

National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

Washington, D.C. 20570

Tel. (202) 273-1991

May 28, 2004

W-2949

CASES SUMMARIZED

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Administrative

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Donaldson Bros. Ready Mix, Inc. (19-CA-26948-1, et al.; 341 NLRB No. 124) Hamilton, MT May 19, 2004. The administrative law judge found, and the Board affirmed, numerous violations of Section 8(a)(1) and (3) of the Act committed by the Respondent. Among others, the Board adopted the judge's finding that the Respondent violated Section 8(a)(1) of the Act by interrogating employee Allen Dukelow and violated Section 8(a)(3) by laying off employee Jim West and by granting the employees a wage increase in response to the union activity. Contrary to the judge, it found that the Respondent violated Section 8(a)(1) by banning off-duty employees from its premises and by misrepresenting the eligibility of union-represented employees to participate in its Employee Stock Option Plan (ESOP). The Board also found that the Respondent did not violate Section 8(a)(1) by Vernon Weidow's attendance at a union meeting. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Schaumber agreed with the judge that Vernon Weidow was a statutory supervisor and that his warning to employees that they would not receive higher wages if they selected Operating Engineers Local 400 to represent them and his telling employees that they were stupid for supporting the Union violated Section 8(a)(1). Member Walsh disagreed with his colleagues on this issue. In his partial dissent, he said that Weidow does not have authority to hire or fire and is required to consult with Respondent President Charles Donaldson and present him with relevant facts regarding hiring and firing matters. In his view, the General Counsel has failed to establish that Weidow is a supervisor within the meaning of Section 2(11) of the Act.

Chairman Battista and Member Walsh, in agreement with the judge, held that the Respondent violated Section 8(a)(1) by creating the impression that employees' union activities were under surveillance and by threatening employees with discharge and violated Section 8(a)(3) by reducing employees' hours of work in retaliation for their union activity and by refusing to allow employee David Raines to clock in early. In his partial dissenting opinion, Member Schaumber wrote he would reverse the judge and find that the Respondent did not violate the Act by creating the impression of surveillance because the evidence does not establish that the Respondent's president, Charles Donaldson, conveyed to the employee listener that he learned of employee union activities through surreptitious surveillance. He also disagreed with his colleagues and the judge that the Respondent violated Section 8(a)(3) by reducing the hours of four unit employees on April 6 and 7, 2000, because, in his view, the evidence is insufficient to support the conclusion that diminished hours resulted from employees' union activities.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Operating Engineers Local 400; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Hamilton, Aug. 22 and 23, 2000. Adm. Law Judge Jerry M. Hermele issued his decision Dec. 15, 2000.

Jacobs Heating and Air Conditioning (4-CA-28122, 28143; 341 NLRB No. 128) Glenside, PA May 20, 2004. Chairman Battista and Member Schaumber, in agreement with the administrative law judge, dismissed the complaint allegation that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire union applicants John Barzeski, Joseph Barzeski, and Patrick Keenan. They found that the Respondent carried its burden by proving that the union applicants (1) “did not possess the specific qualifications the position required” or (2) that “others (who were hired) had superior qualifications” and were hired for that reason. *FES*, 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3d Cir. 2002). [\[HTML\]](#) [\[PDF\]](#)

The Respondent is a contractor that specializes in residential installation and service of heating, ventilation, and air-conditioning (HVAC) systems involving a variety of tasks including electrical, piping, and wiring work. According to the judge, the Respondent “was looking for employees experienced in all aspects of HVAC for positions in installation and service.” The judge found that antiunion animus contributed to the Respondent’s decision not to hire the three applicants but that the General Counsel had not met his *FES* burden of proving that the applicants had the “experience or training relevant to the announced or generally known requirements” of the positions for hire. Even assuming that this burden had been met, the judge observed, the Respondent had established a defense, by showing that the applicants “did not possess the specific qualifications the position required.”

Dissenting in part, Member Liebman determined that the Respondent unlawfully refused to hire the three union applicants. Contrary to her colleagues and the judge, she would find (1) that the General Counsel demonstrated that the union applicants had both experience and training relevant to the announced requirements for the positions that the Respondent sought to fill; and (2) that, in turn, the Respondent failed to prove that it refused to hire the union applicants because they lacked CFC certification (certified to handle chlorofluorocarbon refrigerants) and were experienced only in “sheet metal work,” not all aspects of HVAC work.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Sheet Metal Workers Local 19; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Philadelphia on June 26-27, 2001. Adm. Law Judge Benjamin Schlesinger issued his decision Sept. 18, 2001.

Nevada Security Innovations, Ltd. (31-CA-26020; 341 NLRB No. 126) Las Vegas, NV May 18, 2004. The Board adopted the administrative law judge’s recommendation that the Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing on and after August 15, 2004, to meet and bargain with the Police, Security, & Correction Officers as the exclusive collective-bargaining representative of the employees in the appropriate unit. The Board found no merit in the Respondent’s argument that the Union transferred its bargaining rights to an affiliated local, Local 2001 and, therefore, the Respondent had no obligation to bargain. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Police, Security, & Correction Officers; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Los Angeles on Oct. 20, 2003. Adm. Law Judge Jay R. Pollack issued his decision Dec. 22, 2003.

