

National Labor Relations Board

Weekly Summary of NLRB Cases



Division of Information

Washington, D.C. 20570

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July 31, 2009

W-3219

CASES SUMMARIZED
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County Waste of Ulster (2-CA-37437; 354 NLRB No. 54) Montgomery and Kingston, NY, July 24, 2009. The Board adopted the administrative law judge's supplemental decision withdrawing his unalleged finding and conclusion that the Respondent violated Section 8(a)(1) of the Act by granting a Christmas bonus to its employees. The Board previously remanded this finding to the judge, in 353 NLRB No. 89 (2009), to clarify whether he intended to find the unalleged violation and, if so, to apply *Pergament United Sales*, 296 NLRB 333 (1989). The Board found no merit to the Respondent's exceptions which solely seek to reopen the record to submit the emails and other correspondence between the judge and the parties that occurred after the Board's remand. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Liebman and Member Schaumber participated.)

Adm. Law Judge Raymond P. Green issued his supplemental decision May 1, 2009.

Goffstown Truck Center, Inc. (1-RC-22272; 354 NLRB No. 49) Londonderry, NH, July 21, 2009. The Board reversed the hearing officer and sustained the Employer's election objection, which alleged that severe weather conditions on election day warranted a second election. Applying *Baker Victory Services, Inc.*, 331 NLRB 1068 (2000), the Board sustained the Employer's objection because a severe ice storm on the day of the election denied eligible employees an adequate opportunity to vote and because a determinative number of eligible voters did not vote. The hearing officer had recommended overruling the Employer's objection because, although a determinative number of eligible employees had not voted, some nonvoters testified that they declined to vote for reasons other than the ice storm. The Board explained that the hearing officer erred by considering individual employees' reasons for not voting in the election. The Board found it unnecessary to address the eligibility of two disputed nonvoters. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Liebman and Member Schaumber participated.)

Myers Investigative and Security Services, Inc. (22-CA-28417, 28575; 354 NLRB No. 51) Lakehurst, NJ, July 23, 2009. The Board denied the General Counsel's request for "a bargaining schedule requiring [the] Respondent to meet with the Union not less than 24 hours per month and not less than 6 hours per session or any other schedule mutually agreed upon until a collective bargaining agreement is reached or good faith impasse is reached." [\[HTML\]](#) [\[PDF\]](#)

The administrative law judge granted the General Counsel's motion for default judgment and found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union and refusing to provide information to the Union for the purposes of bargaining, and there were no exceptions to this finding. The General Counsel, however, excepted to the judge's failure to include the requested bargaining schedule remedy, and requested that the Board issue such a remedy. The General Counsel, citing the Board's broad remedial authority, argued that the imposition of such a remedy was appropriate here because the Respondent had

engaged in delay and had refused to bargain, and, as a result, the Union was denied the opportunity to bargain on behalf of unit employees and to negotiate an initial collective bargaining agreement.

The Board denied the General Counsel's request for the bargaining schedule remedy on the grounds that there was no support for this remedy in extant Board law. However, in a personal footnote, Chairman Liebman stated that "such a remedy may be worthy of consideration in a future case."

(Chairman Liebman and Member Schaumber participated.)

Charges filed by United Federation of Special Police and Security Officers, Inc.; complaint alleged violations of Section 8(a)(1) and (5). Hearing at Newark on Jan. 29, 2009. Adm. Law Judge Joel P. Biblowitz issued his decision Feb. 11, 2009.

Seafood Wholesalers, Ltd. (16-CA-25998, et al., 16-RC-10819; 354 NLRB No. 53) Houston, TX, July 24, 2009. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by prohibiting workplace conversations about the Union while permitting workplace conversations about other subjects and by suspending employee Kenneth Graham for protesting the Respondent's prohibition of those conversations. The Board also adopted the judge's finding that the Respondent violated Section 8(a)(3) by laying off Graham because of his Union activity. In adopting the judge's finding that the Respondent violated Section 8(a)(5) by laying off Graham without notice to, or bargaining with, the Union, Chairman Liebman found it unnecessary to rely on the judge's finding that layoffs at the Respondent's facility were unprecedented. Member Schaumber noted that because the Respondent does not contend in its exceptions that its layoff of Graham was consistent with past practice (and the record shows that no such practice existed), Member Schaumber does not pass on the legal issue as to whether an employer's consistent past practice of layoffs would excuse the Respondent's bargain with the Union over layoffs. [\[HTML\]](#) [\[PDF\]](#)

With regard to election objections, the Board adopted the judge's recommendation to overrule the Respondent's objections alleging that the Union used a paid Union employee (Graham) as its election observer; harassed employee Lorenzo Yax about the Union; and disseminated incorrect information to drivers about the Respondent's payment of overtime. The Board also adopted the judge's finding that that the Respondent engaged in objectionable conduct by using Retail Sales Manager David Molina, an agent of the Respondent, as its election observer, but did not pass on the judge's recommendation that the Respondent engaged in objectionable conduct by providing an *Excelsior* list containing incorrect addresses.

