National Labor Relations Board

Weekly Summary of NLRB Cases

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

June 9, 2006 W-3055

C A S E S S U M M A R I Z E D
VISIT WWW.NLRB.GOV FULL TEXT

OTHER CONTENTS

Allied Aviation Fueling of Dallas, LP (16-CA-24267, 24288; 347 NLRB No. 22) Dallas, TX May 31, 2006. Affirming the administrative law judge's conclusions, the Board held that the Respondent violated Section 8(a)(3) and (1) of the Act by suspending and discharging employee and union maintenance chair Patrick Sanford because of his protected concerted activity and/or activity on behalf of Air Transport Workers Local 513; and violated Section 8(a)(5) and (1) by changing its drug-testing policy as it applied to the employees in the appropriate unit without first giving notice to and affording the Union an opportunity to bargain over the proposed changes. [HTML] [PDF]

The Respondent admitted that it discharged Sanford for his actions in filing a grievance under the parties' collective-bargaining agreement. The Board found that Sanford did not engage in conduct so egregious as to lose the Act's protection when he deliberately altered his own signature style and signed the name of another employee on a grievance form without that employee's permission. The Board limited its finding to the facts of this case, which show that Sanford acted in the good-faith belief that his action was necessary to preserve a contractual grievance claim, that he derived no direct benefit from the grievance filing, and that he quickly and voluntarily withdrew the grievance and acknowledged the forgery to management upon learning that the affected employee opposed the filing. It did not pass on whether deliberate falsification of signatures on grievance forms would be protected in other circumstances.

In finding that Sanford's suspension and discharge violated Section 8(a)(3) and (1), the Board did not rely on the judge's analysis of Sanford's discharge under *Wright Line*, 251 NLRB 1083 (1980), noting that where, as here, an employer admits that it discharged an employee for engaging in protected activity, a *Wright Line* analysis is inapplicable.

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charges filed by Air Transport Workers Local 513; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Fort Worth, Nov. 2-3, 2005. Adm. Law Judge William N. Cates issued his decision Dec. 21, 2005.

***

Bud Ante, Inc. (32-CA-21181, 21596; 347 NLRB No. 9) Yuma, AZ and Marina and Huron, CA May 30, 2006. This case involves the end of a 14-year-long lockout pursuant to an agreement between the Respondent, Charging Party Food and Commercial Workers Local 1096, and Teamsters Local 890. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to reinstate, without a legitimate and substantial business justification, from Jan. 23 through Feb. 23, 2004, the formerly locked out employees, who had accepted its offer of reinstatement. [HTML] [PDF]

While the judge found that the Respondent's obligation to reinstate the formerly locked-out employees began on Dec. 19, 2003, the Board decided that the obligation did not mature until Jan. 23, 2004, the date the Respondent knew how many formerly locked-out employees wanted to return to work and their varying degrees of seniority.

Contrary to the judge, Chairman Battista and Member Schaumber found that the Respondent did not violate Section 8(a)(3) and (1) by treating the returning employees as new employees during their first 4 weeks back on the job for purposes of assigning overtime. They found that the Respondent's decision had only a "comparatively slight" impact on employee rights and that the Respondent had a substantial and legitimate business justification for its decision given the many years that the returning employees had not worked for the Respondent and the operational changes that took place between 1989 and 2004. "It was reasonable for the Respondent to require these employees to be retrained and not take on full overtime until that training period had been completed," Chairman Battista and Member Schaumber held.

Member Liebman, dissenting on this issue, found that the Respondent's business justification for treating the returning employees as new employees in terms of overtime assignments "fails to withstand scrutiny." She explained that the returning employees were analogous to returning economic strikers, who must be treated as qualified to perform their job, unless their inability to perform is actually demonstrated (and not merely assumed).

Chairman Battista and Member Schaumber modified the judge's backpay remedy that required the Respondent to make whole all 24 employees who accepted its offer of reinstatement from Dec. 19 through Feb. 23, 2004, by ordering the Respondent to make the employees whole for the period of Jan. 23 through Feb. 23, 2004, and by ordering make-whole relief only for the seven employees who requested reinstatement and actually reported for work on Feb. 23, 2004.

Member Liebman found that the majority erred by denying make-whole relief to 16 locked-out employees whose reinstatement was unlawfully delayed by the Respondent, without requiring the Respondent to prove that the failure of those employees to report to work was unrelated to the delay.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed Food and Commercial Workers Local 1096; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Oakland. Adm. Law Judge Burton Litvack issued his decision Feb. 17, 2005.

