International Brotherhood of Electrical Workers, Local 112, AFL–CIO (Ajax Electric Company) *and* Donald E. Singleton and Dennis M. Wiggins. Case 19–CB–2710

August 8, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND WALTHER

On February 2, 1977, Administrative Law Judge Roger B. Holmes issued the attached Decision in this proceeding. Thereafter, Respondent Union filed exceptions and a supporting brief, and the General Counsel filed a motion to correct error in the Administrative Law Judge's recommended Order and notice to employees and members.

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,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order as modified below.[2]

The complaint alleges, in substance, that Respondent violated Section 8(b)(1)(A) and (2) of the Act by attempting to cause the discharge of employees Dennis Wiggins and Donald Singleton for reasons other than nonpayment of dues and initiation fees and for filing a charge against Respondent with the Board.

As set forth more fully in the Administrative Law Judge's Decision, the record reveals that, in April 1976, the Employer hired employee Wiggins for work at the Pendleton, Oregon, jobsite and then terminated journeyman Couch because of dissatisfaction with his performance. Employer's foreman, Bennett, credibly testified that Respondent's assistant business manager, Williams, came to the jobsite on the following day and told Bennett "that if anybody was to be laid off it should have been Dennis Wiggins, because he was a traveler and the man I laid off was a local man."

In June 1976, Bennett terminated the employment of apprentice Carrier because he was doing the least amount of work. According to Bennett's credited testimony, Williams again came to the Pendleton jobsite and told Bennett that Carrier should not have been fired, "that this was the only local man I had on the job and I should have laid off the travelers I had before I laid off the local men." After refusing to reinstate Carrier, Williams told Bennett that he was going to pull everybody off the crew and that he was going to talk to the men during the lunch hour and ask them to quit as a personal favor to him.

With regard to the Kennewick, Washington, project, Bennett credibly testified that Respondent's business manager, Elgin, requested that Bennett lay off the travelers because of the number of local men out of work. Following his conversation with Elgin, Bennett informed Singleton and Wiggins, the only persons working at that time on the Kennewick job, that Respondent's business manager wanted him to lay them off because they were travelers. As a result of this conversation with Bennett, Singleton and Wiggins filed the unfair labor practice charge. Shortly thereafter, Elgin called Bennett into his office. Bennett credibly testified:

> . . . he wasn't happy that I had gone and told Don [Singleton] and Dennis [Wiggins]. He said that the Labor Relations Board had had a filing against them.
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> He said he assumed it would be confidential between him and myself and he didn't expect me to go over and tell them. He said, "Now we are going to have to go to court." That he wasn't sure if he could find anybody that would work on a job because the other men in the union would know that their dues were going to have to go for a lawyer to fight the case.
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> He did say it was kind of a touchy situation that we are going through. I said yes, I knew. I told him I thought it was against the law and he said it was. And he asked me if I would lay Don Singleton off.
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> Bennett then informed Singleton and Wiggins that Elgin had asked him to fire them because they had filed a charge with the Board.

On these facts the Administrative Law Judge found, and we agree, that Respondent violated Section 8(b)(1)(A) and (2) of the Act by attempting

[1] The Respondent 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), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The General Counsel requests that the Board correct an inadvertent error in the Administrative Law Judge's recommended Order and notice to employees and members by substituting the words, "in any other manner" for "in any like or related manner." The General Counsel's motion is hereby granted. We shall herein correct the error by including the broad cease-and-desist order appropriate in these circumstances. See *Wright-Schuchart-Harbor*, 227 NLRB 1007, fn. 2 (1977).

at various times to cause the Employer to discharge employees Dennis Wiggins and Donald Singleton because they were travelers instead of members of Respondent, and because they had filed an unfair labor practice charge under the Act against Respondent. Specifically, in addition to the requests to lay off the travelers, Respondent threatened to cause a work stoppage among the employees at the Pendleton jobsite because of Bennett's refusal to discharge Wiggins. Respondent also warned Bennett that union members would not work for the Employer at the Kennewick project unless the Employer complied with Respondent's request to discharge the persons who had filed the charge against the Union. In short, the Administrative Law Judge correctly observed that Respondent was not merely relaying information to the Employer about a personality clash among the employees but was actively seeking their termination. Accordingly, we shall adopt the Administrative Law Judge's Decision.

