National Labor Relations Board

Weekly Summary of NLRB Cases

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CASES SUMMARIZED

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Bolivar-Tees, Inc., et al. (17-CA-19569, 19632; 349 NLRB No. 70) Bolivar and O'Fallon, MO; Tarimoro, Guanajuato, Mexico April 12, 2007. Affirming the administrative law judge's supplemental decision, the Board ordered that the Respondents make whole five discriminatees by paying them backpay totaling $96,399.15. [HTML] [PDF]

The Board agreed with the judge that the four corporate Respondents constitute a single employer and are therefore jointly and severally liable for remedying the unfair labor practices found at 334 NLRB 1145 (2001) concerning, among others, the unlawful discharge of five employees. Like the judge, it decided that two American corporations, Bolivar-Tees, Inc. and Screen Creations Ltd., are a single employer, and that Allan Heller is personally liable for the backpay obligation to the five discriminatees; and that two Mexican corporations, Screen Creations de Mexico and Screen Creations de Celaya, constitute a single employer with the American corporations. Respondent Allan Heller owns 100 percent of Bolivar-Tees and 60 percent of Screen Creations and has controlling ownership of the two Mexican corporations: 50 percent of Screen Creations de Mexico (with the remaining ownership shared with his two partners) and 65 percent of Screen Creations de Celaya.

The Board noted the "hallmark" of a single employer is the absence of an arm's length relationship among seemingly independent companies. It considers these four factors in deciding single employer status: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. No single factor is controlling and all four factors are not necessary to find single-employer status. The ultimate determination depends on the totality of the evidence in each case. Based on the facts of this case, the Board agreed with the judge that three of the four relevant criteria are met: common ownership, interrelation of operations, and common management. After considering the totality of the circumstances, particularly the substantial interrelationship and repeated lack of arm's-length relationship among the companies, the Board found that single-employer status exists between the American and Mexican companies.

(Members Liebman, Kirsanow, and Walsh participated.)

Hearing at Overland Park on June 7, 2005. Adm. Law Judge Albert A. Metz issued his supplemental decision Sept. 21, 2005.

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California Offset Printers, Inc. (31-CA-27673, 27679; 349 NLRB No. 71) Glendale, CA April 12, 2007. Members Kirsanow and Walsh reversed the administrative law judge's finding that the Respondent was privileged by the parties' collective-bargaining agreement to issue a new directive without bargaining with Graphic Communications Local 404 M and found that the Respondent violated Section 8(a)(5) and (1) of the Act on Jan. 7, 2006 by unilaterally establishing a new condition of continued employment and grounds for discipline. Specifically, the Respondent required that employees be reachable and responsive to being called back to work on their time off, 24 hours a day, 7 days a week, and that they have specified telephonic messaging devices in order to be reachable. [HTML] [PDF]

The majority held that under either the Board's "clear and unmistakable waiver" standard or under the "contract coverage" standard applied by their dissenting colleague, the management-rights clause does not privilege the Respondent's directive.

Member Schaumber, in dissent, would adopt the judge's finding that the parties' collective-bargaining agreement privileged the Respondent to issue the new directive. While he agreed with the judge's finding of privilege under both the waiver and the contract coverage analysis, he would adopt the contract coverage analysis as applied by the D.C. Circuit and the Seventh Circuit Court of Appeals. *Dept. of the Navy v. FLRA*, 962 F.2d 48, 57 (D.C. Cir. 1992); *NLRB v. Postal Service*, 8 F.3d 832, 836 (D.C. Cir. 1993), denying enf. 306 NLRB 640 (1992); *Chicago Tribune Co. v. NLRB,* 974 F.2d 933, 937 (7th Cir. 1992), denying enf. 304 NLRB 495 (1991).

(Members Schaumber, Kirsanow, and Walsh participated.)

Charges filed by Teamsters Local 404M; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Los Angeles on May 8, 2006. Adm. Law Judge Lana H. Parke issued her decision June 23, 2006.