***

Centerline Construction Co. (5-CA-32001; 347 NLRB No. 31) Baltimore, MD May 31, 2006. The Board affirmed the administrative law judge's findings and held that the Respondent violated Section 8(a)(1) and (3) of the Act by interrogating applicants for employment concerning their union affiliation; threatening not to rehire employees because of their union activity; refusing to hire job applicants because of their union affiliation; and laying off an employee because of his union affiliation or other protected activities. [HTML] [PDF]

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Carpenters Mid-Atlantic Regional Council; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Baltimore, Jan. 12-14 and Jan. 30-Feb. 2, 2005. Adm. Law Judge Joseph Gontram issued his decision June 30, 2005.

***

CMC Electrical Construction and Maintenance, Inc. (2-CA-35489; 347 NLRB No. 25) Wallkill, NY May 31, 2006. The Board set aside the administrative law judge's decision of April 5, 2004, and remanded the proceeding to the chief administrative law judge for reassignment to a different administrative law judge. [HTML] [PDF]

In exceptions, the Respondent asserted that the judge demonstrated bias in favor of Electrical Workers IBEW Local 363 and, thus, denied the Respondent due process. The Respondent contended that the judge "practically advocates the position of the General Counsel without regard to the voice of the evidence." Therefore, the Respondent requested that the Board decline to adopt the judge's decision, or alternatively, that it conduct a hearing de novo before the Board.

Consistent with its decision in *Dish Network Service Corp*., 345 NLRB No. 83 (2005), the Board decided to remand this case to another judge in order for him or her to review the record and issue an appropriate decision. In the Board's view, the impression given is that the judge simply adopted, by rote, the views of the General Counsel and failed to conduct an independent analysis of the case's underlying facts and legal issues. No hearing de novo was ordered because review of the record satisfied the Board that the judge conducted the hearing itself properly.

The Board recognized that the Respondent did not specifically except to the judge's extensive copying. However, the Board stated "that fact does not, and should not, preclude the Board from taking corrective measures. It is the Board's solemn obligation to insure that its decisions and those of its judges are free from partiality and the appearance of partiality."

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charge filed by Electrical Workers IBEW Local 363; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York on Feb. 9, 2004. Adm. Law Judge Howard Edelman issued his decision April 5, 2004.

***

CNP Mechanical, Inc. (3-CA-23731-2; 347 NLRB No. 14) Hilton, NY May 31, 2006. The Board, in affirming the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire or consider for hire 11 discriminatees, modified her requirement that the Respondent offer instatement and other make whole remedies

to all 11 discriminatees because the remedy does not conform to current Board law. Member Schaumber, dissenting in part, would not find that the Respondent's refusal to hire or consider Union Business Agent James Caternolo violated Section 8(a)(3). [HTML] [PDF]

Turning to the modified remedy, the Board applied *FES*, 331 NLRB 9 (2005). It noted that the General Counsel knew or should have known of three openings available before the hearing and accordingly, deferred the determination as to which discriminatees must be offered instatement and backpay to the compliance stage. In addition, the Respondent has been ordered to reinstate Trevor Claffey to one of the three positions and Claffey is presumptively entitled to reinstatement with backpay pending a contrary determination at the compliance stage. If Claffey is reinstated, the compliance stage should determine which discriminatees would have been hired to the remaining two positions. If Claffey is not due reinstatement, then three of the discriminatees are due instatement. The remaining discriminatees are due the remedy for refusal to consider for hire.

(Members Schaumber, Kirsanow, and Walsh participated.)

Charge filed by Plumbers Local 13; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Rochester, Feb. 3-5, 2003. Adm. Law Judge Margaret M. Kern issued her decision June 24, 2004.

***

Crossing Recovery Systems, Inc. d/b/a Crossing Rehabilitation Services (29-CA-26118, et al.; 347 NLRB No. 21) Islip Terrace, NY May 31, 2006. The Board set aside the administrative law judge's decision of Aug. 8, 2005, and remanded the proceeding to the chief administrative law judge for reassignment to a different administrative law judge. Member Liebman dissented from the remand order for the reasons stated in her dissent in *Regency House of Wallingford*, 347 NLRB No. 15 (2006). [HTML] [PDF]

Consistent with the Board's decision in *Dish Network Service Corp*., 345 NLRB No. 83 (2005), the majority remanded this case to another judge in order for him or her to review the record and issue an appropriate decision. In their view, the impression given is that the judge simply adopted, by rote, the views of the General Counsel and failed to conduct an independent analysis of the case's underlying facts and legal issues. No hearing de novo was ordered because a review of the record showed that the judge conducted the hearing itself properly.

The majority recognized that the Respondent did not specifically except to the judge's extensive copying. However, they contended "that fact does not, and should not, preclude the Board from taking corrective measures. It is the Board's solemn obligation to insure that its decisions and those of its judges are free from partiality and the appearance of partiality."

