



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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Newcor Bay City Div. of Newcor, Inc.	Bay City, MI	1
PPG Industries, Inc.	Evansville, IN	1
Spirit Construction Services, Inc.	Green Bay, WI	1
T. Steele Construction, Inc.	Rock Island, IL	2

OTHER CONTENTS

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List of Unpublished Board Decisions and Orders in Representation Cases	3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

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Newcor Bay City Division of Newcor, Inc. (7-CA-48339; 351 NLRB No. 54) Bay City, MI Nov. 15, 2007. The Board affirmed the administrative law judge's dismissal of the complaint allegation that the Respondent subcontracted certain bargaining-unit work because the Union filed an unfair labor practice charge against it, in violation of Section 8(a)(4) and (1) of the Act. Citing his credibility determinations, the Board adopted the judge's finding that the General Counsel failed to meet his burden to show that the Union's filing of the charge was a motivating factor in the Respondent's subcontracting decision. [\[HTML\]](#) [\[PDF\]](#)

No exceptions were filed to the judge's finding that the Respondent did not violate Section 8(a)(5) and (1) by transferring unit work to nonunit employees without affording the Union notice and an opportunity to bargain.

(Chairman Battista and Members Kirsanow and Walsh participated.)

Charge filed by Auto Workers Local 496; complaint alleged violations of Section 8(a)(5), (4), and (1). Hearing at Bay City, Sept. 14 and 15 and Oct. 10, 2006. Adm. Law Judge Keltner W. Locke issued his decision Nov. 7, 2006.

PPG Industries, Inc. (25-CA-30018; 351 NLRB No. 57) Evansville, IN Nov. 16, 2007. The Board adopted the administrative law judge's decision and found that the Respondent violated Section 8(a)(1) of the Act (1) by prohibiting employees from distributing union handbills on the driveway at the Respondent's facility; (2) by interrogating an employee about his union membership, activities, and sympathies and the union membership, activities, and sympathies of other employees; and (3) by threatening an employee with job loss if the employees selected the Union as their collective-bargaining representative. In adopting the judge's finding that Supervisor Debes' interrogation of employee Thomas was unlawful, the Board emphasized the context: the questioning occurred during a performance evaluation, the meeting was held in Debes' office, only Debes and Thomas were present, and Debes asked Thomas about the union activities of other employees. [\[HTML\]](#) [\[PDF\]](#)

(Members Schaumber, Kirsanow, and Walsh participated.)

Charge filed by Auto Workers International; complaint alleged violation of Section 8(a)(1). Hearing at Evansville on Jan. 25, 2007. Adm. Law Judge William N. Cates issued his decision March 13, 2007.

Spirit Construction Services, Inc. (30-CA-17601, 17604; 351 NLRB No. 56) Green Bay, WI Nov. 16, 2007. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by stating, through its agent Charles Jones, that it would be futile for employees to select the Union, Wisconsin Pipe Trades Association, as their collective bargaining representative, and that the Respondent would cease operations in Wisconsin if a union were elected. In addition, the Board affirmed the judge's finding that the Respondent

violated Section 8(a)(1) by prohibiting employees Nathan Brunner and David Neumeyer from wearing a union sticker on Oct. 11, 2006, and that the Respondent violated Section 8(a)(3) by discharging Brunner on Oct. 12, 2006. [\[HTML\]](#) [\[PDF\]](#)

The events of this case occurred at one of the Respondent's construction sites in Green Bay, WI. On Oct. 9, 2006, employee David Neumeyer gave his supervisor, Charles Jones, a letter notifying the Respondent that he supported the Union and that he would be working to organize the Respondent. In the ensuing conversation, which Neumeyer secretly taped, Jones stated that Respondent's CEO would shut down its operations in Wisconsin if the employees organized. On Oct. 10, Neumeyer placed several union stickers on his hard hat, one of which stated, "Catch the Union Spirit for a Better Living." Neumeyer gave an identical sticker to his helper, Brunner, who displayed the sticker on his hard hat. On Oct. 11, Jones ordered both Neumeyer and Brunner to remove the "Spirit" stickers from their hard hats. As noted above, the Board affirmed the judge's finding that Jones was the Respondent's agent, and his conduct violated 8(a)(1).

On Oct. 12, the day after Brunner wore the union sticker, he was laid off. The Board affirmed the judge's finding that the Respondent acted in response to Brunner's union activity, and thus it violated Section 8(a)(3).

(Members Schaumber, Kirsanow, and Walsh participated)

Charges filed by Wisconsin Pipe Trades Association; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Green Bay on March 13, 2007. Adm. Law Judge Arthur J. Amchan issued his decision April 27, 2007.

