# National Labor Relations Board

# Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 273-1991

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CASES SUMMARIZED

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*Chinese Daily News* (21-CA-34626-1, et al.; 346 NLRB No. 81) Monterey Park, CA April 17, 2006. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by, among others, threatening employees with unspecified reprisals for engaging in union activities, telling reporter Lynn Wang to resign if she wasn't happy with her job, and threatening that employees' bonuses would be reduced because of legal expenses the Respondent would be forced to incur to fight The Newspaper Guild. Chairman Battista did not agree that Chief Editor Shih-Yaw Chen unlawfully threatened to reduce employee bonuses because of legal expenses it would incur in fighting the Union. He found that Chen's statement was a prediction of economic consequences, not a threat of economic reprisals. [HTML] [PDF]

The Board affirmed the judge's recommendation to dismiss the allegation that the Respondent posted antiunion newsletters near Wang's desk to intimidate and humiliate her for union activity. Contrary to the judge, Chairman Battista and Member Schaumber found that the Respondent's newsletter of June 6, 2001, did not violate Section 8(a)(1) because it did not state an unlawful prediction related to union activity. The newsletter, "Let the Truth Speak Out," contained information about recent improvements in employees' health insurance, discussed the possible implementation of new printing technology (CTP—Computer to Plate), and included a paragraph stating that "history and actual data" indicate that the costs of running a business increase where employees are represented by a labor union. Member Liebman agreed with the judge that the statements about the implementation of CTP would reasonably be construed by employees as unlawful threats of job elimination and violated Section 8(a)(1).

Turning to other alleged violations, the Board adopted the judge's dismissal of allegations that the Respondent violated Section 8(a)(3) or (4) by certain conduct and affirmed his finding that the Respondent's decision to increase Wang's beats after she protested against the Respondent's beat changes violated Section 8(a)(3) and (1).

The Board denied the judge's request that the Board translate his decision and any subsequent decisions into Chinese. Chairman Battista and Member Schaumber denied the General Counsel's request that a responsible Respondent official read the attached notice to the assembled employees, concluding that the extraordinary remedy is not warranted in this case and that neither the General Counsel nor the dissent has offered any evidence to show that the Board's traditional remedies are insufficient. Member Liebman would grant the General Counsel's request, noting the remedy is generally imposed in cases, where like here, the violations are so numerous and serious that the reading aloud of the notice is considered necessary to dissipate the lingering effects of the Respondent's unlawful conduct and to ensure the further protection of employees' Section 7 rights.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by The Newspaper Guild, Communications Workers; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Los Angeles in July, Sept., and Oct. 2004. Adm. Law Judge Clifford H. Anderson issued his decision Feb. 25, 2005.

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*Iron Workers Local 112* (33-CD-448; 346 NLRB No. 85) Peoria, IL April 21, 2006. Relying on employer preference and past practice, area and industry practice, relative skills and training, and economy and efficiency of operations, the Board decided that employees of Freesen, Inc., represented by Iron Workers Local 112, are entitled to perform the setting of precast concrete beams on steel bearings on the Upgrade I-74 project, Peoria, IL. [HTML] [PDF]

Freesen, Inc. is engaged in the business of highway construction and is a signatory member of the Associated General Contractors of Illinois, through which it is bound to a series of collective-bargaining agreements with Iron Workers Local 112, Carpenters Mid-Central Illinois Regional Council, and Laborers Local 165.

Employer managers Buhlig and Coates testified that the Employer can perform the work in dispute more efficiently and economically with Iron Workers because it requires a crew of only five employees—one employee to relay signals from the crew to the crane operator, two employees to rig the beam before it is lifted, and two employees to assist in placing the beam on the pintles in the bearing base, once the beam is guided into place, to adjust the bearings as necessary, and to install the anchor bolt.

The Employer would have to use a six or seven person crew if the work is assigned to employees represented by the Carpenters—one Carpenters-represented employee to be the signal person, two employees represented by Laborers for rigging (as required by the collective-bargaining agreement with Laborers if a Carpenters-represented employee is used), two employees represented by Carpenters to set the beams into place, and two Iron Workers-represented employees to adjust the bearings and set the anchor bolt. Employees represented by the Iron Workers would be needed because only they can adjust the bearings and set the anchor bolts for the retainers.

(Chairman Battista and Members Liebman and Walsh participated.)