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 herein, and hereby orders that the Respondent, International Brotherhood of Electrical Workers, Local 112, AFL–CIO, Kennewick, Washington, its officers, agents, and representatives, shall take the action set forth in the said recommended Order as so modified:

1. Substitute the following for paragraph 1(b):

"(b) In any other manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act."

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

CHAIRMAN FANNING, dissenting:

This is a case alleging attempts by the Union to cause the discharge of journeyman electricians Singleton and Wiggins. The Employer is an electrical contractor in the construction industry. The alleged attempts occurred at jobsites in Pendleton, Oregon, and Kennewick, Washington. The Administrative Law Judge credited the testimony of Employer's foreman, Bennett, whose testimony is uncontroverted as to the Pendleton job, but is disputed by Union Business Manager Elgin concerning some aspects of discussions about the Kennewick job.

Taking at face value Foreman Bennett's account as recited by the Administrative Law Judge, I cannot agree with my colleagues to find 8(b)(1)(A) and 8(b)(2) violations. I would dismiss. I think it fair to conclude on the credited evidence and the record as a whole that the Union was performing its obligation of fairly representing the unit employees—the unit being one established by contract with the National Electrical Contractors Association of whose Western Division the Employer is a member.

At Pendleton, Assistant Business Agent Williams, who did not testify, came to the job on two occasions in the spring of 1976: first in an effort to have journeyman Couch rehired, and several weeks later to request the rehire of apprentice Carrier. As to the Couch incident, Bennett quoted Williams as telling him "that if anybody was to be laid off it should have been Dennis Wiggins, because he was a traveler and the man I laid off was a local man." Wiggins, in fact, had recently been cleared for the job by the Union, whereupon Bennett let Couch go because of dissatisfaction not clearly specified. As to the Carrier incident, materials were then running low, the then complement of electricians consisted of Bennett, three travelers who were journeymen (Singleton, Wiggins, and Mitch), and apprentice Carrier. Bennett let Carrier go because he was doing the least work.[3] Williams came to the job and told Bennett that, from the Union's standpoint and from the apprentice's standpoint, Carrier should not have been discharged and asked Bennett to rehire him. According to Bennett, Williams "told me again that this was the only local man I had on the job and I should have laid off the travelers I had before I laid off the local man." When Bennett refused, Williams told Bennett he was going to pull everybody off, talk to the men at lunch, and ask them to quit as a personal favor to him. Though Williams was seen later talking to the men, there is no testimony as to what he said and no work stoppage occurred.

The upshot of these two incidents was that Couch was offered his job back but declined; Carrier accepted a similar offer. In both instances Respondent was seeking the retention of unit members newly laid off. In my view these were attempts by Respondent to perform its obligation of representing the unit employees, not unlawful encouragement of union membership within the meaning of Section 8(b)(2).[4]

[3] Bennett agreed there had been "some rather significant conflict" over whether Carrier was to take orders from him as foreman or from one of the journeymen, the latter policy being consistent with the Union's traditional method of handling apprentices, a policy Bennett said he now understood.

[4] See *International Hod Carriers, etc., Local 7 AFL-CIO (Yonkers Contracting Co., Inc.)*, 135 NLRB 865 (1962), where the job steward recommended the retention of an employee about to be laid off because his phase of the work was ending, and against the hire of an applicant, also a union member. The Board said at 866:

(Continued)

