

# National Labor Relations Board

## Weekly Summary of NLRB Cases



Division of Information

Washington, D.C. 20570

Tel. (202) 273-1991

January 9, 2009

W-3190

CASES SUMMARIZED  
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*Ashley Furniture Industries, Inc.* (18-CA-18737; 353 NLRB No.71) Arcadia, WI Dec. 31, 2008. The Respondent received “no-match” letters from the Social Security Administration (SSA) stating that the social security numbers (SSNs) of certain of its employees did not match their names. Respondent informed the employees that they were required to resolve the discrepancy with the SSA, and instructed them not to discuss their no-match letters with anyone. Respondent also told an employee not to discuss with anyone that he had received a disciplinary warning and that his “green card” had expired. [\[HTML\]](#) [\[PDF\]](#)

The administrative law judge found that the disciplinary warning, green card issue, and no-match letters constituted Section 7 “workplace matters” which employees were free to discuss among themselves or with outsiders, and that Respondent could not lawfully prohibit such discussions absent a legitimate and substantial business justification. Respondent asserted several confidentiality concerns as justification for its “no-discussion” requirement. The judge found that Respondent’s defense failed because none of its confidentiality concerns outweighed the employees’ Section 7 right to discuss the workplace matters at issue. Accordingly, the judge found, and the Board agreed, that Respondent’s no-discussion requirement violated Section 8(a)(1) of the Act.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Voces de la Frontera; complaint alleged violation of Section 8(a)(1). Hearing at Whitehall on June 17, 2008. Adm. Law Judge James M. Kennedy issued his decision Sept. 17, 2008.

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*Bentonite Performance Minerals, LLC, a Product and Service Line of Halliburton Energy Services, Inc.* (27-CA-20596, et al.; 353 NLRB No. 75) Colony, WY Dec. 31, 2008. The Board affirmed the administrative law judge’s findings that the Respondent violated Section 8(a)(1) of the Act by: (1) interrogating employees; (2) soliciting employees to sign and circulate decertification petitions; (3) proposing the idea of decertification petitions; (4) impliedly and actually promising employees improved wages and benefits if they repudiated the Union; and (5) discouraging employees from attending a Union meeting. The Board additionally affirmed that the Respondent violated Section 8(a)(5) by: (1) withdrawing recognition from the Union based on the decertification petitions; (2) failing and refusing to provide the Union with information requested on two separate occasions; and (3) unilaterally changing terms and conditions of employment immediately following its withdrawal of recognition. Finally, the Board modified the judge’s recommended remedy to include the Board’s traditional make-whole language for any losses of benefits resulting from the Respondent’s unilateral changes, and found, contrary to the judge, that the circumstances of the case did not warrant a broad cease-and-desist order. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Chemical Workers Council/Food and Commercial Workers Local 353C; complaint alleged violations of Section 8(a)(1) and (5). Hearing at Belle Fourche, Dec. 18-21, 2008 and Jan. 23-25, 2008. Adm. Law Judge James M. Kennedy issued his decision June 2, 2008.

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*Harco Asphalt Paving, Inc.* (25-CA-30352, et al.; 353 NLRB No. 74) Indianapolis, IN Dec. 31, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by instructing union representatives to leave the area, threatening to call and calling the police to have union representatives removed from the area, photographing union representatives, threatening to obtain a restraining order against union representatives, and ordering employees to leave a jobsite to avoid contact with union representatives. [\[HTML\]](#) [\[PDF\]](#)

The Board, in agreeing with the judge that the Respondent violated the Act, found it unnecessary to pass on whether other actions taken by the Respondent in response to the presence of the Union's agents in the area of Harco Way on May 21 and 31, 2007 violated Section 8(a)(1) inasmuch as the Board's Order issued in 25-CA-30671 et al., accepting the parties' settlement, fully addressed handbilling activity in the areas along Harco Way.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Laborers Local 120; complaint alleged violation of Section 8(a)(1). Hearing at Indianapolis on Dec. 11, 2007. Adm. Law Judge Mark D. Rubin issued his decision March 6, 2008.

