

National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED

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Auto Workers International and its Local Lodge 376 (Colt's Mfg. Co.) (34-CB-1447-1 (Formerly Case 31-CB-8641-26); 342 NLRB No. 6) Hartford, CT June 18, 2004. The Board, in this supplemental decision, adopted the administrative law judge's recommendation and ordered that the Respondents make whole Charging Party George W. Gally in the amount of \$30,773 plus interest accrued to the date of payment. [\[HTML\]](#) [\[PDF\]](#)

(Members Schaumber, Walsh, and Meisburg participated.)

Hearing at Hartford on Oct. 23, 2003. Adm. Law Judge Joel P. Biblowitz issued his supplemental decision Dec. 24, 2003.

Connecticut Hospice, Inc. (34-CA-10314; 342 NLRB No. 3) Branford, CT June 17, 2004. The Board affirmed the recommendations of the administrative law judge and found that the Respondent violated Section 8(a)(1) of the Act by threatening and later discharging employee Rosanne Corning because she engaged in protected concerted activities. [\[HTML\]](#) [\[PDF\]](#)

Members Walsh and Meisburg rejected the Respondent's assertion that the decision to discharge Corning came only after an investigation of an assault incident.

Member Schaumber agreed with his colleagues' determination that the Respondent violated the Act by discharging Corning. In finding the requisite animus, he relied solely on the Respondent's falsification of the Retention Committee election results to exclude Corning, and Respondent's human resources director's statement to Corning that her participation in concerted activities could have caused management to harass her.

(Members Schaumber, Walsh, and Meisburg participated.)

Charge filed by Roseanne Corning, an Individual; complaint alleged violation of Section 8(a)(1). Hearing at Hartford, June 25-27 and July 31, 2003. Adm. Law Judge Wallace H. Nations issued his decision Dec. 3, 2003.

Engelhard Corp. (2-CA-32909, 33080; 342 NLRB No. 5) Peekskill, NY June 18, 2004. Members Liebman and Walsh affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by suspending 38 employees because they picketed its shareholders' meeting (over 70 miles from the facility where the employees worked) and violated Section 8(a)(1) when it published two letters in the plant that threatened employees with discipline and discharge for engaging in picketing, and when it videotaped the picketing employees. The majority agreed with the judge that the employees did not contravene the no-strike/no lockout clause (article 28) in the Employer's collective-bargaining agreement with Electrical Workers IBEW Local 1430. The judge found, and they agreed, that article 28 does not constitute a clear and unmistakable waiver by the Union of the employees' right to engage in the picketing and that the picketing was protected by Section 7. [\[HTML\]](#) [\[PDF\]](#)

Dissenting, Member Schaumber would reverse the judge and dismiss the complaint. He concluded that his colleagues and the judge ignore "the plain meaning of the parties' no strike/no lockout pledge and instead adopt a highly improbable construction consistent with the express language of the parties' agreement." The Union clearly and unmistakably waived its own and its represented employees' right to engage in such activity during the terms of the parties' collective-bargaining agreement, Member Schaumber found. Because the picketing was unprotected, the Respondent did not violate the Act when it disciplined its employees and threatened to discipline employees who engaged in picketing, and videotaped the picketing itself.

(Members Liebman, Schaumber, and Walsh participated.)

Charges filed by Electrical Workers IBEW Local 1430; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York, Dec. 20-21, 2000. Adm. Law Judge Steven Davis issued his decision April 27, 2001.

North American Enclosures, Inc. (29-CA-25492, 25550; 342 NLRB No. 4) Central Islip, NY June 18, 2004. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by photographing its employees while they engaged in protected concerted activities, threatening its employees with discharge and job loss if they support or vote for Food and Commercial Workers Local 348-S in an NLRB election, and promising its employees wage increases if they withdraw their support from the Union or vote against the Union in an NLRB election. [\[HTML\]](#) [\[PDF\]](#)

(Members Schaumber, Walsh, and Meisburg participated.)