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charges filed by Novelty and Production Workers Local 298; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York, Aug. 3-5 and Sept. 20-21, 2004. Adm. Law Judge Howard Edelman issued his decision Aug. 8, 2005.

***

Dairyland USA Corp. and Food and Commercial Workers Local 348-S (2-CA-35632, 35633 and 2-CB-19388, 19389; 347 NLRB No. 30) Bronx, NY May 31, 2006. The Board affirmed the administrative law judge's findings that the Respondent Employer violated Section 8(a)(1) of the Act in various respects, including interrogating employees about their activities for Teamsters Local 202, threatening them with loss of work if the Teamsters came into Dairyland's facility, and promising employees increased medical benefits if they supported Respondent Food and Commercial Workers Local 348-S; and violated Section 8(a)(2) by directing employees to sign the Respondent Union's authorization cards. [HTML] [PDF]

Reversing the judge, the Board found that the Respondent Employer violated Section 8(a)(2) by recognizing the Respondent Union as the employees' collective-bargaining representative at a time when the Respondent Union did not have the support of an uncoerced majority of employees; that the Respondent Union violated Section 8(b)(1)(A) by accepting recognition; and that the Respondent Employer violated Section 8(a)(3) and the Respondent Union violated Section 8(b)(2) by entering into, maintaining, and enforcing a collective-bargaining agreement containing a union security clause when the Union did not represent an uncoerced majority of employees.

In her separate concurring opinion Member Liebman wrote:

> Under the Board's precedent, applying Section 8(a)(2) . . ., a pattern of employer assistance or coercion precludes a union from establishing majority support among employees by signed authorization cards, even without a showing that the employer's conduct affected a sufficient number of card-signers to deprive the union of an actual majority. That precedent dictates the results in this case, and so I concur.
>
> I write separately to point out that the Board's approach in this area—which has never been carefully explained—seems to be at odds with its approach to analogous legal issues. In the context of bargaining orders issued to remedy employer unfair labor practices during union-organizing campaigns, the Board requires a union to demonstrate an actual card majority. And in the election context, the Board requires specific proof that objectionable conduct potentially affected enough employees to change the result of the election. But where, as here, the issue is employer conduct that aids a union, no analogous showing is demanded. At some point, the Board should reconcile its precedents.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Miguel Pierre and William Urizar, Individuals; complaint alleged violation of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2). Hearing at New York during 16 days of hearing commencing on March 29, 2004. Adm. Law Judge D. Barry Morris issued his decision July 19, 2005.

***

Eugene Iovine, Inc. (29-CA-21052, et al.; 347 NLRB No. 23) Farmingdale, NY May 31, 2006. The Board set aside the administrative law judge's decision of April 17, 2002, and remanded the proceeding to the chief administrative law judge for reassignment to a different administrative law judge. [HTML] [PDF]

The Respondent objected to the judge's extensive copying and requested, among other things, that this case be remanded to the chief administrative law judge for a new hearing and decision because the judge had improperly created the appearance of partiality by copying extensive portions of the General Counsel's post-hearing brief into his decision.

Consistent with its decision in *Dish Network Service Corp*., 345 NLRB No. 83 (2005), the Board decided to remand this case to another judge in order for him or her to review the record and issue an appropriate decision. In the Board's view, the impression given is that the judge simply adopted, by rote, the views of the General Counsel and failed to conduct an independent analysis of the case's underlying facts and legal issues. It further stated that "it is the Board's solemn obligation to insure that its decisions and those of its judges are free from partiality and the appearance of partiality." No hearing de novo was ordered because review of the record satisfied the Board that the judge conducted the hearing itself properly.

(Chairman Battista and Members Schaumber and Kirsanow participated.)

Charges filed by Electrical Workers IBEW Local 3; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Brooklyn on Feb. 21, 2002. Adm. Law Judge Howard Edelman issued his decision April 17, 2002.

***

Garden Ridge Management, Inc. (16-CA-22275, 22756; 347 NLRB No. 13) Dallas, TX May 31, 2006. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to meet at reasonable times with Teamsters Local 745, following its certification as exclusive bargaining representative on April 22, 2002. Contrary to the judge, Chairman Battista and Member Schaumber, with Member Liebman dissenting, found that the Respondent did not violate Section 8(a)(5) and (1) by engaging in surface bargaining and withdrawing recognition from the Union. [HTML] [PDF]

The parties began negotiations for a first collective-bargaining agreement on May 15, 2002. They negotiated on 20 occasions over 11 months and reached tentative agreement on 28 articles. During negotiations, the Respondent refused without explanation approximately eight requests from the Union that they meet more frequently. On April 25, 2003, the Respondent withdraw recognition of the Union based on an employee petition indicating that a majority of the unit employees no longer wanted the Union to represent them.