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*Phelps Dodge Magnet Wire Corp.* (26-CA-18913-1, 19133-1; 346 NLRB No. 84) Hopkinsville, KY April 19, 2006. On a stipulated record, the Board dismissed the complaint alleging that the Respondent violated the Act by failing to bargain with the Auto Workers prior to laying off union officials pursuant to a super seniority provision (article 16.5) contained in the parties' governing employment terms. It found that the General Counsel failed to prove that the Respondent modified the employment terms within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1). [HTML] [PDF]

The Union has represented a unit of production and maintenance employees at the Respondent's Hopkinsville, KY plant for a number of years, and the parties have negotiated a series of collective-bargaining agreements. Effective July 1, 1997—following a good faith

impasse in bargaining for a successor contract to the parties' 1993-1997 bargaining agreement—the Respondent lawfully implemented unilaterally its final proposal, which included a change in the application of super seniority for union officials.

In November 1998, the Respondent laid off 92 unit employees, including Donna Parker, the Union's recording secretary/bargaining committee member; Etherd Blake, the Union's financial secretary/bargaining committee member; and Jason Summer, a third shift steward. An arbitrator later sustained the Union's grievance alleging that the Respondent breached article 16.5 by selecting Parker, Blake, and Summer for layoff, but he found that the layoffs were implemented in good faith and in accordance with the Respondent's perception of the employment terms.

The General Counsel contended that this case does not involve a dispute over contract language, that the parties have never bargained over which bargaining committee members were entitled to super seniority and, therefore, the Respondent had a duty to bargain over application of the provision, and that the arbitrator's award is palpably wrong and repugnant to the Act because his remedy tolled backpay based on arbitrary considerations.

The Board acknowledged that the employment terms do not constitute a collective-bargaining agreement because they were unilaterally implemented by the Respondent, after a lawful impasse in bargaining was reached, and were not consented to by the Union. It added however that no party disputes that the employment terms were lawfully in effect, and served as the governing terms and conditions of employment for the unit employees, at the time of the Respondent's actions. Having decided to treat the employment terms as if they were a contract and to regard the dispute as essentially one of contract interpretation, the Board explained that the 8(a)(5) allegation turns on whether the employer had a sound argument for its interpretation of the contract. Although the Respondent's construction of article 16.5 may have been erroneous, its interpretation had a sound arguable basis. Because the Respondent's interpretation did not rise to the level of a statutory violation, the Board found it unnecessary to consider the propriety of the arbitrator's remedy.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by the Auto Workers; complaint alleged violation of Section 8(a)(1) and (5). Parties waived their right to a hearing before an administrative law judge.

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## LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Community Emergency Medical Services, Inc.* (EMTS and Paramedics, NAGE-SEIU) Walled Lake, MI April 17, 2006. 7-CA-45193; JD-28-06, Judge John T. Clark.

*United States Postal Service* (an Individual) Columbus, OH April 18, 2006. 9-CA-42161; JD(ATL)-14-06, Judge Keltner W. Locke.

*Industria Lechera de Puerto Rico, Inc. d/b/a Indulac* (Congreso de Uniones Industriales de Puerto Rico) Hato Rey, PR April 17, 2006. 24-CA-10091; JD(ATL)-13-06, Judge Michael A. Marcionese.

*United States Postal Service* (Postal Workers Local 232) Columbus, OH April 20, 2006. 9-CA-42466; JD(ATL)-16-06, Judge Keltner W. Locke.

*WGE Federal Credit Union* (Office & Professional Employees Local 1) Muncie, IN April 18, 2006. 25-CA-29712; JD-27-06, Judge Ira Sandron.

*Birnie Bus Service, Inc.* (Teamsters Local 1149) Bouckville, NY April 21, 2006. 3-CA-25601; JD-31-06, Judge Arthur J. Amchan.

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## LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

***(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)***

### DECISION AND CERTIFICATION OF REPRESENTATIVE

*Pivotal Staffing Services, LLC,* Chicago, IL, 13-RC-21393, April 18, 2006
(Chairman Battista and Members Liebman and Walsh)

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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 REPRESENTATIVE

*Gary Metal Manufacturing, LLC,* Gary, IN, 13-RC-21348, April 18, 2006
(Members Schaumber, Kirsanow, and Walsh)
*L.M. Waste Services Corp*., Yauco, PR, 24-RC-8482, April 18, 2006
(Members Schaumber, Kirsanow, and Walsh)

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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)***

*Airgas Southwest, Inc.***,** San Antonio, TX, 16-RC-10712, April 19, 2006 (Members Kirsanow and Walsh; Member Schaumber dissenting)

*HCR Manor Care Corp. d/b/a Heartland Healthcare of Whitehall*, Whitehall, MI, 7-RC-22957, April 19, 2006 (Members Kirsanow and Walsh; Member Schaumber dissenting)

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