

National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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AAA Cab Services, Inc. (28-RC-6154; 341 NLRB No. 57) Tucson, AZ March 17, 2004. After consideration of the Petitioner's request for review, the Board affirmed the Regional Director's Decision and Order in which he found that the Employer's taxi drivers are independent contractors, not statutory employees, and dismissed the petition filed by the Independent Taxi Drivers Union. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Walsh and Meisburg participated.)

Builders, Woodworkers & Millwrights Local 1 (3-CB-7986; 341 NLRB No. 54) Glens Falls, NY March 15, 2004. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(b)(1)(A) and 8(b)(2) of the Act by accepting recognition from employer-members of the Glens Falls Contractors Association (GFCA), and entering with them into a collective-bargaining agreement containing a union-security clause, at a time when the employers already had recognized and were bound to a collective-bargaining agreement with Carpenters Local 229 and Empire State Regional Council of Carpenters (Carpenters). The Carpenters contended that the judge, in making this finding, unnecessarily found that the GFCA-Carpenters relationship was an 8(f) relationship. The Board agreed and wrote that the GFCA employers were not free to unilaterally repudiate their agreement with the Carpenters and recognize the Respondent regardless of whether it may have been a 9(a) or 8(f) relationship. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Meisburg participated.)

Charges filed by Carpenters Local 229 and Empire State Regional Council of Carpenters; complaint alleged violation of Section 8(b)(1)(A) and 8(b)(2). Hearing at Albany on Dec. 16-17, 2002. Adm. Law Judge Margaret M. Kern issued her decision Aug. 21, 2003.

Enterprise Masonry Corp. (5-CA-30421; 341 NLRB No. 53) Elsmere, DE March 15, 2004. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by laying off and discharging employees Thomas Glennon, Kyle Tucker, and Tyrone Sales on February 21, 2002, and William Smith on February 22, 2002, and by failing to recall them. It agreed with the judge that the Respondent has not established that the layoffs were necessitated by legitimate business reasons and that its proffered reasons for the layoffs were pretexts. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by Laborers Local 199; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Wilmington, Oct. 21 and 22, 2002. Adm. Law Judge Richard A. Scully issued his decision Jan. 17, 2003.

Inter-Regional Disposal & Recycling, Inc., a successor to Denville Disposal, t/a Carmine Forgione & Sons, Inc. (22-CA-25305; 341 NLRB No. 56) Riverdale and Elizabeth, NJ March 19, 2004. By refusing to bargain with Teamsters Local 945, the Board found that the Respondent violated Section 8(a)(5) and (1) of the Act. It did not adopt the administrative law judge's conclusion or recommended order designating Local 945 as the exclusive bargaining representative of a unit of "[a]ll drivers and helpers employed by the Respondent at its Riverdale and Elizabeth, N.J. facilities" and, accordingly, corrected the judge's remedial order to state that Local 945 was the bargaining representative for the Respondent's drivers and helpers only at the Riverdale terminal. [\[HTML\]](#) [\[PDF\]](#)

The Respondent is engaged in the collection, transport, and disposal of waste. In July 2001, it purchased the assets of Denville Disposal in Riverdale. At the time of the purchase, Teamsters Local 945 represented Denville's drivers and helpers. The Respondent contended that its acquisition of the Riverdale terminal was a "consolidation" with its Elizabeth terminal, that the resulting bargaining unit included employees at both terminals, and that Local 890 of the League of International Federated Employees (LIFE) is the consolidated unit's bargaining representative.

The Board wrote that the Respondent continued its preexisting operations at the Elizabeth terminal, that the two terminals continued to operate separately, and none of the former Denville employees was transferred to Elizabeth. It found no factual basis for treating the Respondent's acquisition of the Riverdale terminal as a consolidation or merger with the terminal at Elizabeth. Accordingly, the Board agreed with the judge that the Respondent was the successor to Denville Disposal, that Local 945 became the bargaining representative for the Respondent's drivers and helpers at Riverdale, and that the Respondent refused to bargain with Local 945 over those employees' terms of employment in violation of Section 8(a)(5) and (1).

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Teamsters Local 945; complaint alleged violation of Section 8(a)(1), (2), (3), and (5). Hearing at Newark, Feb. 11-13, 20, 25, and 26, 2003. Adm. Law Judge D. Barry Morris issued his decision June 16, 2003.