Chairman Battista and Member Schaumber found that the General Counsel failed to prove that the Respondent did not intend to reach agreement with the Union, an "essential aspect of a surface-bargaining allegation." They also found no specific proof that the Respondent's unlawful refusal to meet at reasonable times caused the Union's loss of majority support. Member Liebman noted that the Respondent had expressed its intent to engage in surface bargaining prior to the election and later followed through on its intent. She wrote: "Predictably, the Union, which had failed to produce a contract, lost majority support—and by then the Union's certification year, which insulated it from challenges to its representative status had run out." While the Respondent's unlawful refusal to meet with the Union at reasonable times was enough, by itself, to taint the Respondent's withdrawal of recognition from the Union, Member Liebman explained, the record also demonstrates that the Respondent engaged in surface bargaining.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Teamsters Local 745; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Fort Worth, June 30, July 1-3, and July 16-17, 2003. Adm. Law Judge Keltner W. Locke issued his decision Aug. 19, 2003.

***

Halsted Communications (2-RC-23006; 347 NLRB No. 20) Yonkers, NY May 31, 2006. The Board sustained the challenges to the ballots of Contractor Technician Supervisors Jayson McCoy, Uton Cousins, and Collie Smith; and certified Electrical Workers IBEW Local 1430, winner of a Sept. 12, 2005 election by a 28-to-24 vote, as the exclusive representative of the installation technicians employed by Halsted Communications in and out of its Yonkers, NY facility. [HTML] [PDF]

The hearing officer found that McCoy, Cousins, and Smith were eligible to vote as dual-function employees because they regularly performed unit work and overruled the challenges to their ballots. Members Schaumber and Walsh found merit in the Employer's exception, arguing that McCoy, Cousins, and Smith should be excluded from the bargaining unit by the clear terms of the stipulated election agreement. They concluded that the parties' intent to exclude the three disputed employees is clear and that the parties' stipulation is not contrary to any statutory provision or established Board policy.

Chairman Battista agreed that the three challenges should be sustained, but on a different basis. He found that there is an insufficient community of interest between the contractor technician supervisors and the other unit employees to warrant their inclusion in the unit.

(Chairman Battista and Members Schaumber and Walsh participated.)

***

J.C. Penney Corp., Inc. (29-RC-11193; 347 NLRB No. 11) Elmhurst, NY May 30, 2006. The Board directed the Regional Director to open and count 9 ballots and thereafter to serve on the parties a revised tally of ballots and the appropriate certification. The tally of ballots for the election held on Aug. 19 and 20, 2005, showed 123 votes for and 117 against the Petitioner, Food & Commercial Workers Local 3, with 12 challenged ballots, a number sufficient to affect the results of the election. [HTML] [PDF]

At issue are the challenges to the ballots of Magaly Ochoa and Betty Pawlak. The hearing officer recommended that the challenge to Ochoa's ballot be overruled and the challenge to Pawlak's ballot be sustained. The Board reversed the hearing officer's recommendations. It agreed with the Employer that Ochoa was terminated on Aug. 12, 2005 and was thus ineligible to vote in the election. The Petitioner challenged Pawlak's ballot on the ground that she was a supervisor under Section 2(11) of the Act based on her alleged authority to hire new employees. The Board held that the Petitioner did not meet its burden of establishing Pawlak's supervisory status and overruled the challenge to her ballot.

In the absence of exceptions, the Board adopted pro forma the hearing officer's recommendations regarding the remaining 10 challenged ballots and that all remaining objections are withdrawn.

(Members Schaumber, Kirsanow, and Walsh participated.)

***

Letter Carriers Branch 1227 (United States Postal Service) (16-CB-6815, 6874; 347 NLRB No. 27) Wichita Falls, TX May 31, 2006. The Board adopted the administrative law judge's recommendation and dismissed the complaint alleging that the Respondent violated Section 8(b)(1)(A) of the Act by allocating a lesser portion of the proceeds of a grievance settlement to retirees than to active employees. [HTML] [PDF]

As a result of a "class action grievance," an arbitrator issued an award stating that the Union was "entitled to a make-whole remedy for the carriers," as a compensation for the Postal Service's forcing them to work an additional 10 minutes per day. The Union and the Postal Service agreed that the Postal Service would pay $800,000 and that the Union would provide the Postal Service with the names and amounts to be paid each letter carrier.

In deciding how to apportion the settlement proceeds, the Union officials sought the advice of counsel who informed the officials that the Union had no duty to include the retirees in the distribution of the proceeds, basing his advice on the Supreme Court's decision in *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass*, 404 U.S. 157 (1971), in which the Court held that an employer did not violate Section 8(a)(5) and (1) of the Act by refusing to negotiate over its modification of retiree benefits, because retirees are not "employees" under the Act.

