

**American Federation of Grain Millers Local 33, AFL-CIO and Charles Mingus, Representative (Boise Cascade Corporation) and Carlton Lowe.** Cases 9-CB-3539 and 9-CB-3576

December 21, 1978

**DECISION AND ORDER**

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On August 31, 1978, Administrative Law Judge Bernard Ness issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

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 brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**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 and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

<sup>1</sup> The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

**DECISION**

**STATEMENT OF THE CASE**

BERNARD NESS, Administrative Law Judge: These consolidated cases were heard at Louisville, Kentucky, on December 13, 1977, pursuant to unfair labor practice charges filed in Cases 9-CB-3539 and 9-CB-3576 by Carlton L. Lowe, an individual, on April 18 and June 13, 1977, respectively,<sup>1</sup> and separate complaints consolidated for purposes of hearing. The complaints in Cases 9-CB-3539 and 9-CB-3576 issued on June 8 and July 29, respectively. The consolidation order was issued on July 29. The complaint alleges that the Union and Charles Mingus, its president,

<sup>1</sup> All dates hereinafter are in 1977 unless otherwise indicated.

violated Section 8(b)(1)(A) of the Act in their treatment of Mary Boston and Carlton Lowe, both stewards of the Union and employees of Boise Cascade Corporation, herein called the Company. The complaint alleges that the Union's and Mingus' actions taken against Boston were because she threatened to utilize the processes of the National Labor Relations Board, herein called the Board, if the Union failed to support a grievance filed by her against the Company concerning employee Harold Sarles. The complaint further alleges that the Union's and Mingus' action taken against Lowe were because he filed the unfair labor practice charge in Case 9-CB-3539 on her behalf and because he testified on her behalf before the Union's trial board on March 14. The Union has denied the commission of any unfair labor practices and contends that the actions taken against the individuals concerned were not for the reasons alleged in the complaint. It should be noted that insofar as their employment is concerned, stewards do not receive any additional benefits or emoluments attending such position. They only are relieved from paying union dues.

Upon the entire record, including my observation of the witnesses and their demeanor, and after due consideration of the briefs filed by the parties, I hereby make the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE COMPANY**

The Company is engaged at its New Albany, Indiana, plant, in the manufacture of fiber cans. During the 12-month period preceding the issuance of the complaint, it sold and shipped products valued in excess of \$50,000 from its New Albany plant directly to points outside the State of Indiana. The parties agree, and, based on the foregoing, I find, that the Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

The parties agree, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

The Union represents the production and maintenance employees at the plant. The collective-bargaining contract between the Union and the Company during the period herein involved was from September 1, 1975, through August 31, 1977. Mingus, an employee at another company, has been president and business representative of the Union since 1972. Lowe, an employee of the Company, was the steward for the inspection department for 8 years and was the chief steward of the entire bargaining unit since 1976. Boston became a steward in May 1976. Both Lowe and Boston are members of a three-person plant committee which is involved in the grievance process. Stinner was the third member on the committee. Mingus' role in the grievance procedure is only advisory in the initial stages.

Mingus preferred charges with the Union against Boston on January 31, charging her with improper conduct in that she lied about him and brought discredit upon the Union. A hearing was held before the Union's trial board on February 19 and March 5. On March 14, the trial board found her guilty and invoked the penalty of censure and a suspension of rights in the Union for 6 months. The union membership ratified the trial board's action on March 22. By letter dated March 25, Mingus notified Boston that she was removed from office as a steward and was suspended from all union activities for 6 months.

The General Counsel's contention is that the action taken against her was because she expressed an intention to seek the assistance of the Board if the Union did not pursue a grievance involving Sarles. The Union has denied that this was a consideration in disciplining Boston.

Boston wrote a letter to the International, dated December 26, 1976, complaining that an employee, Harold Sarles, did not have an adequate opportunity to bid on a job.<sup>2</sup> The letter stated, *inter alia*, "He could have been contacted by registered letter or a continued effort by the Union President to bid on the job. I am asking your assistance in supporting this grievance within seven days or I will refer this grievance to the National Labor Relations Board, Washington, D.C. in that the union will not support or submit the grievance to the Company." (G.C. Exh. 2) International President Wellborn responded by letter of December 30. (G.C. Exh. 3). He suggested that if Sarles had not yet filed a grievance, he should submit one and give a copy to Mingus. The letter went on to say, "I would further suggest that in the future when you request assistance from this office that you do so on the basis of the facts and refrain from the unnecessary threats of going to the National Labor Relations Board as you are, of course, perfectly free to go to the National Labor Relations Board at any time you wish to do so. However, we do have, at all times, representatives available who are more than pleased to assist you in any difficulties arising." Boston directed another letter to the International, dated January 3 which reads as follows:

Mr. Wellborn:

I referred this matter to the national office because the available representatives (President of Local Union) would not take the grievance to the company or management. This lack of support by the local led me to offer you the first chance to settle this grievance. Should you not make an effort I will then make an appeal to the National Labor Relations Board. You must realize this grievance effects [sic] each person working for this company.

