

National Labor Relations Board

Weekly Summary of NLRB Cases



Division of Information

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Food & Commercial Workers Local 4 (Safeway, Inc.) (19-CB-9660; 353 NLRB No. 47) Whitefish, MT Oct. 31, 2008. The Board adopted the administrative law judge's finding that the Respondent-Union violated its duty of fair representation and thus Section 8(b)(1)(A) of the Act by failing to provide the Charging Party, a *Beck* objector, with expenditure information that was sufficiently verified, consistent with the Board's decisions in *California Saw & Knife Works*, 320 NLRB 224 (1995), *enfd.* 133 F.3d 1012 (7th Cir. 1998), *cert. denied sub nom. Strang v. NLRB*, 525 U.S. 813 (1998), and *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474 (1999), reconsideration denied 327 NLRB 802 (1999), petition for review dismissed 1999 WL 325508 (D.C. Cir. 1999). Although the Respondent-Union provided the Charging Party with a statement of its chargeable and non-chargeable expenses that was reviewed by an accountant, there was no evidence that the accountant did more than rely on the Respondent's representations in preparing the report, such as independently verify that the expenses claimed were in fact made. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Pamela Barrett, an individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Whitefish on April 29, 2008. Adm. Law Judge James M. Kennedy issued his decision May 20, 2008.

Health Now, Inc. d/b/a Dr. Rico Perez Products (2-CA-37882, et al.; 353 NLRB No. 43) Miami, FL, Brooklyn, NY, and Elizabeth, NJ Oct. 31, 2008. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by: (1) threatening employees with job loss, relocation of the business out of state, and store closures if they continued to support or voted for the Union; (2) accusing employees who supported the Union of disloyalty; and (3) making threats of unspecified reprisals. The Board did not pass on the judge's finding that the Respondent violated Section 8(a)(1) by making statements to employees indicating that their support for the Union was futile, finding that, in the particular circumstances of the case, the more serious threats of job loss and store closures subsumed any implied threat of futility. [\[HTML\]](#) [\[PDF\]](#)

The Board adopted the judge's dismissals of the allegations that the Respondent violated Section 8(a)(3) by discharging employees Machado and Londoño. The Board also adopted the judge's findings that the Respondent would have discharged both employees for insubordination even in the absence of their protected activities.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by UFCW; complaint alleged violations of Section 8(a)(1) and (3). Hearing at New York, Oct. 16, 17, 19, 22, and 23, 2007. Adm. Law Judge Steven Davis issued his decision March 7, 2008.

Morse Operations, Inc., d/b/a Sawgrass Auto Mall and d/b/a Ed Morse Chevrolet (12-CA 25466, et al.; 353 NLRB No. 40) Sunrise and North Palm Beach, FL Oct. 30, 2008. The Board agreed with the administrative law judge that, during the Charging Party's organizing campaign in the summer of 2007, the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Craig Robinson, and violated Section 8(a)(1) by interrogating its employees, creating the impression of surveillance, telling Robinson that he had been "blackballed" because of his union activity, and threatening an employee with reprisals if he voted for union representation. [\[HTML\]](#) [\[PDF\]](#)

The Board clarified the judge's *Wright Line* analysis of the Robinson discharge, particularly his finding of pretext concerning the Respondent's contentions that Robinson, an auto service technician, was discharged for warranty fraud and/or theft. The Board also affirmed, with additional evaluation of the relevant circumstances, the judge's finding that the Respondent unlawfully threatened reprisal against service technician Andrew Smith should he vote for the Union. In addition, Chairman Schaumber provided a personal footnote explaining his agreement with the judge's impression-of-surveillance finding. Finally, the Board denied the General Counsel's request that the Board adopt a practice of quarterly compounding of interest in calculating backpay and other monetary remedial awards.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Machinists; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Miami, March 3-4, 2008. Adm. Law Judge William N. Cates issued his decision April 30, 2008.