Notwithstanding its counsel's advice, the Union decided to allocate some of the settlement proceeds to the retired carriers, who received approximately half as much as carriers actively employed at the time of the settlement. The charging parties, who are retired carriers, contended that the Union violated its duty of fair representation by failing to treat the retirees in the same manner as active employees.

The Board noted under counsel's advice, the Union could have given the retirees nothing. However in an effort to be fair, the Union adopted a compromise position and gave each retiree a half share. In the Board's view, the Union's distribution of the settlement proceeds cannot be said to be arbitrary, discriminatory, or in bad faith and it found that the Union did not breach any duty of fair representation that it may have owed to the retirees.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Terry Erwin and Terry Pennington, Individuals; complaint alleged violation of Section 8(b)(1)(A). Hearing at Wichita Falls on Sept. 7, 2005. Adm. Law Judge Keltner W. Locke issued his decision Oct. 7, 2005.

***

Nordstrom, Inc. (19-CA-29729; 347 NLRB No. 28) Bellevue, WA May 31, 2006. The Board adopted, absent exceptions, the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing disciplinary warnings to three employees, Yvonne Chung, Thomas Luis, and Jose Luciano, and issuing a low score on a component of Chung's annual evaluation because it believed that the three employees concertedly refused to speak to coworker Maryam Aghdassi due to her testimony on behalf of Respondent in an NLRB objections hearing. [HTML] [PDF]

The Board found it unnecessary to consider UNITE HERE Local 71JT's request that the Respondent explicitly be ordered to expunge from its electronic records and litigation files all references to the unlawful "opportunity checks" (discipline) of the three employees and the "unsatisfactory" evaluation of Yvonne Chung. It noted that the Respondent did not contest application of the Order to its electronic records, and any question as to the existence of, or the Order's application to, litigation files may be addressed in compliance proceedings.

Because the General Counsel and the Union presented no supporting evidence to indicate that the Respondent customarily communicates with its employees through an intranet, Chairman Battista and Member Kirsanow denied the Union's further request for intranet posting of the Board's notice to employees. See *International Business Machines Corp*., 339 NLRB 966 (2003).

Contrary to her colleagues, Member Liebman said there is no need for evidence on this matter. She would modify the standard notice-posting language to require intranet posting when a respondent customarily communicates to employees via an intranet and would make this

modification based on general consideration. Member Liebman would leave to compliance the issue of whether the Respondent customarily communicates to its employees via an intranet.

Chairman Battista and Member Kirsanow disagreed with their colleague's approach and noted that they would like the benefit of a concrete fact pattern before deciding whether to depart from the standard notice-posting remedy and take the unprecedented step of requiring intranet or some other electronic posting. In their view, "such a record should be made before we enter such an order, not afterward in the compliance stage."

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charge filed by UNITE HERE Local 71JT; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Seattle on Nov. 15, 2005. Adm. Law Judge Mary Miller Cracraft issued her decision March 2, 2006.

****

Northern Indiana Public Service Co. (25-CA-28040-1; 347 NLRB No. 17) Wheatfield, IN May 31, 2006. Chairman Battista and Member Schaumber reversed the administrative law judge and held that the Respondent did not violate the Act by refusing, on the basis of confidentiality, to furnish Steelworkers Local 12775 with a copy of notes from interviews conducted by the Respondent in investigating bargaining unit employee Randy Chaplin's complaint about the threatening conduct of his supervisor, Patrick Long. [HTML] [PDF]

The majority held, contrary to the judge, that the requested information is confidential and that the Respondent's interest in confidentiality outweighed the Union's need for the information. In addition, the majority found that the Respondent did not fail to meet its duty to offer an accommodation of the conflicting interests.

Dissenting Member Liebman would find the interview notes relevant and reject the Respondent's arguments that the related grievance filed on Chaplin's behalf is invalid, untimely, and moot. She also disagreed with the majority's finding that the Respondent's confidentiality interest is legitimate and substantial, saying the majority disregards protective measures available with regard to the assertedly confidential information and ordered by the judge without challenge by the Union or the General Counsel to answer Respondent's concerns. "The majority departs from Board precedent at each step."

On Aug. 27, 2001, Chaplain complained to his union representative, James Blythe, that Long behaved in a threatening manner toward employees, including an incident on July 27, 2001, when Long allegedly approached Chaplin and stated, "Peace, love, and understanding, and then you empty the clip," while pointing his finger at Chaplin as if it were a gun. Blythe informed management of Chaplin's concerns. Among other things, Respondent's EEO manager and labor relations coordinator, Barbara Sacha, interviewed Chaplin, Operations Superintendent Mickey Bellard, and Long. Each individual spoke to Sacha voluntarily, and she prefaced her

interviews by assuring each of them that she would keep their conversation confidential. Sacha personally typed up her handwritten notes of the interviews (the Sacha notes), protected them with a computer password, and did not provide them to the Respondent's other managers.

