Weekly Summary of Cases
National Labor Relations Board
Week of May 17-21, 2010, W-3261

The *Weekly Summary* is provided for informational purposes only and is not intended to substitute for the opinions of the NLRB. Inquiries should be directed to the Office of Public Affairs at Publicinfo@nlrb.gov or 202-273-1991.

Summarized Board Decisions

Roadway Express, Inc. (12-CA-22202, 12-CB-5002, 355 NLRB No. 23) May 21, 2010, Miami, FL [HTML] [PDF]

The Board found that the employer violated the Act by terminating the charging party for actions he undertook in his capacity as union steward, and that the union breached its duty of fair representation to the charging party by representing him at his discharge arbitration perfunctorily and in bad faith. Because the union breached its duty, the Board declined to defer to the arbitral panel's decision upholding the discharge. Administrative Law Judge Keltner W. Locke issued his decision July 24, 2008.

The charges were filed by an individual. Chairman Liebman and Members Schaumber and Pearce participated.

***

Unpublished Board Decisions in Representation Cases

Dish Network Corporation (16-RC-10920) May 19, 2010, Farmers Branch, TX.

In light of exceptions and briefs, the Board adopted the Regional Director's findings and recommendations, and found that a certification of representative be issued. Petitioner – Communications Workers of America, Local 6171. Members Schaumber, Becker, and Pearce participated.

DLC Corp. d/b/a Tea Party Concerts and/or Live Nation (1-RC-22162) May 19, 2010, Cambridge, MA

The Board reversed the Regional Director solely with respect to the eligibility formula set forth in the Supplemental Decision and Direction of Election. In all other respects, the Request for

Review is denied as it raises no substantial issues warranting review. The case is remanded to the Regional Director to conduct an election at an appropriate time.

Petitioner – International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, Local 11, AFL-CIO. Chairman Liebman and Members Schaumber and Becker participated.

***

Decisions of Administrative Law Judges

Aim Royal Insulation, Inc. and Jacobson Staffing, L.C., Joint Employers (28-CA-22605, 22714; JD(SF)-17-10) Phoenix, AZ. Charges filed by International Association of Heat & Frost Insulators & Allied Workers, AFL-CIO, Local No. 73. Administrative Law Judge William G. Kocol issued his decision May 21, 2010. [HTML] [PDF]

Guardsmark, LLC (3-CA-27082, 3-CB-8907; JD-33-10) Buffalo, NY. Charges filed by Plant Protection Association National and Plant Protection Association, Local 104. Administrative Law Judge Eric M. Fine issued his decision May 21, 2010. [HTML] [PDF]

***

Federal Appellate Court Decisions

***McBurney Corp. v. NLRB and International Brotherhood of Boilermakers v. NLRB* (*McBurney Corp.*) (26-CA-17564, 26-CA-17979, 26-CA-18017 & 2d Cir. 08-4003, 08-4456, 08-4689), *and International Brotherhood of Boilermakers v. NLRB* (*Brown & Root*) (15-CA-12752, 15-CA-12875 & 2d Cir. 08-4849),** issued May 18, 2010. [PDF]

These cases involve employers' refusals to hire union applicants and remedies available to union salt applicants who are unlawfully denied employment. The Second Circuit enforced the Board's Order against McBurney Corp., finding that the employer refused to hire 37 job applicants because of anti-union animus. However, in the McBurney case and a similar case involving Brown & Root Power Manufacturing, the Court dismissed the Union's petitions to review a rule the Board set out in *Oil Capitol Sheet Metal*, 349 NLRB 1348 (2007), *review dismissed*, *Sheet Metal Workers Int'l Ass'n, Local 270 v. NLRB*, 561 F.3d 497 (D.C. Cir. 2009). That rule set forth that the General Counsel, rather than the employer (as under the prior rule) has the burden to prove in a compliance proceeding how long a union salt would have remained on the job. The Court agreed with the District of Columbia Circuit that the Union's challenge to the new rule was not ripe for review until a backpay award has been calculated through future compliance proceedings. At that time, the Court stated the Boilermakers could return to challenge the rule.

***