make and enforce the radio ban. It also found that the contract provided Auto Workers Local 2383 with specific grounds and clear procedures to challenge the proposed rule, and by agreeing to the provision, the Union clearly and unmistakably waived its right to request bargaining over the Respondent's action. [\[HTML\]](#) [\[PDF\]](#)

(Members Schaumber, Kirsanow, and Walsh participated.)

Charge filed by Auto Workers Local 2383; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Louisville on May 23, 2001. Adm. Law Judge Earl E. Shamwell Jr. issued his decision Dec. 20, 2001.

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*Reliable Disposal, Inc.* (7-CA-46874, 47389; 348 NLRB No. 83) Stevensville, MI Dec. 4, 2006. The administrative law judge found, and the Board agreed, that the Respondent committed various violations of Section 8(a)(3) and (1) of the Act during Teamsters Local 7's organizing campaign, including discharging Jeff Winslett, interrogating and threatening employees, and soliciting and promising to remedy employee grievances because of the Union. [\[HTML\]](#) [\[PDF\]](#)

Members Schaumber and Kirsanow reversed the judge's finding that the Respondent's layoffs of drivers John Tomlinson and Dan Kuhens were attributable to their union activities in violation Section 8(a)(3) and (1). They concluded that there is insufficient proof that the Respondent was aware of Tomlinson's and Kuhens' union activities. Members Schaumber and Kirsanow also reversed the judge's finding that the Respondent violated Section 8(a)(1) when, on three occasions, Operations Manager Fuller told employee Winslett that he (Fuller) would lose his job if the Union came in.

Member Liebman, dissenting from her colleagues' reversals, reasoned that given the Respondent's numerous unfair labor practices, the Respondent harbored animus against employees' union activity. She observed that the Respondent was well aware that the Union's campaign was spearheaded by the drivers, and that the stated reason for the layoffs of Tomlinson and Kuhens—the anticipated loss of work—was pretextual, which supports an inference of knowledge. Turning to Fuller's statements that he would lose his job in the event of unionization, Member Liebman wrote that Fuller's threats clearly served to reinforce the Respondent's unlawful message that if the Union came all those who worked for the Respondent would lose their job. She would therefore find Fuller's threat coercive and violative of the Act.

(Members Liebman, Schaumber, and Kirsanow participated.)

Charges filed by Teamsters Local 7; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Stevensville on Sept. 22, 2004. Adm. Law Judge Pargen Robertson issued his decision March 8, 2005.

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*Team Clean, Inc.* (37-CA-6905-1; 348 NLRB No. 86) Honolulu, HI Dec. 7, 2006. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with UNITE HERE! Local 5 by failing to furnish the Union in a timely fashion with requested information that is relevant to fulfilling its role as the collective-bargaining representative of the unit employees. Specifically, the Respondent unlawfully delayed in providing the Union with information concerning bargaining unit members' current addresses and telephone numbers, rates of pay, and week work schedules. [\[HTML\]](#) [\[PDF\]](#)

The Respondent argued that the parties' dispute over the Union's information request should be deferred to arbitration. The judge reasoned that Board precedent remains that refusals to provide information are not deferred under *Collyer Insulated Wire*, 192 NLRB (2002) and, denied the Respondent's request for deferral. In a footnote, the Board noted its consistent policy not to defer information disputes to arbitration. See, e.g., *Shaw's Supermarkets*, 339 NLRB 871 (2003); *United Technologies Corp.*, 274 NLRB 504 (1985); *General Dynamics Corp.*, 268 NLRB 1532 (1984).

Members Schaumber and Kirsanow viewed the information request at issue to be encompassed by the parties' arbitration clause and would defer the request to arbitration. In the absence of a majority to reverse Board precedent, however, they agreed to apply current Board law and adopt the judge's decision.

Chairman Battista noted that under *Collyer*, a fundamental prerequisite for deferral to arbitration is that the issue be arbitrable. He noted that the arbitration clause in this case covers disputes "concerning the interpretation or application of, or compliance with provisions of this Agreement." The agreement contains no contractual provision as to information. Thus, the Chairman would not defer because the informational dispute is not arbitrable.

Chairman Battista did not pass on whether the informational allegation would be deferrable if it were covered by the arbitration clause. He recognized that there is Board law stating that information allegations are not deferrable even if covered by a contractual arbitration clause. In an appropriate case, he would reconsider that doctrine.

(Full Board participated.)

Charge filed by UNITE HERE! Local 5; complaint alleged violation of Section 8(a)(1) and (5). Case tried by telephone conference call on Dec. 13, 2005. Adm. Law Judge William G. Kocol issued his decision Dec. 21, 2005.

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**LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES**

*Cofire Paving Corp.* (Plant & Production Workers Local 175) Flushing, NY Dec. 5, 2006. 29-CA-27556; JD(NY)-49-06, Judge Raymond P. Green.

*SEIU Healthcare Workers West* (an Individual) Walnut Creek, CA Dec. 7, 2006. 32-CB-5893-1; JD(SF)-63-06, Judge William L. Schmidt.

*Hercules Drawn Steel Corp.* (Auto Workers [UAW] Local 174) Livonia, MI Dec. 8, 2006. 7-CA-48573, et al.; JD-83-06, Judge George Alemán.

*Ventral SPD Corp.* (Auto Workers [UAW]) Toledo, OH Dec. 8, 2006. 8-CA-36438; JD-84-06, Judge Richard A. Scully.

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**TEST OF CERTIFICATION**

*(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)*

*Sprain Brook Manor Nursing Home, LLC* (New York's Health and Human Services 1199/SEUI) (2-CA-37814; 348 NLRB No. 84) Scarsdale, NY Dec. 6, 2006. [\[HTML\]](#) [\[PDF\]](#)

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

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

**SUPPLEMENTAL DECISION AND DIRECTION [that  
Regional Director takes further appropriate action]**

*Signature Flight Support*, White Plains, NY, 2-RC-22873, Dec. 6, 2006  
(Chairman Battista and Members Liebman and Schaumber)

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

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

*Kandersteg, Inc.*, Evans City, PA, 6-RC-12541, Dec. 6, 2006 (Chairman Battista and  
Members Liebman and Schaumber)

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

*Johnson Truck Bodies, LLC*, Rice Lake, WI, 18-RD-2574, Dec. 8, 2006 (Chairman Battista and  
Members Liebman and Schaumber)

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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)*

*Advanced Architectural Metals, Inc.*, Las Vegas, NV, 28-UC-231, Dec. 6, 2006  
(Chairman Battista and Members Liebman and Schaumber)

*Rite-Aid Corp.*, Lancaster, CA, 31-CA-8587, Dec. 6, 2006 (Chairman Battista and  
Members Liebman and Schaumber)

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