

Matis, Jennifer A.

From: Flynn, Terence F.
Sent: Friday, September 23, 2011 11:41 AM
To: 'Peter Schaumber'
Subject: LEAD CASES 9 22 11 (2).doc

Attachments: LEAD CASES 9 22 11 (2).doc



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September 23, 2011

TO: The Board and Legal Staff

FROM: Les Heltzer
Executive Secretary

SUBJECT: *Major Issues Pending Before the Board*

This list consolidates and updates my earlier memos listing possible Board agenda issues and lead cases. This list highlights the major issues currently pending before the Board and includes cases from all case processing stages. The list focuses on cases that have been identified as presenting major issues by the ES Office [REDACTED]. The list of cases under each issue may not include all our pending cases presenting the particular issue.

ULP Issues

1. 8(a)(1)

D.R. Horton, Inc., 12-CA-25764
[REDACTED]

Did Respondent violate 8(a)(1) by maintaining and enforcing its Mutual Arbitration Agreement, under which employees are required, as a condition of employment, to agree to submit all employment disputes to individual arbitration, waiving all rights to a judicial forum, where the arbitration agreement further provides that arbitrators will have no authority to consolidate claims or to fashion a proceeding as a class or collective action?
Notice/Inv to File Briefs issd 6/16/11

2. 8(a)(5) Refusals to Bargain

Unilateral Changes—Employee Benefit Plans

Cofire Paving Corp., 29-CA-27556
[REDACTED]

8(a)(5) unilateral changes in benefits—whether R is obligated to pay directly to ees amounts it previously contributed to union-sponsored benefit plan and to bargain with U over replacement plan

Refusal to Provide Information—Witness Statements

Stephens Media d/b/a Hawaii Tribune-Herald, 37-CA-7043

[REDACTED]

Notice/Inv to File Briefs issd 3/2/11, 356 NLRB No. 63

Whether Respondent had a duty to provide the Union with a statement provided to it by an employee or any other statements that it obtained in the course of its investigation of another employee's alleged misconduct.

Board precedent establishes that the duty to furnish information "does not encompass the duty to furnish witness statements themselves." *Fleming Cos.*, 332 NLRB 1086, 1087 (2000), quoting *Anheuser-Busch, Inc.*, 237 NLRB 982 (1978). Compare *Northern Indiana Public Service Co.*, 347 NLRB 210 (2006) (employer notes of investigatory interviews of employees held confidential). This case illustrates, however, that Board precedent does not clearly define the scope of the category of "witness statements." This case also illustrates that the Board's existing jurisprudence may require the parties as well as judges and the Board to perform two levels of analysis to determine whether there is a duty to provide a statement: first asking if the statement is a witness statement under *Fleming* and *Anheuser-Busch* and then, if the statement is not so classified, asking if it is nevertheless attorney work product.

3. Retaliatory State Lawsuits (B E & K/Bill Johnson's)

Allied Mechanical, 7-CA-41687-S

[REDACTED]

Whether filing and maintenance of federal court lawsuit by Respondent lacked any reasonable basis and with a retaliatory motive

E.P. Donnelly, Inc., 4-CD-1188

[REDACTED]

Whether in ulp case state court action by Resp U constituted an unlawful threat within the meaning of 8(b)(4)(D)

Federal Security, 13-CA-38669-R

[REDACTED]

Whether fn. 5 of *Bill Johnson's* applies and state proceeding is preempted

Standard Drywall, Inc., 21-CD-659

[REDACTED]

Whether, in a ulp case, Respondent Union's state court action and pursuit of arbitration awards and a grievance constituted threats within the meaning of 8(b)(4)(D).

Standard Drywall, Inc., 21-CD-673

[REDACTED]

Whether Respondent Union's grievances and state court lawsuits contrary to a Board 10(k) award violated 8(b)(4)(D)

4. Job Targeting

J.A. Croson Company, 9-CA-35163-S

[REDACTED]

Whether job targeting constitutes a Sec. 7 activity and the state lawsuit directed at that activity is preempted under fin. 5 of *Bill Johnson's*.

5. Access

Roundy's, 30-CA-17185-S

[REDACTED]

Non-ee access, exclusionary property interest under state law; standard for discrimination *Sandusky Mall* and impact of *Register Guard*
Notice/Inv to File Briefs issd 11/12/10

Simon DeBartolo Group, 29-CA-23218-S

[REDACTED]

Non-ee access; Case Name [REDACTED]

Reliant Energy, 31-CA-25155

[Redacted]

Case Name [Redacted]; discriminatory request of contractor to remove one of its employees for soliciting Respondent's employees on behalf of Union during working time.

6. Beck

Initial Notice

Kroger Limited Partnership, 25-CB-8896

[Redacted]

Did Respondent Union violate 8(b)(1)(A) by [Redacted] with the percentage reduction of dues and fees for nonmembers [Redacted] its initial *Beck* notice to an [Redacted] ee

7. 8(e)

Cosco Fire Protection, 25-CE-4

[Redacted]

Whether dual-charge provision of collective-bargaining agreement provision had secondary purpose of achieving business objectives; whether the provision was otherwise subject to the construction industry proviso to 8(e)

REPRESENTATION CASE ISSUES

1. Employee Status

Various Supervisory Issues

Brusco Tug and Barge Co., 19-RC-13872

[REDACTED]

Barge mates

Appalachian Power Co., 11-RC-6654

[REDACTED]

Energy dispatchers/*Mississippi Power*

Entergy Mississippi, 15-UC-149

[REDACTED]

Energy dispatchers/*Mississippi Power*

The Republican Co., 1-UC-838

[REDACTED]

Various job classifications at newspaper

Alternate Concepts, 28-RC-6750

[REDACTED]

Managerial Employees

Point Park University, 6-RC-12276

[REDACTED]

Whether faculty members at college are managerial under *Yeshiva*

Graduate Teaching Assistants

New York University, 2-RC-23481



Independent Contractor

Lancaster Symphony Orchestra, 4-RC-21311



symphony orchestra musicians

Plano Symphony Orchestra, 16-RC-10844



symphony orchestra musicians

Cape Cod Symphony Orchestra Association, Inc., 1-RC-22338



symphony orchestra musicians

Super Shuttle, W-RC-10963



Airport shuttle drivers

BWI Taxi Management, 5-RC-16489



Taxi drivers

2. Election Objections

Manhattan Center Studios, Inc., 2-CA-35394-R

[REDACTED]

On court remand, whether GC is entitled to summary judgment on allegation that R violated 8(a)(5) by refusing to bargain after U's certification; standard for reopening representation case based on newly discovered evidence

DirectTV U.S. DirectTV Holdings. 21-RC-21191

[REDACTED]

Whether Er's field supervisors are 2(11) supervisors and, if so, whether their Pro-union conduct warrants setting aside the election under *Harborside*. Ptr urges Board to overrule *Harborside*.

3. Successor Bar/MV Transportation

Grocery Haulers, Inc., 3-RC-11944

[REDACTED]

Notice/Inv to File Briefs Issd 8/31/10

4. Jurisdiction

Charter Schools

**Chicago Mathematics & Science Academy Charter School, Inc.,
13-RM- 1768**

[REDACTED]

Notice/Inv to File Briefs issd 1/10/11

Religious Organizations/Catholic Bishop

Manhattan College, 2-RC-23543

[REDACTED]

Saint Xavier University, 13-RC-22025



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Matis, Jennifer A.

From: Flynn, Terence F.
Sent: Monday, September 19, 2011 3:39 PM
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