At Kennewick the job location was a store being constructed across the highway from the union hall, a distance of "probably 2 blocks." Prior to a major strike that summer the Union had had approximately 500 members and 500 travelers and could place both. Apparently this strike was ongoing in July when Bennett called the hall and cleared the matter of bringing "his crew" up from Pendleton. As Bennett recalled: "I took Dennis [Wiggins] and Don [Singleton] to Kennewick and I was running another job there [possibly meaning two jobs at Kennewick?]. I went over to the Union hall to get some termination slips." While there he was called in to talk with Business Agent Elgin, who understood that the Local 112 people who had been working for Bennett in Pendleton did not desire to come to Kennewick, but that Bennett would bring the other two. On direct, Bennett testified that Elgin spoke of the strike at Hanford, the fact that Local 112 had people on the out-of-work roll due to the strike (Elgin himself referred to 60 men), and that local men could look right across to Bennett's jobsite and see travelers working.[5] On cross-examination, Bennett agreed that Elgin spoke of the strike in greater detail: "[T]he strike is the Tri-Cities with five, six, seven, or eight thousand men out of work and it didn't look very good to have travelers on the job across the street." In both versions, Elgin asked Bennett's "cooperation" in laying off the travelers in favor of hiring local men. Bennett said that he would cooperate. What he did was to return to the jobsite, tell Singleton and Wiggins that the business manager at the Local wanted him to lay them off as travelers, and ask them if they wished to continue on the job.

In view of the scope of the strike and the increased pressure on the hiring hall, I would not interpret Elgin's request for cooperation as a specific request for the discharge of Singleton and Wiggins. Elgin's explanation is consistent with Bennett's testimony: "I just made him aware of the problem it is for us, and that was it." The proximity of the union hall to the job created an obvious problem when local men in large numbers were looking for work. Plausibly Bennett, who had worked steadily for Ajax for 14 years and the last 7 as a foreman, might have cooperated by keeping his eye out for another job for the two, less strategically located. Hiring additional men locally would also help and Bennett sought to do that several weeks later. The impact of a major strike on the operation of a hiring hall is a problem that deserves more consideration by this Board.[6]

According to Bennett, he allowed Singleton and Wiggins to decide the issue themselves as he wanted to be sure he had people on the job and to know whether these two wanted to stay. In any event, they were not discharged. As I would not find Elgin's remarks, as reported by Bennett, to have been a specific request to discharge Singleton and Wiggins, and as employment in July 1976 was aggravated by the strike situation in a manner that fully explains Elgin's solicitation of cooperation in hiring local men—and/or laying off those who had come to the job as travelers[7]—I would not find a violation of Section 8(b)(2) with respect to the above incident.

Singleton and Wiggins then jointly filed the charge here. According to Wiggins he did this because of what he had been told by Bennett. Singleton had filed a charge not too long before the one filed here. The record shows little concerning it except that Board personnel went over the Union's records and it was dismissed.

It is a union's function to attempt to obtain benefits for the employees it represents. Here the Respondent was performing that function by inducing the employer to fill desirable new jobs from within the working force rather than by hiring from outside. Although this might encourage union membership, it would be the type of encouragement the Supreme Court was referring to when it stated in *Local 357, Teamsters* v. *N.L.R.B.* (365 U.S. 667, 675–676); "The truth is that the union is a service agency that probably encourages membership whenever it does its job well." Finding a violation in this case would penalize the Respondent for attempting to preserve job opportunities for the unit employees it represented. . . . Clearly, this was an attempt by the Respondent to perform its obligations of representing the employees.

[5] Wiggins testified that he did not consider himself a traveler because he had moved to the area about 2 years before, was book 2 the first year, and after that, book 1 resident. "I get tired of being called a traveler because I don't have a membership in this local." Membership takes "three or four, years." He defined a traveler as he understood it:

> Well, a traveler to me means someone, a Book 2 man, who travels, moves his trailer in here, works on Hanford, picks up in eight or nine months and goes to Reno to work, goes to San Francisco, follows the jobs more or less. That to me is what a traveler is, although everyone is a traveler who isn't a local member. . . ."

Wiggins' original local was 48 at Portland; he also pays dues to Local 112. He stated that nobody had discriminated against him with respect to getting jobs off book 1.

Singleton did not testify. He was asked, after Wiggins testified, if he wished to, and said, "Not presently."

[6] See my dissent in *International Union of Operating Engineers, Local No. 450, AFL–CIO (Holloway Sand and Gravel Co., Inc.)*, 222 NLRB 1213 (1976).

