**United Mine Workers of America, Local 1859 (American Coal Company) *and* Wallace Jensen *and* Glenn Brady.** Cases 27–CB–1143 and 27–CB–1143–2

April 10, 1978

## DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

Upon charges filed on August 1, 1977, by Wallace Jensen and Glenn Brady, and duly served on United Mine Workers of America, Local 1859, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 27, issued an order consolidating cases, consolidated complaint and notice of hearing on September 16, 1977, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges, consolidated complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that since on or about April 5, 1977, and continuing to date, Respondent restrained and coerced, and is restraining and coercing, employees in the exercise of rights guaranteed in Section 7 of the Act, by the following acts and conduct occurring at the Employer's Orangeville, Utah, plant:

(a) On or about April 5, 1977, Respondent, acting by and through Lee Hatton, threatened to blackball, from employment with employers with whom Respondent has contracts and/or referral arrangements, Wallace Jensen, an employee of the Employer, if he testified in an arbitration hearing against Hatton.

(b) On May 13, 1977, the day of the arbitration hearing referred to in subparagraph (a), Respondent, acting by and through Bill Crissman, threatened Glenn Brady, an employee of the Employer, with the loss of his union card because of his testimony in the arbitration hearing.

(c) On or about May 20, 1977, Respondent, acting by and through Lee Hatton, threatened to break Glenn Brady's jaw and then slapped Brady on the face because Brady testified in an arbitration hearing against Hatton.

(d) On or about June 22, 1977, Respondent, acting by and through Lee Hatton, stated to Jensen and Brady, "I am going to push you as far as I can, right out the Union," because of their testimony in the arbitration hearing.

(e) On July 31, 1977, Respondent, acting by and through Charles R. Fausett and the Trial Committee, tried Jensen and Brady for their having given testimony against Hatton in the arbitration hearing and terminated certain privileges they enjoyed as union members.

Respondent failed to file a timely answer to the complaint.

On December 23, 1977, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits attached. Subsequently, on January 6, 1978, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter sent a letter dated January 13, 1978, to the Board in response to Notice To Show Cause. The letter stated that intraunion charges against Charging Parties Jensen and Brady had been dropped.

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.

Upon the entire record in this proceeding, the Board makes the following:

### Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing issued on September 16, 1977, and duly served on Respondent on September 20, 1977, specifically stated that unless an answer was filed by Respondent within 10 days of service thereof "all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board." According to the record herein, and the uncontroverted allegations

contained in the Motion for Summary Judgment, counsel for the General Counsel, after numerous attempts, succeeded in contacting Respondent's representative, Kerry Olsen, by telephone on December 22, 1977, to determine whether Respondent planned to file an answer. Respondent was advised that if no answer was filed immediately a Motion for Summary Judgment would be filed. Mr. Olsen stated that Respondent had no present plans to take any action on the matter. Not having received Respondent's answer by December 23, 1977, on that date counsel for the General Counsel issued the Motion for Summary Judgment herein which was received by and filed with the Board in Washington, D.C., on December 28, 1977.

Respondent was given an additional opportunity to be heard following issuance of the order transferring proceeding to the Board and Notice To Show Cause on January 6, 1978. As indicated previously, Respondent's only response was a letter to the Board dated January 13, 1978, stating that intraunion charges against the Charging Parties had been dropped. No other reason for failing to answer was given.

Because the Board has been unable to find in Respondent's letter or otherwise a sufficient cause why the General Counsel's Motion for Summary Judgment should not be granted, we hereby grant that Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE COMPANY

The American Coal Company (herein the Employer), a Utah corporation with its principal office and place of business at Orangeville, Utah, is engaged in the mining and sale of coal. The Employer, in the course and conduct of its business operations, annually purchases and receives goods and materials valued in excess of $50,000 directly from points and places outside the State of Utah.

We find, on the basis of the foregoing, that Employer is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

United Mine Workers of America, Local 1859, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICE

The record shows that on April 5, 1977, Union President Lee Hatton approached Charging Party Wallace Jensen and told him that he would blackball Jensen from employment with employers with whom the Union has contracts if Jensen testified against Hatton in an upcoming arbitration hearing. On the day of that hearing, May 13, 1977, an agent of the Union, Bill Crissman, told Charging Party Glenn Brady that his union card would be taken if he testified against Hatton. Despite these incidents, both Jensen and Brady did testify at the hearing. Thereafter, on or about May 20, 1977, Hatton threatened to break Brady's jaw and then slapped Brady's face for having testified at the hearing. About a month later, on or about June 22, 1977, Hatton told both Jensen and Brady, "I am going to push you as far as I can, right out of the Union," because of their testimony at the arbitration hearing. Subsequently, on July 31, 1977, a Trial Committee of the Union tried both Jensen and Brady for testifying against Hatton at the arbitration hearing, and terminated certain privileges they enjoyed as union members.