Further it goes without saying I would not write this letter to the national union without Mr. Sarles filing a

grievance and signing it. Second, Mr. Sarles would not sign a grievance and submit it without wanting the promotion.

If your representatives really want to help, send one down to discuss this matter immediately or it will then become necessary for me to contact the National Labor Board.

I will submit this grievance to the company myself without higher Union support, as you suggested. However we will not accept settlement of this grievance until all of my people feel satisfied that they are being fairly treated.

Expecting to hear from you very soon.

Mary Boston  
Union Steward  
Boise Cascade Co.  
3303 Grant Line Road  
New Albany, Indiana 47150

A copy of Boston's first letter was forwarded to Mingus, which he received on January 3. He received her second letter on January 12. Mingus wrote to the International on January 7, responding to Boston's December 26 letter, and sent copies to the plant committee, which included Boston and Lowe. (G.C. Exh. 6.) In this letter he described his efforts to have Sarles bid for the job vacancy and this was known to the Committee. He also stated that Sarles had not even filed a grievance.<sup>3</sup> On January 15, Mingus again wrote to the International, referring to Boston's January 3 letter, copies to the plant committee. (G.C. Exh. 7.) He accused Boston of lying when she reported that he would not take the grievance to the Company and stated that her action constituted a "serious breach of Committee responsibility and Union by-laws." He added that he was unaware that a grievance had even been submitted. On January 31, Mingus preferred charges against Boston and submitted the letters she had written to the International. (G.C. Exh. 8.)

Mingus testified that he preferred charges against Boston because she lied about him when she said he would not pursue the Sarles grievances. He testified that he learned she had circulated her letters in the plant and the letters were posted on the bulletin board. This dissemination of the letters also prompted him to prefer the charges against her. Mingus had spoken to Sarles in October concerning Sarles' lack of opportunity to apply for the job vacancy. Mingus conceded the unfairness of the 48-hour rule and told Sarles he would attempt to have it changed in the next contract negotiations. At the request of the plant committee, Mingus brought up the Sarles affair with the Company on October 19 at a regular company-union meeting. The Company refused to deviate from the 48-hour rule. On December 12, after a union meeting, Boston pressed Mingus to do something about the Sarles affair. Lowe testified that at this meeting on December 12, Mingus told Boston "she could not file a grievance or go to the National Labor Relations Board." He also conceded, however, that Mingus

<sup>2</sup> The existing contract provided that employees interested in applying for a job vacancy must apply within 48 hours. A side agreement between the Union and the Company, in effect for a number of years, provided that the Union would attempt to contact employees who were away because of sickness, vacation, etc. A job vacancy was posted in early October 1976. Sarles was on vacation at the time. Steward Stiner intended to contact him but learned Sarles had no phone. When Sarles returned, he was disappointed that he did not have any opportunity to bid on the job vacancy.

<sup>3</sup> The Sarles grievance was first presented on January 16. Mingus first learned of it on February 3. At the fourth step the parties agreed there was no violation of the contract.

had many times told the stewards that no member would be denied the right to present a grievance. At the trial board hearing on February 19, Lowe testified to the same effect and was called a liar by Mingus at that hearing. Boston corroborated Lowe at the trial board hearing. At the hearing before me, she was called by the General Counsel, but her testimony was limited only to the identification of her December 26 letter to the International.

The General Counsel points in his brief to certain of Mingus' testimony at the trial board hearing, which was substantially repeated at the hearing before me. This was a colloquy between Boston and Mingus on December 12. It reads as follows:

Boston: Ed, can't we do anything for Sarles?

Mingus: No, I've already brought the case before the company. We don't have a case. In fact, if we insisted and the company granted the job award, both the company and union would be vulnerable by contract language to the other party that got the bid.

Boston: What about NLRB charges?

Mingus: You have a misconception about the NLRB. They do not dictate to us. We have the responsibility to process grievances and make good faith disposition of them.

Boston: I don't have a misconception of the NLRB. I told the people when I ran for office, I would push their grievances all the way.

Mingus: What do you want to do arbitrate all the grievances? I have a responsibility to all the members under the Constitution.

Boston: No.

Mingus: What do you mean by all the way? Boston did not answer.