[7] Asked to define "traveler" Elgin said: "Of course a traveler is a member of the I.B.E.W., or the brotherhood. When a traveler comes in from out of the jurisdiction, we have certain requirements to assigning him to our referral procedure. Book 1 and Book 2 are for journeymen wiremen. Book 2 is what the traveler signs when he comes in. Prior to signing it he fills out a work application, shows proof from his home local of having passed the journeyman wireman examination. He works on Book 2 for one year and then he is on Book 1. He benefits from all of our fringe benefits, attends our meetings, has a voice in the meeting, but he has no vote in the meeting. And this is the only difference." As to the policy of Local 112 concerning a distinction between locals and travelers, he said: "Well, this is not a policy of any local union. It is understood by a traveler, and myself in traveling around the country that I have done, that when work does slow down the local people are the ones to stay on the job. But there is nothing in the collective bargaining agreement or the by-laws or constitution that says this is an item you enforce. It is understood in the brotherhood, is all." Elgin agreed that it was sort of an unwritten understanding that has developed over the years.

At the end of July, Bennett went to the union hall for the second time, this time with the purpose to request two more men. He talked with Elgin. According to Bennett's cross-examination, Elgin "advised" him to lay off Singleton as a known troublemaker. Bennett was closely questioned concerning his use of the word "advised" and responded that, in fact, it was Elgin's word and that he, Bennett, "took" Elgin's comments as advice and chose not to follow it. In this postcharge conversation there was no reference to Wiggins by Elgin.[8] Thus "advice" was the posture and it related to Singleton alone, though the Administrative Law Judge interpreted it as referring to both men simply because both had signed the charge. Such advice with regard to Singleton being a troublemaker referred at least in part to the earlier charge that was dismissed as lacking in merit.

There is also Elgin's doubt expressed in this conversation that he could find Bennett "anybody that would work on a job because the other men in the Union would know that their dues were going to have to go for a lawyer to fight the case." Respondent urges as controlling the case of *George Williams Sheet Metal Co.*, 201 NLRB 1050 (1973), where employees struck spontaneously in disapproval of a fellow employee, and the union acted—albeit before a charge was filed—as a conduit in informing the employer of employee sentiments. The information supplied by the union was to the effect that the employee would have to be removed before his fellow employees would return to work. Here we have a business manager's request for cooperation during a strike, a rather logical request that went awry. In all the circumstances, I am inclined to conclude that the Union was functioning as a conduit to relay employee reaction to the whole episode. To say that a union may do so with impunity in circumstances such as these, where a charge has been filed, is a fine line to draw, perhaps, but this is a case with very little substance.

[8] Elgin testified that he bore no ill will to the Charing Parties and recalled that Wiggins originally came to the LaGrande-Kennewick area with the idea of going into business as an electrical contractor and the Union at the time waived the contract requirement of employing "a person full time." However, Wiggins eventually went to work as a journeyman and, after a year's residence, was put on book 1. So far as Elgin knows, Wiggins has never been treated any differently from anyone else on book 1.

APPENDIX

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

WE WILL NOT attempt to cause Ajax Electric Company to terminate Donald E. Singleton and Dennis M. Wiggins either because they are travelers, or because they filed an unfair labor practice charge under the Act against us.

WE WILL notify Ajax Electric Company that we do not object to the employment of Singleton and Wiggins by that Company.

WE WILL NOT in any other manner restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 112, AFL–CIO

DECISION

STATEMENT OF THE CASE

ROGER B. HOLMES, Administrative Law Judge: The charge in this case was filed on June 22, 1976, by Donald E. Singleton and Dennis M. Wiggins. The complaint was issued on September 8, 1976, on behalf of the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for Region 19. The complaint alleges that International Brotherhood of Electrical Workers, Local 112, AFL–CIO, herein called the Respondent, has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, herein called the Act. The Respondent filed an answer to the complaint and denied the commission of the alleged unfair labor practices.

The hearing was held before me on January 4, 1977, at Richland, Washington. Briefs were timely filed before the due date, February 1, 1977, by the General Counsel and by the Respondent and have been duly considered.

Upon the entire record and based upon my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Ajax Electric Company, herein called the Employer, has been at all times material herein an Oregon corporation with an office and place of business located at Portland, Oregon. The Employer is engaged in the construction industry as an electrical contractor.

During the 12 months preceding the issuance of the complaint, which period was representative of all times material herein, the Employer in the course and conduct of its business operations performed services valued in excess of $50,000 for customers located outside the State of Oregon.