Long's immediate supervisor, Lawrence Dora, met with Long, Chaplin, and Union Representative Vern Beck on Oct. 22 to discuss their concerns and resolve the matter. Dora concluded the meeting by instructing Long to keep his conversations with Chaplin strictly work related. Blythe later filed a grievance on Chaplin's behalf and requested information regarding the Respondent's investigation of Chaplin's complaint about Long. The Respondent provided the names of employees who were interviewed in connection with Chaplin's claims, but it refused, citing confidentiality, to provide the Sacha notes to the Union.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Steelworkers Local 12775; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Valparaiso on Aug. 1, 2002. Adm. Law Judge William N. Cates issued his decision Aug. 30, 2002.

***

O.G.S. Technologies, Inc. (34-CA-9336, 9458; 347 NLRB No. 29) Waterbury, CT May 31, 2006. The Board set aside the administrative law judge's decision of Nov. 29, 2002, and remanded the proceeding to the chief administrative law judge for reassignment to a different administrative law judge. Member Liebman dissented from the remand order for the reasons stated in her dissent in *Regency House of Wallingford*, 347 NLRB No. 15 (2006). [HTML] [PDF]

Consistent with the Board's decision in *Dish Network Service Corp*., 345 NLRB No. 83 (2005), the majority remanded this case to another judge in order for him or her to review the record and issue an appropriate decision. In their view, the impression given is that the judge simply adopted, by rote, the views of the General Counsel and failed to conduct an independent analysis of the case's underlying facts and legal issues. No hearing de novo was ordered because a review of the record showed that the judge conducted the hearing itself properly.

The majority recognized that the Respondent did not specifically except to the judge's extensive copying. However, they said "that fact does not, and should not, preclude the Board from taking corrective measures. It is the Board's solemn obligation to insure that its decisions and those of its judges are free from partiality and the appearance of partiality."

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charges filed by Auto Workers Local 376; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Hartford, Dec. 11, 2001, March 21 and Sept. 5, 2002. Adm. Law Judge Howard Edelman issued his decision Nov. 29, 2002.

***

Ogihara America Corp. (7-CA-47942, 48024; 347 NLRB No. 10) Howell, MI May 30, 2006. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by threatening employees with a monetary penalty if they engage in union activity. It reversed the judge and dismissed the complaint allegations that the Respondent violated Section 8(a)(1) by discharging Leo Andre Ahern for engaging in protected concerted activity and interrogating Bruce Pierson as to who sent a letter and photographs critical of a supervisor's work performance; and violated Section 8(a)(4), (3), and (1) by discharging Ahern because he testified at a representation hearing before the Board and because of his support for the Auto Workers. [HTML] [PDF]

(Chairman Battista and Members Schaumber and Kirsanow participated.)

Charges filed by Auto Workers and Leo Andre Ahern, an Individual; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Detroit, May 17-19, 2005. Adm. Law Judge Michael A. Rosas issued his decision Nov. 3, 2005.

***

Regency House of Wallingford, Inc. (34-CA-9895, et al.; 347 NLRB No. 15) Wallingford, CT May 31, 2006. The Board set aside the administrative law judge's decision of Jan. 24, 2003 and remanded the proceeding to the chief administrative law judge for reassignment to a different administrative law judge. Member Liebman dissented from the remand order. [HTML] [PDF]

Consistent with the Board's decision in *Dish Network Service Corp*., 345 NLRB No. 83 (2005), the majority decided to remand this case to another judge in order for him or her to review the record and issue an appropriate decision. In their view, the impression given is that the judge simply adopted, by rote, the views of the General Counsel and failed to conduct an independent analysis of the case's underlying facts and legal issues. No hearing de novo was ordered because review of the record satisfied the majority that the judge conducted the hearing itself properly.

While the majority recognized that the Respondent did not specifically except to the judge's extensive copying, they held "that fact does not, and should not, preclude the Board from taking corrective measures. It is *the Board's* solemn obligation to insure that its decisions and those of its judges are free from partiality and the appearance of partiality."

In dissent, Member Liebman stated that although she does not approve of the judge's conduct, she was opposed to the Board disposing of a case on a basis that could have been, but was not raised, by any party. She said:

> I believe the better course of action is to decide this case with dispatch based on our own independent review of the record, rather than to further delay processing of the case and increase the costs to the parties, by remanding the case for assignment to another judge. By not raising the copying issue, the parties have

implicitly indicated their willingness to have the Board decide the case as it now stands. Our independent review, coupled with the multiple rebukes of the judge, adequately addresses any concerns over the appearance of partiality.

