

# National Labor Relations Board



# Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED  
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*Davey Roofing, Inc.* (28-CA-16394; 341 NLRB No. 27) Las Vegas, NV Feb. 19, 2004. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act when it laid off employees Celestino Gonzales, Martin Gonzalez, and Ricardo Camarena. However, contrary to the judge, Chairman Battista and Member Schaumber, with Member Walsh dissenting, found that the Respondent did not violate Section 8(a)(3) and (1) when it discharged employees Jose Ramirez and Jesus Camargo. [\[HTML\]](#) [\[PDF\]](#)

The judge concluded that the Respondent discharged Ramirez and Camargo for refusing to sign warnings acknowledging safety violations at the worksite, finding that the Respondent's asserted defense of insubordination regarding the discharges failed because the testimony of Vice President Patrick and Supervisor Salvador Guardado concerning the Respondent's decision-making process and its rationale for the discharges was "antithetical in nature and unworthy of belief." Chairman Battista and Member Schaumber contended that the Respondent has established that it would have discharged Ramirez and Camargo absent their union activities and, in their view, Ramirez and Camargo were discharged for an insubordinate refusal to sign.

Member Walsh disagreed with his colleagues' dismissal of the allegation that the Respondent violated the Act when it discharged Ramirez and Camargo. He agreed with the judge's finding and said that the union activities of Ramirez and Camargo were a motivating factor in the Respondent's decision to discharge them. Member Walsh asserted that the Respondent has not shown that it would have discharged Ramirez and Camargo for insubordination in refusing to sign safety warnings even in the absence of their union activity.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Roofers Local 162; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Las Vegas, Oct. 23-26, 2000. Adm. Law Judge Burton Litvack issued his decision Sept. 28, 2001.

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*Ebroadburl Realty Corp. t/a Power Equipment Co.* (4-CA-26249; 341 NLRB No. 32) Hainesport, NJ Feb. 19, 2004. The Board granted the General Counsel's motion for summary judgment with respect to backpay owed discriminatee Jonathan Smith and ordered that the Respondent make whole Smith by paying him \$1,162.05, plus interest as computed pursuant to *New Horizon for the Retarded*, 283 NLRB 1173 (1987), less tax withholdings pursuant to state or Federal law. [\[HTML\]](#) [\[PDF\]](#)

In the prior decision reported at 330 NLRB 70 (1999), the Board ordered that the Respondent make Smith whole for any loss of earnings and other benefits suffered as a result of his discharge in violation of Section 8(a)(3) and (1) of the Act. On October 30, 2000, the U.S. Court of Appeals for the Third Circuit enforced the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatee, the Regional Director issued a compliance specification and notice of hearing, alleging the amount of backpay due upon the discriminatee's reinstatement under the Board's Order. The Respondent filed an answer disputing the backpay figure reached in the compliance

specification. Although Respondent was advised that its answer did not comply with the requirements of the Board's Rules and Regulations, it failed to amend its answer.

(Members Schaumber, Walsh, and Meisburg participated.)

General Counsel filed motion for summary judgment Oct. 9, 2003.

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*Solvay Iron Workers, Inc.* (3-CA-23782-3; 341 NLRB No. 25) Syracuse, NY Feb. 17, 2004. The administrative law judge found, and the Board agreed, that the Respondent committed numerous violations of the Act. Among others, the Board found that the Respondent violated Section 8(a)(1) by: (a) interrogating employees about their union membership or activities, or about the union activities of others; (b) telling employees that they should quit their jobs if they wanted to join a union or sign union authorization cards; (c) telling employees not to talk with union representatives during work hours, including breaks and lunchtime; and (d) creating the impression that the employees' union activities were under surveillance by telling employees that it knew the union informant. The Respondent was also found to have violated Section 8(a)(1) and (3) by discriminating against an applicant affiliated with the Union and changing its hiring procedure; refusing to hire Gary Swanson because he was affiliated with the Union; and laying off Mark McKean because of his union activities. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Ironworkers Local 33; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Syracuse, Feb. 4 and 5, 2003. Adm. Law Judge Karl H. Buschmann issued his decision Aug. 20, 2003.

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#### **LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES**

*Alexandria NE LLC* (Teamsters Local 401) Philadelphia, PA February 18, 2004. 4-CA-32368; JD-11-04, Judge Robert A. Giannasi.

*Industria Lechera De Puerto Rico Inc.* (Indulac, Inc.) (Congreso de Uniones Industriales de Puerto Rico) Hato Rey, PR February 18, 2004. 24-CA-9591; JD(ATL)-05-04, Judge William N. Cates.

*Deaconess Hospital, LLC* (an Individual) Cleveland, OH February 18, 2004. 8-CA-33930; JD-10-04, Judge Michael A. Rosas.

*Duane Reade, Inc.* (Allied Trades Council) New York, NY February 18, 2004. 2-CA-34228, et al.; JD(NY)-07-04, Judge Eleanor MacDonald.

*Paper, Allied Industrial Chemical & Energy Workers* (an Individual) Pennington, AL February 18, 2004. 15-CB-5097, 5140; JD(ATL)-08-04, Judge William N. Cates.

*Mays Electric Co., Inc.* (Electrical Workers Local 666) Richmond, VA February 20, 2004. 5-CA-31247, 31371; JD-144-03, Judge Paul Buxbaum.

*Southwest Regional Council of Carpenters* (Carpenters Local 209) Ventura, Los Angeles, Orange and San Diego, CA February 18, 2004. 31-CC-2113, 2114 formerly 21-CC-3326; JD(SF)-14-04, Judge James M. Kennedy.

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**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 ORDER**

*Bredero Shaw, A Division of Shawcor Ltd.*, Mobile, AL, 15-RC-8356, Feb. 18, 2004

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*(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**

*Head Start of Lane County*, Springfield, OR, 36-UD-356, Feb. 19, 2004

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

*Deaconess Long Term Care, Inc., d/b/a Georgian Garden Nursing Center*, Potosi, MO, 14-RD-1794, Feb. 20, 2004

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*(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)*

*American Ordnance, LLC*, Milan, TN, 26-RC-8402, Feb. 19, 2004

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

*Beverly Enterprises d/b/a The Hermitage*, Worcester, MA, 1-RC-21704, Feb.18, 2004  
*Virtua Health, Inc.*, Marlton, NJ, 4-RC-20692, Feb. 18, 2004  
*Rock-Tenn Company*, Conway, AR, 26-RD-1090, Feb. 18, 2004  
*Human Resource Agency of New Britain*, New Britain, CT, 34-RD-309, Feb. 18, 2004  
*Barron Heating & Air Conditioning, Inc.*, Seattle, WA, 19-RC-14429, Feb. 19, 2004

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**NO ANSWER TO COMPLAINT**

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

*CaseThe Pantry Restaurant* (Hotel Employees Local 360) (19-CA-28663; 341 NLRB No. 30)  
Longview, WA February 19, 2004.

*Victory Van Corp.* (Operating Engineers Local 99) (5-CA-31378; 341 NLRB No. 28)  
Alexandria, VA February 17, 2004.

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**NO ANSWER TO COMPLIANCE SPECIFICATION**

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

*Bryan Adair Construction Co., Inc.* (Mountain West Regional Council of Carpenters)  
(27-CA-17722; 341 NLRB No. 31) Broken Arrow, OK February19, 2004.

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