

**International Union of Operating Engineers, Local No. 12, AFL-CIO (Wilshire Fremont Associates) and Kulbir S. Dhillon.** Case 31-CC-1248

September 30, 1980

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND PENELLO

On July 28, 1980, Administrative Law Judge Russell L. Stevens issued the attached Decision in this proceeding. Thereafter, the General Counsel filed limited exceptions and a supporting brief, and the Respondent filed a brief in response to General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.<sup>2</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, International Union of Operating Engineers, Local No. 12, AFL-CIO, Sherman Oaks, California, its officers, agents, and representatives, shall take the

<sup>1</sup> The General Counsel has excepted to the Administrative Law Judge's statement that "Sometime in the afternoon Whisman was told by Quinn, or by Al Schwartz, the owner-builder, that the existence of the picket line was dependent upon Dhillon's presence on the job." As pointed out by the General Counsel, it is clear from the record that the statement was in fact made by Whisman rather than to him. We therefore correct this inadvertent error.

<sup>2</sup> In the section entitled "The Remedy" the Administrative Law Judge recommended that Respondent cease and desist from the conduct found violative of the Act and post an appropriate notice. The General Counsel excepts, arguing that Respondent should also have been ordered to make the Charging Party whole for initiation or reinstatement fees and dues paid to Respondent. Respondent counters that it would be punitive to require it to reimburse the Charging Party because, subsequent to his employment with Wilshire Fremont Associates, the Charging Party used his union membership to obtain other jobs. In view of the foregoing, we shall require Respondent to reimburse the Charging Party and/or the Employer, Wilshire Fremont Associates, for any dues or fees paid to the Union by them only for the period the Charging Party spent in the employ of Wilshire Fremont Associates. Determination of the amount involved and the identity of the payee or payees can best be left to the compliance stage of this proceeding. We will not require Respondent to reimburse the Charging Party for any dues or fees paid subsequent to his employment with Wilshire Fremont Associates. We shall amend the Administrative Law Judge's recommended Order and notice accordingly.

action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 2(a) and re-letter the subsequent paragraphs accordingly:

"(a) Reimburse Kulbir S. Dhillon and/or the Employer, Wilshire Fremont Associates, as the case may be, for any initiation fees, dues, or other moneys unlawfully exacted during Dhillon's employment with Wilshire Fremont Associates, plus interest, as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). (See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).)"

2. Substitute the attached notice for that of the Administrative Law Judge.

**APPENDIX**

**NOTICE TO MEMBERS**  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT engage in, induce, or encourage individuals employed by persons engaged in commerce, or in industries affecting commerce, to engage in strikes or refusals, in the course of employment, to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform services with the object of forcing or requiring Kulbir S. Dhillon, a self-employed person, to join the Union.

WE WILL reimburse Kulbir S. Dhillon and/or the Employer, Wilshire Fremont Associates, as the case may be, for any initiation fees, dues, or other moneys unlawfully paid to us during Kulbir S. Dhillon's employment at Wilshire Fremont Associates, plus interest.

**INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 12, AFL-CIO**

**DECISION**

**STATEMENT OF THE CASE**

**RUSSELL L. STEVENS, Administrative Law Judge:** This case was heard in Los Angeles, California, on June 16, 1980.<sup>1</sup> The complaint, issued on January 31, 1980, is based upon a charge filed on November 19 by Kulbir S. Dhillon, an individual.<sup>2</sup> The complaint alleges that International Union of Operating Engineers, Local No. 12, AFL-CIO (herein called Respondent or the Union) violated Section 8(b)(4)(i)(A) of the National Labor Relations Act, as amended (herein called the Act).

<sup>1</sup> All dates hereinafter are within 1979, unless stated to be otherwise.

<sup>2</sup> Individuals are referred to by their last names.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record, and from my observation of the witnesses and their demeanor, I make the following:

#### FINDINGS OF FACT

##### I. JURISDICTION

Wilshire Fremont Associates (herein called Fremont) is, and at all times material herein has been, a limited partnership duly organized under and existing by virtue of the laws of the State of California with an office and principal place of business in Sherman Oaks, California, and is engaged as owner-builder in the construction and sale of condominiums at 4460 Wilshire Boulevard, Los Angeles, California (herein called the jobsite).