Primeflight Aviation Services, Inc. (29-RC-11405; 353 NLRB No. 45) Queens, NY Oct. 31, 2008. The Union filed a petition to represent a unit of employees employed by the Employer at LaGuardia Airport. The Board referred the case to the National Mediation Board (NMB) for an opinion whether the Employer is subject to the jurisdiction of the Railway Labor Act. The NMB subsequently issued an opinion stating its view that the Employer and its employees at LaGuardia Airport are subject to the Railway Labor Act. The Board found that the Employer's employees perform work that is traditionally performed by employees in the airline industry, and that air carriers exercise substantial control over the Employer's LaGuardia Airport operations. The Board found, in light of these facts and the opinion issued by the NMB, that the Employer is subject to the jurisdiction of the NMB pursuant to the Railway Labor Act. The Board accordingly dismissed the Union's representation petition. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

TNT Logistics North America, Inc. (8-CA-33664-1, 33810-1; 353 NLRB No. 41) East Liberty, OH Oct. 30, 2008. This case was on remand from the U. S. Court of Appeals for the Sixth Circuit. The Board set aside its previous finding that the Respondent did not violate Section 8(a)(1) of the Act by terminating three employees for preparing and sending a letter to the Respondent's primary customer because the letter was maliciously false. The Board accepted as the law of the case the court's determination that substantial evidence did not support the Board's previous finding that the letter was maliciously false. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

United Parcel Service, Inc. (22-CA-27863; 353 NLRB No. 39) Secaucus, NJ Oct. 28, 2008. The Board adopted the administrative law judge's finding that the case should not be deferred to arbitration and that the Respondent violated Section 8(a)(3) and (1) of the Act by its refusal, because of a shop steward's protected conduct, to rescind a warning letter issued to an employee. The Board also adopted the judge's finding that the Respondent violated Section 8(a)(1) by telling the employee that his warning letter would not be rescinded because of his steward's protected conduct. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Teamsters Local 177; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Newark on Feb. 5, 2008. Adm. Law Judge Mindy E. Landow issued her decision June 20, 2008.

Wiers International Trucks, Inc. and Great Lakes International Trucks, LLC d/b/a Wiers International Trucks, joint employers and/or a single employer, and its successor Great Lakes International Trucks, LLC (25-CA-30375, 25-RC-10389; 353 NLRB No. 48) Elkhart and South Bend, IN Oct. 31, 2008. The Board adopted the administrative law judge's findings that Respondent Great Lakes International Trucks, Inc. violated Section 8(a)(3) and (1) of the Act by transferring employees Timothy Burelison, John Bussey and Eric Reamer because of their union activities and support and additionally violated Section 8(a)(4) by transferring Burelison and Bussey because of their testimony in a Board representation proceeding. In light of these findings, the Board ordered the Regional Director to open and count the challenged ballots of Burelison, Bussey, and Reamer in the representation election. [\[HTML\]](#) [\[PDF\]](#)

The Board also affirmed the judge's findings that Respondent Great Lakes and Respondent Wiers International Trucks, Inc. did not operate as a single employer and/or joint employers at Respondent Wiers' Plymouth, IN facility and, consequently, Respondent

Great Lakes is not liable for the unfair labor practices alleged to have occurred at the Plymouth facility. In doing so, the Board relied particularly upon the absence of evidence that Respondent Great Lakes took part in any aspect of the operation of the Plymouth facility.

In addition, the Board affirmed the judge's findings that Respondent Great Lakes violated Section 8(a)(1) by coercively interrogating employees and threatening them with more onerous conditions and closure if they selected the Union and violated Section 8(a)(3) by implementing a new benefit for the purpose of discouraging union support. Respondent Great Lakes had not excepted to these findings.