It is now well settled that it is a violation of the Act for a labor organization to impose or to threaten to impose penalties upon an employee-member who testifies in an arbitration or grievance proceeding. See *United Steelworkers of America, AFL–CIO–CLC, Local Union 5550, (Redfield Company),* 223 NLRB 854 (1976); *Freight Drivers and Helpers Local Union No. 557, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, (Liberty Transfer Company, Inc.),* 218 NLRB 1117 (1975). In the instant case, Respondent Union tried to intimidate the two employees in an effort to keep them from testifying. After the employees did testify, Respondent Union initiated intraunion disciplinary proceedings as punishment.[1]

Accordingly, we find that Respondent has restrained and coerced its employee-members in the exercise of the rights guaranteed them under Section 7 of the Act, thereby violating Section 8(b)(1)(A) of the Act.

[1] As indicated previously, Respondent filed a letter in response to the Notice To Show Cause wherein it asserted that all charges (presumably intraunion charges against the Charging Parties) have been dropped, hence "there is no sense in holding a hearing . . . ." It is now well established, however, that "discontinuance of unfair labor practices does not render moot the charges based thereon" and a Board order "is necessary as an assurance against a recurrence of the violation. . . ." *Insurance Agents' International Union, AFL–CIO (The Prudential Insurance Company of America),* 119 NLRB 768 (1957).

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

The activities of Respondent set forth in section III, above, occurring in connection with the operations of the Employer 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.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

### CONCLUSIONS OF LAW

1. American Coal Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. United Mine Workers of America, Local 1859, is a labor organization within the meaning of Section 2(5) of the Act.
3. By threatening to blackball from employment and by threatening expulsion from the Union if an employee-member testified at an arbitration hearing against another employee, by threatening to assault, and assaulting, and by conducting an intraunion proceeding resulting in termination of certain privileges for actually testifying in that arbitration hearing, Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

### THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, we shall order that it cease and desist therefrom, that it take certain affirmative action, and that it post the appropriate notice.

Inasmuch as we have found that Respondent's action in disciplining its members Wallace Jensen and Glenn Brady was unlawful, Respondent will be required to rescind that disciplinary action. Respondent will be required to restore to Wallace Jensen and Glenn Brady the privileges taken from them as a result of the action of the Union's Trial Committee on July 31, 1977, without prejudice to any right, interest, or benefit that Jensen and Brady might have been entitled to but for the unlawful action taken against them. Respondent will be further required to expunge from its records any documents or entries purporting to show any disciplinary action taken against Wallace Jensen and Glenn Brady because of their testimony at an arbitration hearing.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, United Mine Workers of America, Local 1859, Orangeville, Utah, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Restraining and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act by trying employee-members in internal union disciplinary proceeding; threatening employee-members with expulsion from the Union or other disciplinary action, and/or assaulting or threatening to assault employee-members, where any such conduct is engaged in because the employees were planning to give or because they gave testimony adverse to the Union's position in an arbitration hearing under a collective-bargaining agreement thereby also impairing the integrity of arbitration procedures under a collective-bargaining agreement.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Immediately restore to Wallace Jensen and Glenn Brady any privileges taken from them as a result of the action of the Trial Committee, without prejudice to any rights, interest, or benefits to which they would have been entitled as of and since the date of the intraunion proceeding directed against them.

(b) Expunge from its records any documents or entries purporting to show any disciplinary action taken against Wallace Jensen and Glenn Brady for giving testimony in an arbitration hearing.

(c) Post at its offices and meeting halls copies of the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by Respondent's 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 employee-members are customarily posted. Reason-

[2] 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."

able steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

## APPENDIX

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

WE WILL NOT restrain and coerce employees in their rights, guaranteed by Section 7 of the National Labor Relations Act, by trying Wallace Jensen or Glenn Brady or any of our members in internal union disciplinary proceedings before our executive board or any other tribunal of our Union for giving testimony adverse to any of our members or to our position in grievance arbitration hearings under a collective-bargaining agreement. Nor will we threaten any of our members with fine, expulsion from our labor organization, or with any other disciplinary action for giving such testimony. Nor will we assault or threaten to assault any of our members for giving such testimony.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed by Section 7 of the Act, or impair the integrity of the arbitration procedures of the collective-bargaining agreement.

WE WILL immediately restore to Wallace Jensen and Glenn Brady all privileges taken from them as a result of the action of our Trial Committee, without prejudice to any rights, interest, or benefits to which they may be entitled as of and since the date of the intraunion proceeding directed against them.

WE WILL expunge from our records any documents or entries purporting to show any disciplinary action taken against Wallace Jensen and Glenn Brady because they gave testimony at an arbitration hearing.

UNITED MINE WORKERS
OF AMERICA, LOCAL
1859