

National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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Tel. (202) 273-1991

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CASES SUMMARIZED
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Fidelity and Rehab Center	El Monte, CA	1
John T. Jones Construction Co., Inc.	Springfield, MO	1
Medical Express Ambulance Service, Inc.	Skokie, IL	2

OTHER CONTENTS

List of Decisions of Administrative Law Judges	2
List of Unpublished Board Decisions and Orders in Representation Cases	3
<ul style="list-style-type: none">• Uncontested Reports of Regional Directors and Hearing Officers• Requests for Review of Regional Directors' Decisions and Directions of Elections and Decisions and Orders• Miscellaneous Decisions and Orders	

Press Release ([R-2629](#)): Deborah Jacobson is Named Deputy Regional Attorney in NLRB's Cincinnati, OH Regional Office

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Mid-Wilshire Healthcare Center d/b/a Fidelity Healthcare and Rehab Center (21-RC-20895; 349 NLRB No. 120) El Monte, CA June 4, 2007. Applying *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004), the Board concluded, in agreement with the hearing officer, that Housekeeping and Maintenance Supervisor Marlon Dayot's conduct was insufficient to warrant setting aside the election held on June 13, 2006. The Board certified Service Employees Local 434B, winner of the election by a 45-to-25 vote, as the exclusive representative of certain employees working at the Employer's El Monte, CA facility. [\[HTML\]](#) [\[PDF\]](#)

There were no exceptions to the hearing officer's findings that Dayot is a statutory supervisor. In its objection, the Employer alleged that Dayot "engaged in prounion campaigning, which tainted the environment for a fair election."

The Board held that the Employer, as the objecting party, failed to carry its burden of showing that the election was materially affected by Dayot's conduct. It agreed with the hearing officer that the evidence failed to substantiate the Employer's allegations that Dayot held meetings of prounion employees in his office; that Dayot bought lunch for prounion employees; and that Dayot locked his office (in which work supplies were stored) to retaliate against employees Linda Filimaua and Mary Smay after they stopped supporting the Union. It also adopted the hearing officer's conclusions that the Memorial Day barbeque that Dayot attended was not a union function and that Dayot's introduction of a schedule for employees' breaks and lunches was not related to Filimaua and Smay's decision to stop supporting the Union.

Based on her dissenting views in *Haborside*, Member Liebman noted that Dayot's conduct was clearly not objectionable. She found, however, that even applying *Harborside*, Dayot's conduct was insufficient to justify setting aside the election.

(Chairman Battista and Members Liebman and Kirsanow participated.)

John T. Jones Construction Co., Inc. (17-CA-22607, et al.; 349 NLRB No. 119) Springfield, MO June 4, 2007. In a supplemental decision and order, the majority, Members Liebman and Walsh, affirmed the administrative law judge's finding that contributions to benefit funds made by interim employers on behalf of the discriminatees are not an appropriate offset against the discriminatees' gross backpay (citing *Tualatin Electric, Inc.*, 331 NLRB 36, 42-43 (2000), *enfd.* 253 F.3d 714 (D.C. Cir. 2001)). The majority noted the Respondent provided no benefits to employees, only wages; the interim benefits received by the discriminatees were not available as wages. "In these circumstances, the Respondent has failed to show that the wages it paid are equivalent in nature to the interim benefits received by the discriminatees," it stated. [\[HTML\]](#) [\[PDF\]](#)

In dissent, Chairman Battista found merit in the Respondent's contention that the interim employers' fringe benefit contributions are an offset. He did not agree that *Tualatin Electric* constituted a compelling precedent on this issue, pointing out: "The judge in that case said the fringe benefits paid by the interim employer were like supplementary income, and the judge therefore declined to offset such benefits from gross backpay. He cited no case in support of this position." Chairman Battista thought the judge's finding that interim contributions are not an offset against gross backpay would result in a "windfall" to discriminatees.

(Chairman Battista and Members Liebman and Walsh participated.)

Hearing at Springfield, March 1 and 2, 2006. Adm. Law Judge Lana H. Parke issued her decision June 8, 2006.

Medical Express Ambulance Service, Inc. (13-CA-43531; 350 NLRB No. 1) Skokie, IL June 8, 2007. Affirming the administrative law judge's decision, the Board held that the Respondent violated Section 8(a)(1) of the Act by interrogating an employee about the union activities of other employees, soliciting an employee to report on the union activities of other employees, and promising benefits to an employee if she provided information about the union activities of other employees. [\[HTML\]](#) [\[PDF\]](#)

The Board substituted a narrow cease-and-desist provision for the broad order recommended by judge and a new notice because it has not been shown that the Respondent has a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for employees' statutory rights.

(Members Liebman, Schaumber, and Kirsanow participated.)

Charge filed by EMTS and Paramedics, SEIU/NAGE; complaint alleged violation of Section 8(a)(1). Hearing at Chicago on Nov. 29, 2006. Adm. Law Judge Bruce D. Rosenstein issued his decision Feb. 9, 2007.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Otay River Constructors (Teamsters Local 36) Chula Vista, CA June 5, 2007. 21-CA-37294; JD(SF)-17-07, Judge James M. Kennedy.

Atlantic Veal & Lamb, Inc. (UNITE Local 155) Brooklyn, NY Jan. 31, 2007. 29-CA-24484, et al.; JD(NY)-08-07, Judge Raymond P. Green.

Laurel Bay Health & Rehabilitation Center (SEIU 119 New Jersey Health Care Union) Keansburg, NJ June 8, 2007. 22-CA-27192, et al.; JD(NY)-26-07, Judge Steven Davis.

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

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

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

Paratransit Services, Inc., Bend, OR, 36-RC-6365, June 6, 2007 (Members Liebman,
Schaumber, and Kirsanow)

DECISIONS AND CERTIFICATIONS OF RESULTS OF ELECTION

Yauco Health Care Corp. d/b/a Hospital Metropolitan Dr. Tito Mattei, Yauco, PR, 24-RD-496,
et al., June 6, 2007 (Members Liebman, Schaumber, and Kirsanow)

*(In the following case, the Board denied requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)*

The California Mushroom Farm, Inc., Ventura, CA, 31-RC-8621, June 8, 2007
(Members Liebman, Schaumber, and Kirsanow)

Miscellaneous Decisions and Orders

**ORDER [reversing Regional Director's dismissal
of petition, reinstating petition, and remanding case to
Regional Director for hearing and issuance of a decision]**

Iron Mountain, San Diego, CA, 21-RD-2830, June 6, 2007 (Members Liebman, Schaumber, and
Kirsanow)