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Operating Engineers, Local Union 564; complaint alleged violations of 8(a)(1) and (5) as well as election objections. Hearing at Houston, Dec. 15-16, 2008. Adm. Law Judge George Carson II issued his decision Feb. 3, 2009.

Teamsters Local 886 affiliated with International Brotherhood of Teamsters (United Parcel Service) (17-CB-6356; 354 NLRB No. 52) Oklahoma City, OK, July 24, 2009. The Board reversed the administrative law judge's finding that the Respondent Union did not violate Section 8(b)(1)(A) of the Act when one of its stewards told employee Reynolds, in the presence of employee Hawkins, that it dropped Reynolds' grievances because the company did not like him and because he ran against the Respondent's leadership in an intraunion election. The Board first found the statement itself to be unlawful. See *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979). The Board then found that an employee in Hawkins' position reasonably could have believed that the steward was acting on behalf of the Respondent and, therefore, that the Respondent was responsible for the steward's statement by virtue of his apparent authority. Given its finding that the Respondent violated Section 8(b)(1)(A) with regard to Hawkins, the Board found it unnecessary to pass on the judge's finding that the Respondent did not violate Section 8(b)(1)(A) with regard to Reynolds. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Liebman and Member Schaumber participated.)

Charge filed by Michael D. Reynolds, an individual; complaint alleged violations of Section 8(b)(1)(A). Hearing at Oklahoma City, July 22 and Oct. 3, 2008. Adm. Law Judge James M. Kennedy issued his decision Aug. 21, 2008.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Kieft Brothers, Inc. (Teamsters Local 673, an Individual, and Construction and General Laborers Local 25) Elmhurst, IL, July 21, 2009. 13-CA-45023, et al.; JD-33-09, Judge Arthur J. Amchan.

Plaza Auto Center, Inc. (an Individual) Yuma, AZ, July 21, 2009. 28-CA-22256; JD(SF)-23-09, Judge Lana Parke.

Fortuna Enterprises, L.P. A Delaware Limited Partnership d/b/a The Los Angeles Airport Hilton Hotel and Towers (UNITE HERE, Local 11) Los Angeles, CA, July 22, 2009. 31-CA-27837, et al.; JD(SF)-24-09, Judge John J. McCarrick.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Beaird Industries, Inc. (Auto Workers Local 2297) (15-CA-17315, et al.; 354 NLRB No. 50) Shreveport, LA, July 21, 2009. [\[HTML\]](#) [\[PDF\]](#)

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

Superior Beverage Group, LTD, Massillon, OH, 8-UD-329, July 20, 2009
(Chairman Liebman and Member Schaumber)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Bristol Hospital EMS, LLC, Bristol, CT, 34-RC-2313, July 23, 2009
(Chairman Liebman and Member Schaumber)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

MS Fire Protection, Inc., Fresno, CA, 32-RM-812, July 20, 2009
(Chairman Liebman and Member Liebman)
Willets Point Asphalt Corp., Brooklyn, NY, 29-RD-1124, July 24, 2009
(Chairman Liebman and Member Schaumber)

(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]**

Industrial Resin Recycling, Inc., Howell, MI, 7-RC-23264, July 22, 2009

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

Dunkin' Donuts Northeast Distribution Center, Inc., Bellingham, MA, East Windsor, and Plainville, CT, Lebanon, NH and South Portland, ME, 1-RC-22303, July 23, 2009 [setting aside election conducted March 31 and April 1, 2009]
Alle Processing Corp., Maspeth, NY, 29-RC-11668, July 23, 2009 [setting aside election conducted on Nov. 13, 2008]

(In the following case, the Board granted request for review of Decision and Direction of Election (D&DE) and Decision and Order (D&O) of Regional Director)

Council of Chapters of AAUP at University of Medicine and Dentistry of New Jersey, Newark, NJ, 22-RC-13014, July 21, 2009 (Chairman Liebman and Member Schaumber)

(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)

Buzzi Unicem Ready Mix, LLC, d/b/a Memphis Ready Mix, Memphis, TN, 26-UC-199, July 22, 2009 (Chairman Liebman and Member Schaumber)
United Rentals Northwest, Inc., Pico Rivera, CA, 21-RD-2855, July 21, 2009 (Chairman Liebman and Member Schaumber)

ORDER [affirming administrative dismissal of petition]

American Etc., Inc. d/b/a Royal Laundry, South San Francisco, 20-RM-2868, July 21, 2009 (Chairman Liebman and Member Schaumber)