Tidewater Construction Corp. (5-CA-25463; 341 NLRB No. 55) Norfolk, VA March 17, 2004. On remand, the Board reversed the original decision, 333 NLRB 1264 (2001), and determined that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to consider hiring certain former employees as temporary replacements during a lockout in response to union efforts to obtain a contract. [\[HTML\]](#) [\[PDF\]](#)

In the prior decision, a Board majority, with Member Liebman dissenting, rejected the argument that the lockout was unlawful insofar as it extended beyond the 25 current employees

who struck, to encompass former employees on the *Excelsior* list, including six job applicants. The Board majority held that, although the Respondent knew that everyone on the *Excelsior* list was a union member, having hired them from the Union's hiring hall, the Respondent did not lock them out for the unlawful reason that they were union members but, rather, for the lawful reason that they reasonably could be considered bargaining unit members who supported the Union's bargaining position. Accordingly, the majority, in dismissing the complaint, concluded that the six job applicants were lawfully locked out, rather than denied consideration for employment.

The Union subsequently filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit and, on July 9, 2002, the court vacated the Board's decision and remanded the case to the Board for further proceedings consistent with its opinion. The court held that "the Board failed adequately to explain why evidence presented by the Union did not demonstrate that [Respondent] had unlawfully refused to consider the applicants due to antiunion animus." *International Union of Operating Engineers v. NLRB*, 294 F.3d 186.

In deciding on remand whether the Respondent, in refusing to consider hiring certain job applicants, was motivated by union animus, the Board wrote that among those who applied for work in response to the Respondent's job advertisements were six union members whose names were on the lockout list. They were not told that their inclusion on the lockout list was the reason they were not being considered for hire. The Board held, contrary to the original decision, that the Respondent was motivated by union animus when it declined to consider the six union applicants for employment during the lockout and when it placed 10 names on its not-to-be-hired list because it believed they were all union members.

(Chairman Battista and Members Liebman and Walsh participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Mountaire Farms of Delaware, Inc. (Food & Commercial Workers Local 27) Millsboro, DE March 15, 2004. 5-CA-31336; JD-19-04, Judge Richard A. Scully.

Longshoremen's (ILA) Local 1526 (an Individual) Ft. Lauderdale, FL March 15, 2004. 12-CB-5156; JD(ATL)-14-04, Judge John H. West.

American Golf Corp. d/b/a Badlands Golf Course (Laborers 872) Las Vegas, NV March 15, 2004. 28-CA-18753, et al.; JD(SF)-20-04, Judge Albert A. Metz.

Longshoremen's (ILWU) Local 13 (Applied Industrial Materials Corp.) Long Beach, CA March 15, 2004. 21-CC-3314, 21-CE-368; JD(SF)-21-04, Judge Gerald A. Wacknov.

Hahner, Foreman & Harness, Inc. (Carpenters Local 201) Wichita, KS March 17, 2004. 17-CA-22382, 17-RC-12206; JD(ATL)-13-04, Judge Lawrence W. Cullen.

NO ANSWER TO COMPLIANCE SPECIFICATION

(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 compliance specification.)

Hannah & Sons Construction Co. (Carpenters Metropolitan Regional Council of Philadelphia and Vicinity) (4-CA-28916; 341 NLRB No. 58) Philadelphia, PA March 22, 2004.

Tri-County Manufacturing and Assembly, Inc. (Steelworkers) (9-CA-37528, et al.; 341-NLRB No. 59) Williamsburg, KY March 22, 2004.

**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

The Hertz Corporation, San Francisco, CA, 20-RC-17887, March 17, 2004

DECISION AND ORDER DIRECTING HEARING

North American Enclosures, Inc., Central Islip, NY, 29-RC-10007, March 17, 2004

(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)

York County Community Action Corp., Sanford, ME, 1-RC-21710, March 17, 2004

Correctional Medical Services, Bridgeton, NJ, 4-RC-20761, March 17, 2004

Berks Products Corp., Reading, PA, 4-UC-400, March 17, 2004

City Tow, San Francisco, CA, 20-RC-17926, March 17, 2004

USF Bestway, Donna, TX, 16-RD-1512, March 17, 2004

Shepard Exposition Services, Inc., Orlando, FL, 12-RC-9005, March 17, 2004

Miscellaneous Board Orders

ORDER[granting Petitioner's request to withdraw the petition]

Avalon & K & H Cleaning Corp., New York, NY, 2-RC-22696, March 18, 2004

ORDER[denying Employer's request for special permission to appeal RD's denial of Employer's request to postpone hearing]

Logan Manor Care Center, Whiting, NJ, 4-RC-20776, March 15, 2004

ORDER[granting Employer's motion to withdraw its motions for disqualification of Union's Counsel]

Publix Super Markets Inc., Deerfield Beach, FL, 12-RC-8844, March 15, 2004