The Board rejected Respondent Great Lakes' contention that the two-member Board does not constitute a quorum as required by statute and, therefore, the Board lacks authority to issue a ruling in this case. The Board also rejected the General Counsel's request that interest on any monetary amounts owing to the discriminatees be computed on a compounded quarterly basis.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Operating Engineers Local 150; complaint alleged violations of Section 8(a)(1), (3), and (4). Hearing at Elkhart, March 4-5, 2008. Adm. Law Judge Paul Bogas issued his decision July 23, 2008.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Interstate Brands Corp. (New England Teamsters Bakery Drivers Council) Biddeford, ME Oct. 27, 2008. 1-CA-44198; JD-56-08, Judge Wallace H. Nations.

Ridgeview Industries, Inc. (Auto Workers) Walker, MI Oct. 27, 2008. 7-CA-50170, et al.; JD-55-08, Judge Mark D. Rubin.

Post Tension of Nevada, Inc. (Iron Workers) Phoenix, AZ Oct. 28, 2008. 28-CA-21886; JD(SF)-44-08, Judge Gregory Z. Meyerson.

Faurecia Exhaust Systems, Inc. (Auto Workers Region 2-B) Toledo, OH Oct. 30, 2008. 8-CA-37192, et al.; JD-57-08, Judge Ira Sandron.

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 the unfair labor practice proceeding.)

Lily Transportation Corp. (Teamsters Local 863) (4-CA-36301; 353 NLRB No. 42)
Gouldsboro, PA Oct. 31, 2008. [\[HTML\]](#) [\[PDF\]](#)

WITHDRAWAL OF ANSWER

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondents' withdrawal of their answers to the complaint and consolidated complaint.)

United Plasterers, LLC and Dun-Rite Drywall and Finish Systems, Inc. (Individuals)
(7-CA-50844, 50845; 353 NLRB No. 44) Shelby Township, MI Oct. 31, 2008. [\[HTML\]](#) [\[PDF\]](#)

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

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

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION AND
CERTIFICATION OF REPRESENTATIVE**

Community Education Centers, Inc., Newark, NJ, 22-RC-12905, Oct. 31, 2008
(Chairman Schaumber and Member Liebman)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Trimas Corp. d/b/a Cequent Towing Products, Goshin, IN, 25-UD-260, Oct. 31, 2008
(Chairman Schaumber and Member Liebman)

Correctional Medical Services, Bridgeton, NJ, 4-RD-2117, Oct. 29, 2008
(Chairman Schaumber and Member Liebman)

DECISION AND ORDER DIRECTING HEARING

Ecology Services, Inc., Ecology Services Curbside Collection Services, LLC, Ecology Services Anne Arundel County Cartage, A Single Employer, Pasadena, MD, 5-RC-16235, Oct. 30, 2008 (Chairman Schaumber and Member Liebman)

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

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

AMC Fire Protection, Inc., Ft. Myers, FL, 12-RC-9328, Oct. 28, 2008

(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)

Fresno Community Hospital & Medical Center, 32-RD-1555, Oct. 29, 2008 (Chairman Schaumber and Member Liebman)

Bud of California, Inc., d/b/a Bud of California, a wholly owned subsidiary of Dole Fresh Vegetables, Inc., Monterey, CA, 32-RC-5580, Oct. 29, 2008 (Chairman Schaumber and Member Liebman)

Indian Ridge Country Club, Inc., Palm Desert, CA, 21-RC-21062, Oct. 29, 2008 (Chairman Schaumber and Member Liebman)

American Red Cross Greater Alleghenies Region Blood Services, Johnstown, PA, 6-RC-12647, Oct. 29, 2008 (Chairman Schaumber and Member Liebman)

ORDER [amending Acting Regional Director's decision to permit RNs employed by Nistel, Inc. to vote by challenged ballot and denying Employer's request for review]

Benedictine Hospital, Kingston, NY, 3-RC-11841, Oct. 30, 2008 (Chairman Schaumber and Member Liebman)

Miscellaneous Board Decisions and Orders

**ORDER [approving Petitioner's request to withdraw
Petition; Employer's request that Board accept its
late-filed request for review of Regional Director's
dismissal of petition is moot]**

University Medical Center, Fresno, CA, 32-RD-1476, Oct. 29, 2008