Charges filed by Food & Commercial Workers Local 348-S; complaint alleged violation of Section 8(a)(1) of the Act. Hearing at Brooklyn, Oct. 29 and Nov. 3, 2003. Adm. Law Judge Steven Fish issued his decision Feb. 6, 2004.

Plumbers Local 149 (G.A. Rich & Sons, Inc.) (33-CD-429, 430; 342 NLRB No. 1) Champaign, IL June 14, 2004. Relying on the factors of collective-bargaining agreements, employer preference and past practice, area and industry practice, economy and efficiency of operations, and relative skills and training, the Board decided that the employees of G.A. Rich & Sons, Inc., represented by Plumbers Local 149, rather than those represented by Central Illinois Laborers' Local 703, are entitled to perform the work in dispute. Specifically, all work outside the buildings related to site-sanitary sewer system, site-storm sewer system, and underground drainage work, including all unloading, scattering, grading trenches, hooking pipe, setting pipe, all pipe connections, backfill and compaction at the University of Illinois Campus Recreational Center and IMPE project, within the property lines at the University of Illinois Campus in Champaign/Urbana, Illinois. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Walsh participated.)

Snap-On Tools, Inc. (10-CA-33020, 33096, 10-RC-15186; 342 NLRB No. 2) Elizabethton, TN June 16, 2004. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by changing its normal practice of panning the parking lot with a surveillance camera to pointing the camera at the plant gate when employees were handbilling. It also adopted the judge's sustaining certain aspects of Objections 1, 4, 7, 11, and 13 and his recommendation that the election in Case 10-RC-15186 be set aside and a new election be conducted. [\[HTML\]](#) [\[PDF\]](#)

The Board reversed the judge and found that: (1) the Respondent violated Section 8(a)(1) by creating the impression that union activities would inevitably lead to strike violence; (2) the Respondent did not engage in objectionable conduct through employee Shouse's alleged list keeping; and (3) the Respondent did not violate Section 8(a)(3) and (1) by issuing a final warning to employee Markland.

No exceptions were filed to the judge's dismissal of the allegation that the Respondent granted a benefit by sending letters to non-network physicians assuring them of payment, processing claims for employees whose physicians refused to do so, and reimbursing \$15 for ophthalmologists examinations, and his dismissal of certain aspects of Objections 1, 2, 5, 7, and 9. The Board found it unnecessary to pass on certain objections that the judge recommended be dismissed.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Auto Workers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Elizabethton, Feb. 11-14, 2002. Adm. Law Judge George Carson II issued his decision April 22, 2002.

Steppenwolf Theatre Co. (13-RC-20942; 342 NLRB No. 7) Chicago, IL June 18, 2004. The Board remanded this proceeding to the Regional Director for further processing, after reversing her application of the *Julliard* formula (*Julliard School*, 208 NLRB 153 (1974)), and holding that the proper eligibility formula to apply in this case is the formula articulated by the Board in *Davison-Paxon Co.*, 185 NLRB 21 (1970), which allows any unit employee who has averaged 4 hours per week in the 3-month period preceding the Decision and Direction of Election to be eligible to vote. [\[HTML\]](#) [\[PDF\]](#)

The Regional Director found that a unit of all full-time and regular part-time production employees including carpenters, electricians, scenic artists, properties employees, sound employees, costume/wardrobe employees, and running crew employees working for the Employer was an appropriate unit and that, applying the eligibility formula articulated in *Julliard*, part-time employees who have worked on at least two productions for a total of 40 hours during the year prior to the eligibility date or who have worked a total of 120 hours during the past 2 years are eligible to vote. By Order dated May 7, 2003, the Board granted the Union's (Joint Petitioners Stage Employees IATSE Local 2 and Scenic Artists IATSE Local 829) request for review solely with respect to the Regional Director's application of the *Julliard School* eligibility formula.