T. Steele Construction, Inc. (33-CA-14914; 351 NLRB No. 55) Rock Island, IL Nov. 14, 2007. The Board denied the Respondent's motion for reconsideration or rehearing of the Board's decision at 348 NLRB No. 79 (2006). In that decision, the Board denied, as untimely, the Respondent's motion for leave to amend its answer to the complaint to deny allegations that foreman Brian Brink was a supervisor within the meaning of Section 2(11) of the Act and an agent within the meaning of Section 2(13) of the Act. The Board found, among other things, that through the actions of Brink, the Respondent committed several violations of Section 8(a)(1) of the Act, including interrogation, creating impression of surveillance, and three threats. The Respondent had contended that its motion should be granted in light of *Oakwood Healthcare, Inc.*, 348 NLRB No. 37 (2006), in which the Board addressed the meaning of "assign," "responsibly to direct," and "independent judgment," as those terms are used in Section 2(11) of the Act, which defines the term "supervisor." [\[HTML\]](#) [\[PDF\]](#)

In its motion for reconsideration or rehearing, the Respondent requested that the Board reconsider or rehear its decision denying the Respondent's motion for leave to amend its answer. The Respondent cited decisions in which the Board remanded other cases for further consideration in light of *Oakwood Healthcare*.

In denying the motion for reconsideration or rehearing, the Board found that its earlier denial of the Respondent's motion for leave to amend its answer was consistent with Board precedent declining to retroactively apply a change in law when a party had failed to preserve the affected issue. The Board noted that, unlike cases that the Board has remanded for further consideration in light of *Oakwood Healthcare*, in the present case the Respondent never placed Brink's supervisory status in issue. The Board additionally pointed out that the Respondent had reason to know at the time that it filed its answer that the Board's interpretation of the term "supervisor" was under review. It also rejected the Respondent's argument that the pleadings should be amended to conform to the evidence. Finally, noting that *Oakwood Healthcare* did not affect the Board's interpretation of the term "agent," the Board found that issuance of *Oakwood* provided no basis for the Respondent to withdraw its admission that Brink was an agent of the Respondent.

(Chairman Battista and Members Liebman and Walsh participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Mesker Door, Inc. (Steelworkers and Individuals) Huntsville, AL Nov. 13, 2007.
10-CA-35863, et al.; JD(ATL)-35-07, Judge Keltner W. Locke.

R.S. Service Systems, Inc. (Operating Engineers Local 150) Romeoville, IL Nov. 13, 2007.
13-CA-43977; JD(ATL)-29-07, Judge William N. Cates.

Electronic Die Corp. (Steelworkers District 4) Brooklyn, NY Nov. 15, 2007. 29-CA-28293,
28422; JD(NY)-48-07, Judge Joel P. Biblowitz.

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 AND CERTIFICATION OF REPRESENTATIVE

Challenger Transportation, Inc., Gaithersburg, MD, 5-RC-16119, Nov. 14, 2007
(Members Liebman, Schaumber, and Kirsanow)

Nico Asphalt Paving, Inc., Brooklyn, Bronx, Manhattan, Queens, and Staten Island, NY, 29-RC-11227, Nov. 15, 2007 (Members Liebman, Schaumber, and Kirsanow)

DECISION, ORDER [setting aside election conducted on July 18, 2007] AND DIRECTION OF SECOND ELECTION

Hillside Manor Nursing d/b/a Hillside Healthcare Center and Hillside Place, Missoula, MT, 19-RD-3766, Nov. 15, 2007 (Members Liebman, Schaumber, and Kirsanow)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Shred-It USA, Inc., Brooklyn, NY, 29-RC-11485, Nov. 14, 2007 (Members Liebman, Schaumber, and Kirsanow)

The Dutch Manor Nursing and Rehabilitation Centre, Schenectady, NY, 3-RC-11762, Nov. 14, 2007 (Members Liebman, Schaumber, and Kirsanow)

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

Briar Construction Corp., Staten Island, NY, 29-RC-11226, Nov. 15, 2007 (Members Liebman, Schaumber, and Kirsanow)

(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)

Aztar Indiana Gaming Co., LLC, d/b/a Casino Aztar, Evansville, IN, 25-RC-10403, Nov. 14, 2007 (Members Liebman, Schaumber, and Kirsanow)

Saia Motor Freight Line, LLC, Grand Prairie and Dallas, TX, 16-RC-10804, Nov. 14, 2007 (Members Liebman, Schaumber, and Kirsanow)

Miscellaneous Board Decisions and Orders

DECISION ON REVIEW AND ORDER [affirming Regional Director's finding that petitioned-for unit is appropriate, amending decision to permit dispatcher to vote under challenge, and remanding case to Regional Director to conduct election]

Woody Bogler Trucking Co., Gerald, MO, 14-RC-12655, Nov. 14, 2007 (Members Liebman and Schaumber; Chairman Battista dissenting)

**ORDER [denying Employer's motion for
reconsideration of the Board's Oct. 17, 2007 Order]**

Rudd Equipment Co., St. Louis, MO, 14-RC-12680, Nov. 16, 2007
(Chairman Battista and Members Liebman and Kirsanow)

**ORDER [denying Employer's special appeal to the
Report on Challenges and Objections, Order
Directing Hearing and Notice of Hearing]**

Park Pictures, LLC, Santa Monica, CA, 31-RC-8652, Nov. 15, 2007