At all times material herein Fremont subcontracted construction work at the jobsite to Federal Steel Corporation, Ro West, Division of H. H. Robertson Company, and other persons.

Federal Steel Corporation is a corporation duly organized under and existing by virtue of the laws of the State of California with an office and principal place of business in Long Beach, California, where it is engaged in the business of steel fabrication and erection. During the past 12 months, Federal Steel Corporation purchased goods valued in excess of \$30,000 for use at the jobsite from suppliers who in turn purchased those goods from sources located outside the State of California.

Ro West, Division of H. H. Robertson Company, is a corporation duly organized under and existing by virtue of the laws of the State of Pennsylvania with an office and principal place of business in South El Monte, California, where it is engaged in the sale and construction of metal decking and siding. During the past 12 months, Ro West, Division of H. H. Robertson Company, purchased goods valued in excess of \$20,000 for use at the jobsite from sources located outside the State of California.

I find that Federal Steel Corporation and Ro West, Division of H. H. Robertson Company are, and at all times material herein have been, employers engaged in commerce and in businesses affecting commerce within the meaning of Section 2(6) and (7) of the Act.

I find that Fremont is, and at all times material herein has been, a person engaged in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4) and Section 2(6) and (7) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

International Union of Operating Engineers, Local No. 12, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. Background<sup>3</sup>

Dhillon is, and at all times material herein has been, an independent contractor engaged in the business of construction inspection. In 1971, 1972, and 1973 Dhillon was a member of the Union, but he quit paying union dues, without notice to the Union, in 1973 because at that time he planned to discontinue working.

In June 1979 Dhillon signed a contract with Fremont, pursuant to which he began working as an independent on-site inspector at Fremont's jobsite where approximately 30 employees were working for Fremont's subcontractors.<sup>4</sup> Dhillon employed no one other than himself at the jobsite. Dhillon's contract provided for a fee of approximately \$20 per hour.

In July 1979 Orville Whisman, a business representative and special representative in charge of inspectors and survey representatives for the Union, came to the jobsite, talked with Quinn about the possibility of a union contract with Fremont,<sup>5</sup> talked with Dhillon, and attempted to get Dhillon to join the Union. Dhillon declined to join.

On September 26 at 7 a.m., Whisman and another union representative, Steve Billey, commenced picketing the jobsite with signs reading:

KULBIR S. DHILLON, INSPECTOR, UNFAIR. LOCAL  
12, INTERNATIONAL UNION OF OPERATING ENGI-  
NEERS, AFL-CIO. SANCTIONED BY L.A. BUILDING  
TRADES COUNCIL.

No employee of any subcontractor crossed the picket line to work.<sup>6</sup> Quinn and Dhillon talked with Whisman, and asked the reason for the pickets. Whisman referred them to the Union's attorney. Quinn thereafter talked with the Union's attorney, and talked further with Whisman. Sometime in the afternoon Whisman was told by Quinn, or by Al Schwartz, the owner-builder,<sup>7</sup> that the existence of the picket line was dependent upon Dhillon's presence on the job. At approximately 1 or 1:30 p.m. Quinn advised Dhillon to go home, since all the subcontractors' employees had left, and to return "when this matter is settled with the Union."

On September 27 or 28, Quinn tried to get Dhillon to join the Union in order that Dhillon could return to the job, but Dhillon declined. Quinn talked with Dhillon on

<sup>3</sup> This background summary is based upon credited testimony and evidence that is not in dispute.

<sup>4</sup> Fremont then had no employees at the jobsite other than the job superintendent, Walt Quinn, and one temporary machine operator.

<sup>5</sup> Fremont did not then enter into a contract with the Union, but did sign a union agreement in December in order to obtain the services of the machine operator referred to above.

<sup>6</sup> Whisman and Billey were replaced by two other pickets at approximately 10 a.m.

