

**Allied Industrial Workers of America, AFL-CIO, and its Local No. 148 (Allen Testproducts Division, The Allen Group, Inc.) and Carolyn L. Henke.** Case 7-CB-3672

July 6, 1978

### DECISION AND ORDER

On October 18, 1977, Administrative Law Judge Bruce C. Nasdor issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions and a supporting brief, and the Respondent filed an answering brief.

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, 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.

MEMBERS JENKINS AND PENELLO, dissenting:

For the reasons expressed in our dissent in *United Electrical, Radio and Machine Workers of America, Local 623 (Limpco Mfg. Inc.)*, 230 NLRB 406 (1977), we would find the provision of superseniority for the union financial secretary, whose presence in the shop was plainly not necessary to the administration of the union contract, to violate Section 8(b)(1)(A) and (2) of the Act.

### DECISION

#### STATEMENT OF THE CASE

BRUCE C. NASDOR, Administrative Law Judge: This proceeding, under Section 10(b) of the National Labor Relations Act, as amended, was heard pursuant to due notice on May 3, 1977, at Kalamazoo, Michigan.

The charge in this proceeding was filed by Carolyn L. Henke, on November 4, 1976, and the consolidated complaint and notice of hearing issued on February 1, 1977. Originally, another charge had been filed in Case 7-CA-13481, on the same date, alleging Allen Testproducts Division, The Allen Group, Inc., as a Respondent Employer in this matter. At the hearing, counsel for the Respondent made a motion to sever that case from this proceeding. Counsel for the General Counsel represented that the Employer, Allen Testproducts, had entered into an informal

settlement agreement. I therefore granted the motion to sever which has the effect of remanding the CA case back to the Regional Director for compliance, and granted the motion to delete the name of the Employer from the instant proceeding.

The complaint alleges that the Respondent Unions violated Section 8(b)(1)(A) and (2) of the Act by invoking a superseniority provision to protect the financial secretary from being laid off.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs received from the General Counsel and the Respondents, I make the following:

#### FINDINGS OF FACT

##### I. JURISDICTION

Allen Testproducts Division, The Allen Group, Inc., is engaged at Kalamazoo, Michigan, in the manufacture, sale, and distribution of automotive test equipment and related products. During the year ending December 31, 1976, which period is representative of its operations during all times material herein, Allen Testproducts, in the course and conduct of its business operations, manufactured, sold, and distributed at its Kalamazoo, Michigan, place of business, products valued in excess of \$50,000 which were shipped from said place of business directly to points located outside the State of Michigan. I find that Allen Testproducts is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. THE LABOR ORGANIZATIONS INVOLVED

Allied Industrial Workers of America, AFL-CIO, and its Local No. 148, the Respondent Unions, are and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

Respondent Unions and the Employer are parties to a collective-bargaining agreement which provides in article VI, section 18:

For the purposes of layoff for lack of work and recalls to work following such layoffs, the Union's President, Vice-President, Bargaining Committee members, Chief Steward, Financial Secretary, Recording Secretary and Executive Board Members at large, in that order, shall be considered as being at the top of the plant-wide seniority list. These designated officers and committeemen shall be the last employees to be laid off for lack of work and the first employees to be recalled following such layoffs, provided always that they must have the then present ability to satisfactorily perform the available required work.

(a) For the purposes of layoff for lack of work and recalls to work following such layoffs, Stewards during

their terms of office shall be considered as being at the top of the seniority list for their shift in their department. They shall be the last to be laid off for lack of work from their shift in their department and the first to be recalled thereto following such layoffs, provided always that they must have then present ability to satisfactorily perform the available required work.

On October 27, 1976, Bruce Billingsley, plant manager, met with the Union's bargaining committee to discuss the impending 2-day<sup>1</sup> layoff which was prompted by a shortage of materials. The purpose of the meeting was to determine who would work and who would be laid off during the shutdown in accordance with the superseniority clause of the contract.

Billingsley outlined the 10 jobs which would be available during the layoff. Pursuant to the contract's superseniority provisions and past practice, he offered the 10 jobs to the union officers in the sequence required by section 18 of the contract. The financial secretary during this period was Betty Wills, who had 11 years of seniority at the Company. By exercising her right to superseniority, she was able to fill a position as shipping clerk, during the layoff, which would otherwise have gone to Carolyn Henke, the Charging Party herein. Henke had 25 years of seniority at the plant and was its most senior employee.

Article 8, section 4, of the bylaws of Local No. 148 delineate the duties and responsibilities of the financial secretary. Basically, the duties set forth in this section deal with maintaining financial records and managing the Local's finances. The financial secretary is also to provide each member of the Local with the membership dues book, a copy of the International Union's constitution, a copy of the Local's bylaws, and a copy of the current collective-bargaining agreement between the Union and the Employer.

Record testimony discloses that the financial secretary performs the following additional functions: (1) issuing reports and checks to the International covering the per capita tax; (2) distributing checkoff authorizations to new employees; (3) filing reports with the U. S. Department of Labor as required under the Landrum-Griffin Act; (4) filing social security and unemployment taxes; (5) reviewing the checkoff list which the Company supplied to her, reflecting the names of the individuals who have had their union dues deducted from the Employer's payroll; (6) issuing clearance or withdrawal cards which exonerate a member from paying dues; and (7) releasing funds necessary to reimburse employees lost time vouchers.

