



# National Labor Relations Board

## Weekly Summary of NLRB Cases

Division of Information

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*Carpenters Local 687, Michigan Regional Council (Convention & Show Services, Inc.)* (7-CB-15293; 352 NLRB No. 119) Detroit, MI July 31, 2008. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(b)(1)(A) of the Act in the operation of its nonexclusive hiring hall by maintaining written referral procedures that discriminate against members who refrain from engaging in Respondent-sponsored picketing and other protected activity. The Board adopted the make-whole remedy, including backpay, as recommended by the judge. However, the Board denied the General Counsel's request for compound interest on the backpay. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Michael Johnston, an individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Detroit on Oct. 22, 2007. Adm. Law Judge Paul Bogas issued his decision Dec. 27, 2007.

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*East Buffet and Restaurant, Inc.* (29-CA-27114, et al.; 352 NLRB No. 116) Huntington Station, NY July 31, 2008. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(3) of the Act by: (1) discharging employee David Lee because of his activities in behalf of the Union; (2) directing its employees not to speak to co-workers while on duty, telling its employees that they had to eat in two groups and not together, and prohibiting its employees from making or receiving cell phone calls while on duty; and (3) failing to reinstate unfair labor practice strikers upon the unconditional offer to return made in their behalf. [\[HTML\]](#) [\[PDF\]](#)

The Board reversed the judge's finding that the Respondent further violated Section 8(a)(3) by criticizing its employees due to their protected concerted activities because there is insufficient evidence to support the allegation.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by 318 Restaurant Workers Union; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Brooklyn, Sept. 18-21 and Oct. 18-20, 2006. Adm. Law Judge Steven Davis issued his decision April 3, 2007.

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*First Transit, Inc., successor with liability to Ryder/ATE, Inc.* (21-CA-32146, 32285; 352 NLRB No. 111) Pomona, CA July 28, 2008. The Board, in this second supplemental backpay decision, adopted the administrative law judge's backpay determinations and ordered that the Respondent pay five claimants amounts totaling \$118,104.26. In adopting the judge's determination as to claimant Denny Benavides, the Board rejected the Respondent's claim that his backpay should be tolled as of his arrest in late Sept. 1999. As to claimant Shawn Howell, the Board found that Howell's decision to quit an interim job at Laidlaw did not disqualify her from backpay for the entire backpay period. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Hearing at Los Angeles, Aug. 21 and Sept. 20, 2007 and Lancaster on Sept. 21, 2007. Adm. Law Judge James M. Kennedy issued his second supplemental decision Feb. 22, 2008.

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*Laborers Local 578 (Shaw Stone and Webster Construction, Inc.)* (27-CB-4935; 352 NLRB No. 118) Pueblo, CO July 31, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by seeking the discharge of employee Sebedeo Lopez for non-payment of dues without first providing him with an adequate explanation of his arrearage and a reasonable opportunity to pay. The Board also adopted the judge's finding that the Respondent violated Section 8(b)(1)(A) by making Lopez apprehensive that it was seeking his discharge by means of a Nov. 1, 2006 letter. No party accepted to the judge's dismissal of the allegation that the Respondent violated Section 8(b)(2) by attempting to cause the Employer to discharge Lopez by means of the Nov. 1 letter. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Sebedeo Lopez, an individual; complaint alleged violations of Section 8(b)(1)(A) and (2). Hearing at Colorado Springs on Jan. 22, 2008. Adm. Law Judge Clifford H. Anderson issued his decision March 21, 2008.

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*Lily Transportation Corp.* (4-RC-21314; 352 NLRB No. 121) Gouldsboro, PA July 31, 2008. The Board adopted the administrative law judge's recommended decision, overruling the Respondent's objections to alleged electioneering activity. In affirming the judge's decision, the Board applied *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118 (1982), enf. sub nom. *Boston Insulated Wire & Cable Systems, Inc. v. NLRB*, 703 F.2d 876 (5<sup>th</sup> Cir. 1983) and distinguished the facts in this case from *Nathan Katz Reality LLC v. NLRB*; 251 F.3d 981 (D.C. Cir. 2001). [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

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*Lithographers Local One-L* (2-CB-21027; 352 NLRB No. 114) New York, NY July 31, 2008. The Board adopted the administrative law judge's findings and conclusion that the Respondent Union violated Section 8(b)(3) of the Act by refusing to supply the Charging Party Metropolitan Lithographers Association, Inc. (MLA), with information about the relationship between two non-MLA employers with whom the Union had separate bargaining agreements. The information was relevant to whether more favorable terms in the contract with one of those employers should be applied to employees in the MLA bargaining unit pursuant to a "most favored nations" provision in the MLA's contract with the Union. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Metropolitan Lithographers Association, Inc.; complaint alleged violation of Section 8(b)(3). Hearing at New York on Oct. 3, 2007. Adm. Law Judge Mindy E. Landow issued her decision Jan. 29, 2008.