<sup>7</sup> Quinn testified that he asked Whisman on September 26 if there would be a picket line the following day, and Whisman asked if Dhillon was going to be on the job. Quinn replied, "No," and Whisman said there would not be a picket line. Whisman testified that "the owner of the project" called him, and said Dhillon would not be back on the job, to which Whisman replied, "Well, if he is not back on the job, the picket line won't be there." Dhillon credibly testified that Quinn called Schwartz on the telephone on September 27. Quinn's version is credited.

several occasions thereafter, and tried to get him to join the Union and return to work, but Dhillon continued to refuse. Ultimately, Quinn proposed that Fremont would pay the union initiation fee, and Dhillon agreed. Dhillon went to the union hall, talked with Whisman, agreed to join the Union, and obtained a work clearance from Whisman. That same day, October 5, Dhillon returned to work for Fremont, and later, approximately November 8, joined the Union. Dhillon has continued to pay union dues to the present. Dhillon worked at the jobsite until February 1980.

#### B. Contentions of the Parties

The General Counsel contends that Respondent violated the Act by forcing Dhillon, through picketing at the jobsite, to join the Union.

Respondent contends that the picketing was informational, to inform the public that Dhillon was unfair to Local 12's members because he was charging less than the union contract amount of approximately \$29 per hour.

#### C. The July Incident

Whisman contends that his visit with Dhillon in July was almost incidental; that he was not particularly concerned with whether or not Dhillon joined the Union; and that he learned at the time of the visit, by radio call to the Union and by looking at Dhillon's union card, that Dhillon was a suspended union member because of failure to pay dues, rather than a nonunion member.

Dhillon and Quinn contradicted Whisman. Their version is that Whisman was quite seriously concerned about Dhillon's not being a union member, and Dhillon testified that he had no union card at the time of the incident. Dhillon further testified that Whisman was insistent upon Dhillon's joining the Union. Dhillon acknowledged that Whisman talked with him about union benefits, but Whisman's contention that such was the extent of his persuasion is unrealistic. Dhillon had been a union member for approximately 2-1/2 years, and there was no necessity for Whisman to explain union benefits. Dhillon's testimony that Whisman was putting pressure on him is consistent with Whisman's emphasis upon union benefits as a part of that pressure. It may well be, as contended by Respondent, that Whisman did not specifically threaten Dhillon with retaliation if he did not join, but Dhillon testified in a manner that shows Whisman put considerable heat on him to join, and Quinn's testimony corroborates that impression.

Dhillon and Quinn are credited, and it is found that the July incident constituted a clear signal to Quinn and Dhillon that the Union did not approve of Dhillon's working at the jobsite without holding union membership.

Finally, Whisman's contention that he only was concerned that Dhillon was charging less than union members is inconsistent with his acknowledgement that he tried to get Dhillon to join the Union. Clearly, Dhillon's union membership was sought for one principal reason—to require that he charge the same amount that union members charged. As later demonstrated by events,

Dhillon had only two choices—join the Union or be without work.

#### D. The Reason for the Picketing

Whisman explained his reasoning:

Because Kulbir Dhillon was unfair to the members that Local 12 represents and the employer entity as a whole, the industry, in that he was not paying the wage, or the prevailing wage—or not asking the prevailing contract [wage] per hour, and undercutting what I consider the journeymen employees at a wage lesser, thereby taking work away from members that I represent, or we represent.

Q. If Mr. Dhillon became a member of the Union, would that situation be corrected in any way?

A. No.

Q. You picketed one day at the jobsite. Why didn't you go back the next day and picket?

A. Because I was called at the office and informed that Kulbir Dhillon would no longer be on the job.

Whisman thus contends that Dhillon was undercharging, yet he also contends that Dhillon would continue to undercharge even as a union member. The facts of life contradict that testimony. Further, the pickets were pulled when Whisman was told that Dhillon was no longer on the job, and they were not reinstated when Dhillon returned to the job as a member-elect. Patently, Dhillon could work as a member of the Union, but not as a nonmember.