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charges filed by Chemical Workers/UFCW Local 560C; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Hartford, June 11-12 and July 9, 2002. Adm. Law Judge Howard Edelman issued his decision Jan. 24, 2003.

****

Simon Debartelo Group a/w M. S. Management Associates, Inc. (29-CA-23218-1; 347 NLRB No. 26) Garden City, NY May 31, 2006. The Board set aside the administrative law judge's decision of Dec. 1, 2000, and remanded the proceeding to the chief administrative law judge for reassignment to a different administrative law judge. Member Liebman dissented from the remand order for the reasons stated in her dissent in *Regency House of Wallingford*, 347 NLRB No. 15 (2006). [HTML] [PDF]

Consistent with the Board's decision in *Dish Network Service Corp*., 345 NLRB No. 83 (2005), the majority remanded this case to another judge in order for him or her to review the record and issue an appropriate decision. In their view, the impression given is that the judge simply adopted, by rote, the views of the General Counsel and failed to conduct an independent analysis of the case's underlying facts and legal issues. No hearing de novo was ordered because a review of the record showed that the judge conducted the hearing itself properly.

The majority recognized that the Respondent did not specifically except to the judge's extensive copying. However, they said "that fact does not, and should not, preclude the Board from taking corrective measures. It is the Board's solemn obligation to insure that its decisions and those of its judges are free from partiality and the appearance of partiality."

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charge filed by Service Employees Local 32B-32J; complaint alleged violation of Section 8(a)(1). Hearing at Brooklyn on June 20, 2000. Adm. Law Judge Howard Edelman issued his decision Dec. 1, 2000.

****

JLL Restaurant, Inc. and Smoke House Restaurant (31-CA-26240, et al.; 347 NLRB No. 16) Burbank, CA May 31, 2006. The Board upheld the administrative law judge's findings that Respondent Smokehouse (Respondent) violated Section 8(a)(1) of the Act by advising the employees of its predecessor, Respondent JLL, and other applicants for employment that it intended to operate nonunion, and telling a JLL employee not to speak to Hotel Employees and Restaurant Employees Local 11 about employment with the Respondent. [HTML] [PDF]

The judge also found, with Board approval, that the Respondent violated Section 8(a)(3) and (1) by refusing to hire Frederico Cruz, Tomas Garcia Rodriguez, Raul Martinez, and Alex Vaquerano because they engaged in union activity; and violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union, failing to apply the terms of the collective-bargaining agreement between JLL and the Union, and unilaterally changing certain contractual terms and conditions of employment.

Agreeing with the judge, the Board dismissed allegations that the Respondent violated Section 8(a)(3) by failing to hire former JLL employees Lori Barnes, Alice Colon, and Hector Uribe. The Board agreed with the judge that the Respondent is a successor to JLL within the meaning of *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), and that it is liable to remedy JLL's unfair labor practices. In addition, it agreed that an affirmative bargaining order is warranted as a remedy for the Respondent's unlawful refusal to recognize and bargain with the Union.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Hotel Employees and Restaurant Employees Local 11; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Los Angeles, Jan. 26-29, 2004. Adm. Law Judge Lana H. Parke issued her decision April 6, 2004.

***

Teamsters Local 287 (32-CB-5817-1; 347 NLRB No. 32) San Jose, CA May 31, 2006. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(b)(3) of the Act by unlawfully delaying the ratification vote on the tentative agreement reached with the Employer, Granite Rock Company, on July 2, 2004, and by unilaterally imposing conditions on the submission of that agreement to a ratification vote by the employees. [HTML] [PDF]

The judge rejected the Employer's request that the Respondent be ordered to honor the collective-bargaining agreement retroactively to July 2, 2004. Because the parties had agreed that employee ratification was a condition precedent to a final binding agreement, and because that ratification did not occur until Aug. 22, the judge determined that a final and binding agreement was not formed until the latter date.

The Board agreed with the Respondent's argument that, remedially, it should require that the tentative agreement be made retroactive to July 2. The Board determined that, but for the Respondent's unlawful delay of the ratification vote, the tentative agreement would have been ratified and become final as of July 2. It modified the judge's recommended order and required that the Respondent give retroactive effect to the terms of the agreement reached with the Employer on July 2, 2004, as if ratified on that date.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Granite Rock Company; complaint alleged violation of Section 8(b)(3). Hearing at Oakland, May 11-12, 2005. Adm. Law Judge Jay R. Pollack issued his decision July 14, 2005.