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*Stanadyne Automotive Corp.* (34-CA-9365; 352 NLRB No. 117) Windsor, CT July 31, 2008. This case was on remand from the United States Court of Appeals for the Second Circuit, which set aside the Board's finding that the Respondent did not violate Section 8(a)(1) of the Act by orally issuing a statement prohibiting "harassment." The Board accepted as the law of the case the court's determination that, applying the test set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), and given the context of the statement by the Respondent's President and CEO Bill Gurley prohibiting harassment, a reasonable employee could infer that the statement was intended to discourage protected election activity. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

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*United States Postal Service* (15-CA-17767, et al.; 352 NLRB No. 115) Destin, FL July 31, 2008. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1), (3), and (4) of the Act by: 1) issuing employee Marcus Jackson a warning letter; 2) issuing employee Bobby Cline a warning letter; 3) placing Cline on emergency suspension; 4) requiring Cline to undergo a fitness-for-duty examination; 5) placing Cline on administrative leave; 6) unlawfully interrogating Cline on three separate occasions concerning his union and other protected activities; and 7) suspending Cline's pay for 2 weeks. There are also no exceptions to the judge's findings that the Respondent violated Section 8(a)(5) by failing and refusing to provide relevant and necessary information to the Postal Worker, Playground Area Local 5643 upon its request. [\[HTML\]](#) [\[PDF\]](#)

However, the Board did not adopt the judge's recommendation that the Respondent violated Section 8(a)(1) by denying Cline his *Weingarten* right to union representation during an investigative interview. The General Counsel alleged that the Respondent's supervisors coercively interrogated Cline, but did not allege that Cline's *Weingarten* rights had been violated. The Board found that the unalleged *Weingarten* violation was not fully litigated and so reversed the judge's finding that the Respondent violated Section 8(a)(1) by violating Cline's *Weingarten* right to union representation during an investigative interview.

Further, the Board did not adopt the judge's recommendation to issue a broad order on the basis that a narrow order in this case will prohibit any future violations of Section 8(a)(1), (3), (4), and (5) that are like or related to those found in this case. The Board also did not adopt the judge's recommendation to require the Respondent's Chief Executive Officer to sign the

Notice to Employees and to place the Respondent on notice that if it commits further *Weingarten* violations, it will be assessed the expenses of the resulting litigation, on the basis that the circumstances of this case do not require such extraordinary remedies.

Finally, the Board modified the judge's recommended Order in keeping with the foregoing, to conform to the violations found and to the Board's standard remedial language, and in accordance with its decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), *Excel Container*, 325 NLRB 17 (1997), and *Ferguson Electric Co., Inc.*, 335 NLRB 142 (2001), and also substituted a new notice to conform with the Order as modified and in accordance with *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6<sup>th</sup> Cir. 2004).

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Postal Workers Playground Area Local 5643; complaint alleged violations of Sections 8(a)(1), (3), (4), and (5). Hearing at Destin, June 26-29, July 19, and Aug. 11, 2006. Adm. Law Judge Keltner W. Locke issued his decision May 17, 2007.

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*United States Postal Service* (28-CA-21451; 352 NLRB No. 122) Phoenix, AZ July 31, 2008. The American Postal Workers Union represents the Respondent's drivers performing delivery routes for the Respondent's processing and distribution center located in Phoenix, AZ. In late April 2007, the Respondent informed the Union that it wanted to subcontract, on a temporary basis, the drivers' route in the Sun City area. Despite the Union's stated opposition to this arrangement, the Respondent went forward with soliciting bids from various private contractors who were interested in handling the Sun City route on a temporary subcontracting basis. The Union subsequently filed a grievance and also requested certain information and documents, including Form 7468A, a cost worksheet that had been submitted by the successful contractor awarded the bid. In response to the Union's information request, the Respondent furnished a redacted copy of Form 7468A, disclosing only the contractor's final, bottom-line total cost to do the job. The contractor's estimated itemized underlying costs indicated on Form 7468A were blacked out by the Respondent and not revealed to the Union. The complaint alleged that the Respondent's refusal to furnish the Union with an unredacted copy of Form 7468A violated Section 8(a)(5) and (1) of the Act. [\[HTML\]](#) [\[PDF\]](#)