U.S. Information Services, Inc. (2-CA-34668-1; 341 NLRB No. 129) Nyack, NY May 21, 2004. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide the Union (Communications Workers) with information relating to 2001 Christmas bonuses it gave to its employees. [\[HTML\]](#) [\[PDF\]](#)

In exceptions, the Union contended that the judge failed to require the Respondent to furnish information regarding all bonuses, not just the Christmas bonuses; failed to address the General Counsel's contention that the Respondent did not furnish the Union with certain additional information the Union requested; and failed to order that the notice be mailed to the Respondent's employees. The Union also excepted to judge's finding that CWA Local 1106, not the Union, was the employees' exclusive bargaining representative.

Having found merit in certain of the Union's exceptions, the Board modified the judge's Order to require the Respondent to: 1) provide the Union with information regarding all of the bonuses it gave to its employees; 2) provide relevant information to the Union about gross salaries, total hours, or overtime hours worked by each unit employee; and 3) mail the Notice to all affected employees in addition to posting the notice at its Nyack facility as the unit employees do not have a fixed worksite. It found it unnecessary to pass on which of the two unions is the employees' exclusive bargaining representative.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Communications Workers; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York, Oct. 7 and 8, 2003. Adm. Law Judge Raymond P. Green issued his decision Nov. 21, 2003.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

K.W. Electric, Inc. (Electrical Workers [IBEW] Local 466) Fayetteville, WV May 18, 2004. 9-CA-40422; JD(ATL)-28-04, Judge Michael A. Marcionese.

State Plaza, Inc., a wholly owned subsidiary of RB Associates, Inc. d/b/a State Plaza Hotel (Hotel and Restaurant Local 25) Washington, DC May 19, 2004. 5-CA-31346; JD-44-04, Judge David L. Evans.

United States Postal Service (Southern New York Area Postal Workers Local 522) Warwick, NY May 19, 2004. 2-CA-35623; JD(NY)-20-04, Judge Steve Davis.

Niagara Mohawk Power Corp. (Electrical Workers [IBEW] Local 97) Syracuse, NY May 19, 2004. 3-CA-24266; JD(NY)-21-04, Judge Joel P. Biblowitz.

D.C. Scaffold, Inc. (New England Regional Council of Carpenters) Boston, MA May 19, 2004. 1-CA-41294, 1-RC-21685; JD-48-04, Judge Joseph Gontram.

R. C. Associates, Inc. (Plumbers Local 536) Westminster, MD May 20, 2004. 5-CA-31434, et al.; JD-51-04, Judge Karl H. Buschmann.

Superior Travel Service, Inc. (an Individual) Flint, MI May 21, 2004. 7-CA-46641; JD-46-04, Judge Paul Bogas.

Westchester Iron Works Corp. (an Individual) Bronx, NY May 21, 2004. 2-CA-31494; JD(NY)-22-04, Judge D. Barry Morris.

Hospital and Healthcare Employees Local 399 (an Individual) Los Angeles, CA May 13, 2004. 31-CB-11324, JD(SF)-37-04, Judge James M. Kennedy.

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 failure to file an answer to the compliance specification.)

Falcon Wheel Division L.L.C. (Teamsters of San Pedro, Wilmington, Long Beach & Vicinity Local 692) (21-CA-34646; 341 NLRB No. 127) Gardena, CA May 19, 2004. [\[HTML\]](#) [\[PDF\]](#)

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

Long Beach Memorial Medical Center, Long Beach, CA, 21-RC-20583, May 17, 2004

DECISION AND CERTIFICATION OF REPRESENTATIVE

Valcourt Building Services, Inc., Elizabeth, NJ, 22-RC-12384, May 20, 2004
Berkshire Nursing Home LLC, West Babylon, NY, 29-RC-10113, May 21, 2004
Crossings Recovery Centers, Islip Terrace, NY, 29-RC-10145, May 20, 2004
Maintech Corp., Newark, NJ, 22-RC-12304, May 19, 2004

DECISION AND DIRECTION OF SECOND ELECTION

Marquette University, Milwaukee, WI, 30-RC-6547, May 19, 2004

*(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

*El Morro Corrugated Box Corp. and Inland Paper Corp., Inc., Vega Alta, PR
24-RC-8356, May 19, 2004*

**DECISION AND DIRECTION [that Regional Director open and
count 2 challenged ballots]**

Butler Gas Products Co., McKees Rocks, PA, 6-RC-12803, May 19, 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)*

*Greystone Programs, Inc., Poughkeepsie, NY, 3-RC-11423, May 20, 2004
True World Foods, Inc., Elizabeth, NJ, 22-RC-12452, May 20, 2004
New York Association for New Americans, New York, NY, 2-UC-566, May 21, 2004*

*(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)*

Magic Brite Janitorial, Las Vegas, NV, 28-RD-875, May 18, 2004

MISCELLANEOUS BOARD ORDERS

ORDER [affirming RD's dismissal]

Majestic Star Casino, Gary, IN, 13-RD-2462, May 20, 2004