***

Trim Corp. of America, Inc. (29-CA-26325, et al.; 347 NLRB No. 24) Brooklyn, NY May 31, 2006. The Board set aside the administrative law judge's decision of Sept. 7, 2005, and remanded the proceeding to the chief administrative law judge for reassignment to a different administrative law judge. [HTML] [PDF]

The Respondent objected to the judge's extensive copying. In exceptions, it asserted that the judge failed to issue a reasoned decision and created the appearance of partiality by copying extensive portions of the General Counsel's posthearing brief into his decision. The Respondent claimed that this conduct demonstrated that the judge was biased against it and requested the Board to remand the case to a different judge and that the judge review the record and issue a proper decision.

Consistent with its decision in *Dish Network Service Corp*., 345 NLRB No. 83 (2005), the Board decided to remand this case to another judge in order for him or her to review the record and issue an appropriate decision. In the Board's view, the impression given is that the judge simply adopted, by rote, the views of the General Counsel and failed to conduct an independent analysis of the case's underlying facts and legal issues. It further stated that "it is the Board's solemn obligation to insure that its decisions and those of its judges are free from partiality and the appearance of partiality." No hearing de novo was ordered because review of the record satisfied the Board that the judge conducted the hearing itself properly.

(Chairman Battista and Members Schaumber and Kirsanow participated.)

Charges filed by Auto Workers Local 2179; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Brooklyn on May 3, 2005. Adm. Law Judge Howard Edelman issued his decision Sept. 7, 2005.

***

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Peoples Auto Parking Co., Inc. (an Individual) Chicago, IL May 26, 2006. 13-CA-42993; JD(ATL)-24-06, Judge Michael A. Marcionese.

Elbrus Transportation (Teamsters Local 803) Brooklyn, NY May 30, 2006. 29-CA-27566; JD(NY)-25-06, Judge Steven Davis.

Morris Healthcare & Rehabilitation Center (State, County and Municipal Employees Council 31, AFSCME Local 3903) Morris, IL May 30, 2006. 13-CA-42882; JD-36-06, Judge Michael A. Rosas.

Teamsters Local 952 (Individuals) Orange, CA May 30, 2006. 21-CB-13609, et al.; JD(SF)-30-06, Judge William G. Kocol.

Chestnut Ridge Transportation, Inc. (Individuals) Spring Valley, NY May 30, 2006. 2-CA-36510, 36680; JD(NY)-23-06, Judge Eleanor MacDonald.

Hacienda Hotel, Inc. (UNITE HERE Local 11) El Segundo, CA May 31, 2006. 31-CA-26945; JD(SF)-28-06, Judge Burton Litvack.

Human Development Assn. (New York's Health and Human Services Local 1199/Service Employees) Brooklyn, NY May 31, 2006. 29-CA-9367; JD(NY)-24-06, Judge Steven Fish.

***

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.)

Optimum Fire Protection Service Co. (Plumbers Local 669) (5-CA-32690; 347 NLRB No. 12) Knoxville, MD May 30, 2006. [HTML] [PDF]

Shane Steel Processing, Inc. (Auto Workers [UAW] Local 771) (7-CA-47710, 48016, 347 NLRB No. 18) Fraser, MI May 31, 2006. [HTML] [PDF]

***

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

All Seasons Climate Control, Inc. (Sheet Metal Workers Local 33) (8-CA-36459; 347 NLRB No. 19) Norwalk, OH May 31, 2006. [HTML] [PDF]

***

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

Castle Enviromental, Inc., New Castle, PA, 6-RC-12507, May 30, 2006 (Chairman Battista and Members Liebman and Walsh)

Greater Hartford Association for Retarded Citizens, Inc. d/b/a HARC, Hartford, CT 34-RC-2157, May 31, 2006 (Chairman Battista and Members Liebman and Walsh)

Laidlaw Transit Services, Inc., Lower Lake, CA, 20-RC-18054, May 31, 2006 (Members Schaumber and Kirsanow; Member Liebman concurring)

DECISION AND DIRECTION OF SECOND ELECTION

Bethlehem Construction, Inc., Wenatchee, WA, 19-RC-14758, May 30, 2006 (Members Schaumber, Kirsanow, and Walsh)

***

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

DECISION AND DIRECTION OF SECOND ELECTION

River Ranch Fresh Foods LLC, Salinas and El Centro, CA, 32-RC-5362, May 31, 2006 (Chairman Battista and Members Kirsanow and Walsh)

***

(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)

Country Fresh, LLC and Melody Farms, LLC Wholly Owned Subsidiaries of Dean Foods Co., Livonia, MI, 7-RM-1476, May 31, 2006 (Chairman Battista and Members Kirsanow and Walsh)

***

Miscellaneous Board Orders

DECISION ON REVIEW AND ORDER REMANDING

Sears, Roebuck & Co., Brooklyn, NY, 29-RC-10296, May 31, 2006 (Chairman Battista and Members Liebman and Schaumber)

***