The Board adopted the administrative law judge's recommended dismissal of this complaint allegation. While the judge had relied on alternative justifications for his dismissal, the Board found it unnecessary to pass on his findings relating to interpretation of the contract (including article 32) and the alleged confidentiality of Form 7468A. Assuming the Respondent had a bargaining obligation regarding the temporary subcontracting of the Sun City route, the Board adopted the judge's finding that the Union's asserted explanations for seeking Form 7468A failed to prove the requisite relevancy of that form to the Union's representative status and responsibilities.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Postal Workers Phoenix Metro Area Local; complaint alleged violations of Section 8(a)(1) and (5). Hearing at Phoenix, Dec. 18 and 19, 2007. Adm. Law Judge Gregory Z. Meyerson issued his decision Feb. 27, 2008.

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*Verizon North, Inc.* (6-CA-35379; 352 NLRB No. 120) Erie, PA July 31, 2008. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally eliminating a past practice of permitting an employee to "stack" leave, i.e., to use paid vacation or personal leave days for an absence that qualifies under the Family and Medical Leave Act (FMLA) without any concurrent reduction in the employee's annual allotment of unpaid leave. The Board found no merit to the Respondent's argument that Electrical Workers IBEW Local 1637 (Union) clearly and unmistakably relinquished its right to bargain over the elimination of the existing stacking practice. Citing *Provena St. Joseph Medical Center*, 350 NLRB No. 64 (2007). [\[HTML\]](#) [\[PDF\]](#)

The Board also affirmed the judge's finding that the Respondent violated Section 8(a)(5) and (1) by disciplining employee Amy Stewart pursuant to the above change in practice.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Electrical Workers IBEW Local 1637; complaint alleged violations of Section 8(a)(5) and (1). Hearing at Erie on May 17, 2007. Adm. Law Judge Ira Sandron issued his decision July 13, 2007.

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### **LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES**

*Jackson Hospital Corp. d/b/a Kentucky River Medical Center* (Steelworkers) Jackson, KY July 29, 2008. 9-CA-42249, et al.; JD-20-08, Judge Paul Buxbaum.

*American Medical Response, Inc.* (Teamsters Local 145) Bridgeport, CT July 30, 2008. 34-CA-11941; JD(NY)-26-08, Judge Joel P. Biblowitz.

*Horace E. Green Day Care Center* (AFSCME Local 205, District Council 1707) Brooklyn, NY July 30, 2008. 29-CA-28789; JD(NY)-28-08, Judge Steven Davis.

*Kingsbridge Heights Rehabilitation and Care Center* (1199 Service Employees) Bronx, NY July 30, 2008. 29-CA-27502 (formerly 2-CA-37367); JD(NY)-27-08, Judge Steven Fish.

*Carpenters New England Regional Council* (Village Construction Co., Inc.) Salem, MA July 30, 2008. 1-CC-2712; JD(NY)-25-08, Judge Raymond P. Green.

*Professional Janitorial Service of Houston, Inc.* (Service Employees Local 5) Houston, TX  
August 1, 2008. 16-CA-25491, 25780; JD(NY)-29-08, Judge Joel P. Biblowitz.

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**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  
[that Regional Director open and count ballots]**

*Power Line Consultants, LLC d/b/a PLC, LLC*, Doe Run, MO, 14-RC-12668,  
July 31, 2008 (Chairman Schaumber and Member Liebman)

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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**

*BV General, Inc., d/b/a Buena Ventura Care Center*, Los Angeles, CA, 21-RC-21037,  
July 28, 2008

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

*T. F. Louderback, Inc. d/b/a Bay Area Beverage Co.*, Richmond, CA, 32-RC-5551,  
July 30, 2008

**DECISION AND ORDER [remanding proceeding to  
Regional Director for further appropriate action]**

*Rivera Health Systems d/b/a Montesano Health & Rehabilitation Center*, Montesano, WA,  
19-RC-15085, July 29, 2008

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***Miscellaneous Board Decisions and Orders***

**ORDER [denying Petitioner's motion to strike Employer's exceptions  
to Hearing Officer's report on objections and supporting brief]**

*Rehabilitation Institute of Chicago*, Chicago, IL, 13-RC-21711, July 30, 2008

**ORDER [denying Joint Petitioners' motion to accept  
late-filed exceptions and supporting brief]**

*First Student, Inc.*, Rochester, MN, 18-RC-17565, Aug. 1, 2008

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