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Rome Electrical Systems, Inc. (10-CA-35458; 349 NLRB No. 72) Rome, GA April 12, 2007. The Board held, under Board precedent and the terms of the parties' letter of assent and area agreements, that the Respondent's notice of withdrawal of agency from the multiemployer association that negotiated area collective-bargaining agreements on its behalf was untimely. Thus, the Respondent violated Section 8(a)(5) and (1) of the Act by failing to abide by the terms of the successor area agreements and making unilateral changes in the terms and conditions of employment of the covered employees. [HTML] [PDF]

The Respondent and Electrical Workers IBEW Local 613 have had a collective-bargaining relationship for the Respondent's electricians since the Respondent signed the Union's "Letter of Assent-A" in Dec. 1989. The agreement authorized the Atlanta Chapter of the National Electrical Contractor Association (the AECA) to be the Respondent's "collective-bargaining representative for all matters contained in or pertaining to the current and any subsequently approved contract between [the AECA] and [the Union]." Until the events here, the Respondent remained covered by a series of successive area collective-bargaining agreements that the AECA negotiated with the Union on behalf of its members. The two most recent agreements—a 3-year contract, effective from Sept. 1, 2000, to Aug. 31, 2003, and a 1-year extension, effective from Sept. 1, 2003 to Aug. 31, 2004—included this provision:

> Section 1.02(a) Either party or an employer withdrawing representation from the Chapter or not represented by the Chapter, desiring to change or terminate this Agreement must provide written notification at least 90 days prior to the expiration date of the Agreement or any anniversary date occurring thereafter.

The Board framed the issues as follows. First, whether, as the Respondent contends, the reference in the notice language of Section 1.02(a) of the contract to "an employer withdrawing representation" from the AECA had the effect of substituting the notice period in that section—90 days prior to contract expiration—for the 150-day notice requirement for withdrawing negotiating authority from the AECA contained in the earlier-signed letter of assent. If the contract's notice language did not have that effect, the next issue is whether the Union's Oct. 21, 2003 letter—in which Union Business Manager Plott cited section 1.02(a) and stated that the Respondent's earlier notice of termination of "affiliation" had been untimely "[u]nder the terms of the contract"—estops the Union from arguing that the 150-day notice requirement was applicable to withdrawal of agency representation, or waives that argument, or created "special circumstances" that excuse the Respondent's failure to comply with the 150-day requirement. The significance of the Respondent's 2003 attempt to terminate "affiliation" is also at issue.

The Board concluded that the 150-day notice period in the letter of assent remained in force, that the Union was not estopped from invoking that period, and that the Respondent's 2003 attempt to terminate its AECA "affiliation" has no effect here.

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charge filed by Electrical Workers IBEW Local 613; 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

Windstream Corp. (Electrical Workers [IBEW] Locals 463, 1198, 1507, 1929, 2089 and 2374) Meadville, PA April 9, 2007. 6-CA-35290; JD(ATL)-12-07, Judge Michael A. Marcionese.

Clarke Mfg., Inc. (Steelworkers Local 2-200) Milwaukee, WI April 10, 2007. 30-CA-17472; JD-23-07, Judge Karl H. Buschmann.

Electrical Workers[IBEW] Local 98 (Tri-M Group, LLC) Philadelphia, PA April 10, 2007. 4-CB-9713; JD-17-07, Judge Paul Buxbaum.

TTS Terminal, Inc. (Teamsters Local 705) Willow Springs and Cicero, IL April 11, 2007. 13-CA-43370; JD-22-07, Judge John T. Clark.

Electrical Workers [IBEW] Local 2321 (an Individual) Lawrence, MA April 11, 2007. 1-CB-10559; JD(NY)-20-07, 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 and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Super Store Industries, Fairfield, CA, 20-RC-18114, April 11, 2007 (Chairman Battista and Members Liebman and Walsh)

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(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Entergy Mississippi, Inc., Jackson, MS and New Orleans, LA, 15-UC-149, April 11, 2007 (Chairman Battista and Members Schaumber and Kirsanow)
Appalachian Power Co., Roanoke, VA, 11-RC-6654, April 11, 2007 [solely with respect to supervisory status of dispatchers] (Chairman Battista and Members Schaumber and Kirsanow)

(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)

Regional Transportation Program, Inc., Portland, ME, 1-RC-22002, April 11, 2007 (Chairman Battista and Members Liebman and Walsh)

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Miscellaneous Decisions and Orders

ORDER GRANTING MOTION [of Union to rescind its objection to the petition] AND REMANDING [to the Regional Director for further appropriate action]

Rite Aid of West Virginia, Inc., Hurricane, WV, 9-RM-1052, April 11, 2007 (Chairman Battista and Members Liebman and Schaumber)

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