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*Long Island Head Start Child Development Services, Inc.* (29-CA-28712; 353 NLRB No. 70) Patchogue, NY Dec. 29, 2008. By memorandum dated Nov. 14, 2007, and without notice to the Union or bargaining with it, the Respondent issued revised job descriptions for unit employees. The revisions clarified the employees' responsibilities to include the additional cleaning duties that had been previously assigned to unit employees as of Dec. 4, 2006. On Jan. 11, 2008, the Union filed an unfair labor practice charge alleging that the revised job descriptions violated Section 8(d) and Section 8(a)(5) and (1) of the Act. [\[HTML\]](#) [\[PDF\]](#)

The administrative law judge observed that the Union was fully aware of the Dec. 4, 2006 action taken by the Respondent which caused a change in the job functions of the unit employees, and the Union took many steps in an effort to get the Respondent to rescind the imposition of the additional cleaning duties on the unit employees. In this connection, the judge emphasized the Union's receipt of the almost-immediate complaints from employees, the Union's grievance filed on Dec. 5, 2006, the Union's subsequent ongoing negotiations with the Respondent from Dec. 2006 through Sept. 2007, and the Union's first unfair labor charge filed in Feb. 2007. He also viewed the Nov. 14, 2007 modifications to the job descriptions as not a "real" change in the employee's terms and conditions of employment but rather the Respondent's action simply memorialized the employees' cleaning duties already in existence as of Dec. 4, 2006. In these circumstances, the judge found that the 10(b) triggering date for filing a charge to contest the additional cleaning duties assigned to the employees was Dec. 4, 2006.

Therefore, he concluded that the instant charge filed on Jan. 11, 2008, which was more than 6 months after Dec. 4, 2006, was untimely. The Board agreed with the judge and dismissed the complaint as being barred by Section 10(b) of the Act.

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Community and Social Agency Employees Union, District Council 1707, AFSCME Local 95; complaint alleged violation of Section 8(d) and Section 8(a)(1) and (5). Hearing at Brooklyn, June 11-12, 2008. Adm. Law Judge Raymond P. Green issued his decision Aug. 20, 2008.

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*Racetrack Food Services, Inc. and Casino Food Services, Inc., Single Employer* (4-CA-35158; 353 NLRB No. 76) Bensalem, PA Dec. 31, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (5) of the Act by failing to respond to the Union's information request, which included, among other things, the names, addresses, and telephone numbers of nonunit employees. The Board also adopted the judge's finding that the Respondent further violated Section 8(a)(1) and (5) by closing one of its restaurants on Wednesday and Thursday evenings without first providing the Union notice and an opportunity to bargain over the matter. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by UNITE HERE Local 274; complaint alleged violations of Section 8(a)(1) and (5). Hearing at Philadelphia on March 10, 2008. Adm. Law Judge Wallace H. Nations issued his decision July 25, 2008.

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

*PDK Investments, LLC* (Electrical Workers [IBEW] Local 20) Balch Springs, TX Dec. 29, 2008. 16-CA-26292; JD(ATL)-44-08, Judge Michael A. Marcionese.

*Community Medical Center, Inc.* (New York State Nurses Assn.) Toms River, NJ Dec. 29, 2008. 4-CA-34888, 35025, 4-RC-21199; JD-67-08, Judge Bruce D. Rosenstein.

*ADT Security Services, Inc.* (Electrical Workers [IBEW] Local 131) Wyoming, MI Dec. 30, 2008. 7-CA-51288; JD(ATL)-45-08, Judge George Carson II.

*ARC Bridges* (American Federation of Professionals) Gary, IN Dec. 31, 2008. 13-CA-44627; JD(SF)-53-08, Judge Gerald A. Wacknov.

*Kiewit Power Constructors Co.* (an Individual) Weston, MO Dec. 31, 2008. 17-CA-24192; JD(SF)-54-08, Judge William L. Schmidt.

*Geissler's Supermarkets* (Food & Commercial Workers Local 371) East Windsor, CT Jan. 2, 2009. 34-CA-12046; JD(NY)-48-08, Judge Joel P. Biblowitz.

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#### NO ANSWER TO COMPLAINT

*(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 complaint.)*

*Capital District Enterprises, Inc. d/b/a Acme Press* (Graphic Communications/Teamsters Local 259-M) (3-CA-26828; 353 NLRB No. 73) Schenectady, NY Dec. 31, 2008. [\[HTML\]](#) [\[PDF\]](#)

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#### NON-COMPLIANCE WITH SETTLEMENT AGREEMENT

*(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's non-compliance with a settlement agreement.)*

*Willett Enterprises, LLC* (Iron Workers Local 769) (9-CA-44279, et al.; 353 NLRB No. 72) Jackson, OH Dec. 31, 2008. [\[HTML\]](#) [\[PDF\]](#)

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

*(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)*

*Valley Power Systems North, Inc.*, San Leandro, CA, 32-RD-1533, Dec. 29, 2008  
(Chairman Schaumber and Member Liebman)  
*Entergy Nuclear Operations, Inc.*, Plymouth, MA, 1-UC-866, Dec. 30, 2008  
(Chairman Schaumber and Member Liebman)

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