In this decision on review, the Board determined that the *Julliard* formula is overly inclusive because it includes employees with only the most peripheral interest. Whereas, the *Davison-Paxon* formula, allows for optimum employee enfranchisement by distinguishing between a corps of part-time employees who work frequent, substantial hours and part-time employees who tend to work only a few days a year and have no real continuing interest in the terms and conditions of employment at the Employer. Chairman Battista noted that *Davison-Paxon* is the formula that is used for on-call employees, absent special circumstances.

(Chairman Battista and Members Liebman and Walsh participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Insta-Print, Inc. t/a IPI Lithography & Graphics (Washington Printing, Pressmen, Assistants and Offset Workers Local 72) Upper Marlboro, MD June 14, 2004. 5-CA-31428; JD-55-04, Judge William G. Kocol.

Shares, Inc. (Auto Workers) Shelbyville, IN June 15, 2004. 25-CA-28771; JD(ATL)-33-04, Judge Keltner W. Locke.

EAD Motors Eastern Air Devices, Inc. (IUE-CWA Local 81243) Dover, NH June 15, 2004. 1-CA-40651, et al.; JD-56-04, Judge Martin J. Linsky.

United States Postal Service (American Postal Workers San Francisco Local) San Francisco, CA June 9, 2004. 20-CA-31172; JD(SF)-42-04, Judge Burton Litvack.

Electrical Workers IBEW Local 357 (Individuals) Primm, NV June 15, 2004. 28-CB-5957; JD(SF)-47-04, Judge Lana H. Parke.

The Blasters, Drillrunners and Miners Local 29, Laborers (RWKS Comstock, a Joint Venture) Brooklyn, NY June 18, 2004. 29-CE-120; JD(NY)-28-04, Judge Raymond P. Green.

Communications Workers Local 13000 (an Individual) Pittsburgh, PA June 18, 2004. 6-CB-10992; JD-58-04, Judge Arthur J. Amchan.

Ybarra Construction Co. and D&P Drywall, Inc., a Single Employer (Painters District Council 22) Detroit, MI June 16, 2004. 7-CA-44824; JD-57-04, Judge Michael A. Rosas.

**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 OF SECOND ELECTION

Des Plaines Sod Center & Landscaping, Algonquin, IL, 13-RC-21078, June 15, 2004

**DECISION, DIRECTION, AND CERTIFICATION
OF REPRESENTATIVE**

Inter-Con Security Systems, Inc., Pasadena, CA, 21-RC-20520, June 17, 2004

*(In the following cases, the Board adopted Reports of
Regional Directors or Hearing Officers in the absence of exceptions)*

DECISION AND CERTIFICATION OF REPRESENTATIVE

The Solar Corp., Libertyville, IL, 13-RC-21131, June 17, 2004

DECISION AND DIRECTION OF SECOND ELECTION

Somerset Medical Center, Somerville, NJ, 22-RC-12426, June 18, 2004

Miscellaneous Board Orders

NOTICE AND INVITATION TO FILE BRIEFS (due 7/15/04)

*Dana Corp. and Metaldyne Corp., Upper Sandusky, OH and Saint Marys, PA
8-RD-1976 and 6-RD-1518, 1519, June 14, 2004*

**DECISION ON REVIEW AND ORDER [affirming Acting
Regional Director's Decision and Direction of Election]**

Bombardier Mass Transit Corp., Plattsburgh, NY, 3-RC-11235, June 15, 2004

**ORDER [granting Employer's request for reconsideration of its
rejected request for review and advising parties the request
for review has been forwarded to Board for consideration]**

Keystone Automotive Industries, Inc., Minneapolis, MN, 18-RC-17261, June 17, 2004

**DECISION AND ORDER [granting Petitioner's request
to withdraw its objections and remanding proceeding
to Regional Director for further appropriate action]**

NYU Hospitals Center, New York, NY, 2-RC-22614, June 18, 2004