Additionally, the financial secretary attends monthly meetings of the executive board. These meetings are attended by the Local's officers, the bargaining committee, and the union stewards. The uncontradicted testimony reveals that bargaining strategy, bargaining demands, and grievance policies are discussed at these meetings. All of the members of the executive board, including the financial secretary, have an equal vote with respect to the policy matters discussed at these meetings.

Although the financial secretary has no direct responsi-

bility in the processing of grievances, the president of the Local can delegate to the financial secretary the responsibility for sitting in on grievance meetings when two members of the executive board are absent.

Betty Wills testified that she spends 2 to 3 hours per week in her duties as financial secretary.

#### Analysis and Conclusions

The facts herein are essentially undisputed. The complaint was issued on the theory that the Respondent-Unions are engaging in violative conduct within the meaning of *Dairyalea Cooperative, Inc.*, 219 NLRB 656 (1975), enfd. 531 F.2d 1162 (C.A. 2, 1976). In that case, the Board, with court approval, held that steward superseniority for purposes of layoff and recall was lawful, but when extended to other job benefits was unlawful. An essential element in upholding the legality of a superseniority clause is finding that there is legitimate justification for such a clause. This concept was enunciated as requiring that "superseniority for purposes of layoff and recall is justified because it encourages the continued presence of the steward on the job and thereby furthers effective administration of bargaining agreements on the plant level."

The Board in *Dairyalea* considered the question of justification in the context of union stewards. A more recent case, *United Electrical, Radio and Machine Workers of America, Local 623 (Limco Mfg. Inc.)*, 230 NLRB 406 (1977), expanded the concept when faced with the issue in terms of union officers, other than stewards, who had no responsibility for performing "steward-type" duties. In that case, principles are extended which are applicable to the instant matter.

In *Limco*, the contract's superseniority provision was invoked in order to protect the continued employment of the Union's recording secretary, during an economic layoff.

The Administrative Law Judge reasoned that *Dairyalea* limited superseniority provisions to layoff and recall of stewards, not other union officers. Thus, he concluded in *Limco* that the superseniority clause had been applied unlawfully to the recording secretary, and therefore it went beyond the limits set forth in *Dairyalea*. He concluded that the recording secretary was not involved in the grievance process and she did not perform "steward-type" functions which would warrant granting her superseniority.

The Board majority rejected the Administrative Law Judge's finding, stating that his reading of the *Dairyalea* decision was too narrow.

In *Limco*, the Board stated (230 NLRB at 407):

Since our Decision in *Dairyalea* focused on steward superseniority—because that was the type of seniority provision in dispute—the issue of union officer superseniority was not specifically addressed. Contrary to the Administrative Law Judge, we do not consider that *Dairyalea* established the principal that superseniority is presumptively valid only when the individual involved is engaged in the function of processing and/or adjusting grievances at the workplace. In *Dairyalea*, it was determined that a legitimate statutory purpose

<sup>1</sup> The layoff was subsequently extended to 3 days.

of superseniority provisions was the effective administration of the collective-bargaining agreement on the plant level. And this objective was served by superseniority provisions limited to layoff and recall which insured the continued presence of the employees' bargaining representative on the job. Thus, *Dairylea* was not intended to circumscribe which union representatives could be recipients of superseniority, but, rather, it articulated what the appropriate objectives of such provisions were, in light of the legitimate statutory purpose of facilitating the effective administration of the collective-bargaining agreement on the plant level.

In this regard, we do not consider that the administration of the collective-bargaining agreement is limited solely to grievance processing or other "steward-type" duties performed at the workplace.

The Board expressed further that, after it is demonstrated that the union official bears a direct relationship to the effective and efficient representation of the employees, said official is entitled to benefit from superseniority the same as union stewards.

The threshold question then is, has the Respondent demonstrated that Wills "qualified for the benefit [superseniority] by reason of her role in the overall administration of the collective-bargaining agreement?" In my opinion it has.

The record discloses that Wills, *inter alia*, manages the Local's finances, issues the various reports referred to earlier, files required reports and returns as required by Federal law and reimburses union officers for their time away from the job on union business.

Moreover, she attends executive board meetings where strategy, bargaining demands, and grievance policies are discussed, and has a voice in any vote.

Wills is paid \$35 per month as financial secretary. She, and all of the union officers, are elected by secret ballot.

Having established that Wills functions and performs as set forth above, I find that the Respondent's practices in maintaining and enforcing the subject clause conformed to the lawful objective of superseniority provisions in the effectuation of Section 7 rights of employees, "by assuring them the continued presence of their representatives who are charged with effectively and efficiently representing unit employees."<sup>2</sup>

Accordingly, I recommend that this complaint be dismissed in its entirety.

#### CONCLUSIONS OF LAW

1. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent Unions are labor organizations within the meaning of Section 2(5) of the Act.

3. The allegations of the complaint that Respondent Unions have engaged in conduct violative of Section 8(b)(1)(A) and (2) of the Act have not been supported by substantial evidence.

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

#### ORDER<sup>3</sup>

It is recommended that the complaint herein be, and it hereby is, dismissed in its entirety.

<sup>2</sup> *Limpro*, *supra*.

<sup>3</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 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.