The General Counsel submits that this colloquy supports a finding that Mingus would not support a Sarles grievance and that he did not favor Boston going to the Board. Thus, according to the General Counsel, it was this dialogue that motivated Boston to communicate with the International, and the statements in her letters were not lies. The General Counsel's position is that since Boston's letters mentioned the possible intention of using the Board's processes, and Mingus attached her letters to his charges against her, it follows that a reason for the charges against her and for the trial board's finding was based upon her intention of going to the Board. I do not agree. Mingus, in his testimony before me, which I credit, expressly stated that he was not concerned with the possibility that she might go to the Board. And at the hearing before the trial board, this matter came up only in an indirect way. Mingus testified as stated in the above colloquy. I do not construe his comments as a directive that a Sarles grievance could not be filed or that she could not go to the Board. In short, I find that Mingus preferred charges against Boston because her letters to the International misrepresented his actions in the Sarles affair and because she was circulating the letters in the plant. There is no suggestion in the minutes of the trial board that its findings were predicated in any way on the fact that she was considering going to the National Labor Relations Board. To put it another way, I do not agree that Mingus' action or the trial board's action was because she

threatened to utilize the Board's processes as alleged in the complaint. Accordingly, I shall dismiss this allegation.

Mingus preferred charges with the Union against Lowe on April 29, charging Lowe with improper conduct and of being deceitful. A hearing was held before the Union's trial board on May 14. Lowe received timely notice of the hearing but chose not to appear. On May 18, the trial board found Lowe guilty of the charges. He received a censure, a suspension of rights in the Union for 6 months, and a \$40 fine, which he ultimately paid. The trial board's decision was ratified by the membership on May 24, and Mingus thereafter removed Lowe from the position of chief steward.

The complaint alleges that the action taken against Lowe was in retaliation for his having filed charges with the Board's Regional Office on behalf of Boston on April 18 and because he testified on her behalf at the trial board hearing on March 14.<sup>4</sup> At the trial board hearing, the thrust of Mingus' charge was Lowe's behavior in the Reynolds grievance and in the feed-in tube grievance. I find it unnecessary to dwell at length on each of these incidents. An employee, Janet Reynolds, wanted what was called in the record a "sign sheet" concerning the availability of employees in her department for work on weekends or holiday overtime. This was brought to Mingus' attention by Lowe in mid-February. Both expressed the view that they preferred not having a sign sheet. Mingus added that if an employee insisted upon it, he felt that, pursuant to the contract terms she would prevail. Thereafter, Mingus learned that Lowe had told employees that he (Mingus) had said there would not be a sign sheet. Mingus denied to the employees that he had taken such position. At his request, one of the employees involved, Adans, confirmed this in writing to him on April 7.<sup>5</sup> Mingus had also charged that Lowe withheld from the Union and its committee the fact that he had approached the Company in June 1976 on the allocation of overtime work on the feed-in tube operation, thus misleading employees to file a grievance on this matter. Mingus stated that the Union first became aware of Lowe's role in this matter when this was revealed by the Company at a meeting between the parties in January. Mingus stated he later received reports that Lowe was denying to employees that he had approached the Company on this matter. Mingus also stated that Lowe lied to him when Lowe said he had spoken to Mingus about the matter on a specific date in June 1976. Thus, Mingus accused Lowe before the trial board of being deceitful, making misrepresentations, and slandering him. Apart from the timing of Lowe's first unfair labor practice charge, there is nothing in the record to suggest that Mingus' charges against Lowe were preferred for that reason. Nor does the record show that the Union's findings against Lowe were based upon his having filed unfair labor practice charges on behalf of Boston. Likewise, the record made before the trial board did not include any testimony concerning Lowe's having appeared as a witness at the Boston hearing. I find that the preponderance of the evidence does not support the General Counsel's contention that the action taken against Lowe

<sup>4</sup> Lowe actually testified on behalf of Boston on February 10 rather than March 14.

<sup>5</sup> The first unfair labor practice charge was filed on April 18.

was because he had filed unfair labor practice charges with the National Labor Relations Board or because he had testified on behalf of the trial board hearing.<sup>6</sup> Accordingly, this allegation shall likewise be dismissed.

#### CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent is a labor organization within the mean-

<sup>6</sup> Even if the latter were one of the reasons for the action taken against Lowe, I have serious doubts that this would have been violative of the Act in the circumstances of this case.

ing of Section 2(5) of the Act.

3. Respondent has not engaged in the unfair labor practices alleged in the complaint.

Upon all the foregoing, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER <sup>7</sup>

It is hereby ordered that the complaint herein be dismissed in its entirety.

<sup>7</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.