Whisman's testimony that he was not trying to force Dhillon into union membership, and that all of the insistence upon such membership originated with, or was urged by, Fremont, appeared strained and contrived; it was credibly contradicted by Quinn and Dhillon, and is given no credence. Quinn credibly testified concerning his conversations with Whisman:

I believe he told me that this was an informational picket line, in order to recruit Mr. Dhillon to join the Union.

\* \* \* \* \*

Q. Well, you say you talked to Mr. Whisman, and Mr. Whisman said something concerning the purpose of the picketing.

A. Yes. Mr. Whisman wanted Kulbir to join the Union, and he suggested that I suggest to Kulbir that he join the Union.

\* \* \* \* \*

Q. Isn't it true that Mr. Whisman told you that he didn't care whether Mr. Dhillon becomes a member of the Union? Did he ever tell you that?

A. No. On several occasions, he told me that he wanted Kulbir to join the Union, and he urged me to convince him to join the Union.<sup>8</sup>

Whisman testified that, a week or so prior to the picketing he talked with Schwartz and asked to see Dhillon's contract, in order to verify that Dhillon was an independent contractor, and not an employee. The contract was shown to Whisman. Quinn testified that he saw Schwartz show Dhillon's contract to Whisman, but that he believes the incident was more than a week or so prior to the picketing. Respondent contends that the picketing was instituted soon after Whisman saw the contract in order to protest Dhillon's below union scale fee charges. However, that argument is not persuasive, since it is clear that Whisman attempted to pressure Dhillon into joining the Union. Only through union membership could there be effective control of Dhillon's charges. Inevitably, picketing of the worksite would deprive Dhillon of work. Any replacement potentially would be subject to the same retaliation if he was not a union member.

#### E. Conclusion

Section 8(b)(4)(i)(A) of the Act states that it shall be an unfair labor practice for a labor organization or its agents:

... to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) Forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e).

The parties agree that Dhillon was a self-employed person at times relevant herein.

The fact that there was picketing, and the resultant refusal of employees of subcontractors at the worksite to continue on the job, is not in dispute.

As found above, the object of the picketing was to force or require Dhillon to join the Union. As noted by counsel for the General Counsel, even if the forcing of Dhillon to join the Union was only one object among

others, rather than the sole object of the picketing, the Act would have been violated.<sup>9</sup>

The allegations of the complaint are supported by the record.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(A) of the Act, it will be recommended that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and the entire record, I make the following:

#### CONCLUSIONS OF LAW

1. Wilshire Fremont Associates is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Federal Steel Corporation and Ro West, Division of H. H. Robertson Company, are, and at all times material herein have been, persons engaged in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4)(i)(A) of the Act.

3. International Union of Operating Engineers, Local No. 12, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

4. Respondent violated Section 8(b)(4)(i)(A) of the Act by engaging in, or inducing or encouraging individuals employed by persons engaged in commerce or in industries affecting commerce to engage in, strikes or refusals in the course of employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform services, with the object of forcing or requiring Kulbir S. Dhillon, a self-employed person, to join the Union.

5. The unfair labor practices described in paragraph 4 above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

<sup>8</sup> The subject of charges for inspection work was not fully litigated, but that matter is of only marginal relevance. Dhillon and Quinn testified that the customary charge is approximately \$20 per hour, and Whisman testified that the union rate is approximately \$29 per hour. The fact of two rates is not material in view of the fact that not all inspectors are union members.

<sup>9</sup> *Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Santini Brothers, Inc.)*, 208 NLRB 184, 201 (1974), enfd. 546 F.2d 989 (D.C. Cir. 1976).

ORDER<sup>10</sup>

The Respondent, International Union of Operating Engineers, Local No. 12, AFL-CIO, Sherman Oaks, California, its officers, agents, and representatives, shall:

1. Cease and desist from engaging in, or inducing or encouraging individuals employed by persons engaged in commerce or in industries affecting commerce to engage in, strikes or refusals in the course of employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform services, with the object of forcing or requiring Kulbir S. Dhillon, a self-employed person, to join the Union.

2. Take the following affirmative action, to effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."<sup>11</sup> Copies of

said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to said Regional Director copies of the aforementioned notice for posting by Wilshire Fremont Associates, that company willing, at the picketed premises.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>10</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>11</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."