Based upon the foregoing stipulated facts, I find that the Employer has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It was stipulated that the Respondent has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act. Based upon that stipulation and the record, I so find.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Background*

The parties stipulated to the following facts for the purposes of this proceeding.

At all times material herein, the Employer was a member of the Western Division, Inland Empire Chapter of the National Electrical Contractors Association, which is an organization of employers existing for the purpose of dealing with labor organizations representing employees and its employer-members concerning wages, hours, and other terms and conditions of employment.

By virtue of its membership in the National Electrical Contractors Association, the Employer has been at all times material herein a party to a collective-bargaining agreement with the Respondent which designated the Respondent as the exclusive bargaining representative of certain employees, including, *inter alia,* journeyman electricians.

The Respondent has been at all times material herein the duly recognized exclusive collective-bargaining representative within the meaning of Section 9(a) and (c)(1) of the Act of the employees of the Employer referred to above, and those employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Singleton was employed by the Employer as a journeyman electrician on or about May 30, 1976, and Wiggins was employed by the Employer as a journeyman electrician during the month of April 1976. During their employment and at all times material herein, Singleton and Wiggins were employed pursuant to the terms of the contract between the Employer and the Respondent in the appropriate collective-bargaining unit described above.

George Elgin has been business manager and Don Williams has been the assistant business manager of the Respondent at all times material herein and they have been agents of the Respondent acting on its behalf within the meaning of Section 2(13) of the Act.

B. *The Events in Pendleton, Oregon*

1. The first conversation between Bennett and Williams

Richard Bennett has worked for the Employer about 14 years and has been a foreman electrician for the Employer for about the past 7 years. As a foreman electrician, Bennett possessed the authority to hire and fire employees. Bennett had his initial contact with Business Manager Elgin and Assistant Business Manager Williams about 4 years ago in Yakima, Washington. However, his contacts with Elgin during the ensuing time were infrequent since he estimated that he had seen Elgin only two or three times during the 4-year period.

At a jobsite in Pendleton, Oregon, Bennett had a journeyman named Couch who had worked only about 27 hours there and who, in Bennett's opinion, was not showing up on the job as he should be.

Meanwhile, Wiggins stopped by the jobsite and informed Bennett that he was going to sign up with the Respondent in Kennewick. Thereafter, Bennett telephoned the Respondent and requested the referral of Wiggins to the jobsite. He was told that would be "no problem," and the Respondent did refer Wiggins to work for the Employer at Pendleton; whereupon Bennett laid off or discharged journeyman Couch.

The next day Assistant Business Manager Williams came to the jobsite. Bennett testified that Williams "told me that if anybody was to be laid off it should have been Dennis Wiggins, because he was a traveler and the man I laid off was a local man." Bennett told Williams that he did not want any hassles, and that he would take Couch back to work if Williams "would have a talk with him and straighten him out." According to Bennett, however, Couch would not return to work there. Wiggins continued his employment with the Employer.

The foregoing findings of fact are based upon the uncontradicted testimony of Bennett. Williams did not testify.

The General Counsel's complaint alleges that this incident took place on or about March 26, 1976. Bennett also placed this event as occurring in March 1976. The stipulation of the parties was that Wiggins was employed by the Employer during the month of April 1976. That fact was also alleged in the General Counsel's complaint and stipulated to by the parties at the hearing. Bearing in mind that Bennett was testifying in January 1977 as to the time of an incident which had occurred in the spring of 1976, and further bearing in mind the complaint allegation and stipulation of the parties that Wiggins was employed during the month of April 1976 as a journeyman electrician by the Employer, I find that this first conversation between Bennett and Williams took place in April 1976. Nevertheless, that is only a slight variation between the complaint allegation and the proof at the hearing as to the timing of the event.

2. The second conversation between Bennett and Williams

Several weeks later Bennett was running low on material at the Pendleton jobsite. At that point in time there were five persons working for the Employer on that job. They were Bennett, Singleton, Wiggins, an employee identified only as Mitch, and an apprentice named Carrier. Singleton, Wiggins, and Mitch were "travelers."

In Bennett's view, Carrier was the one who was doing the least amount of work, so he laid off or discharged Carrier. Bennett acknowledged at the hearing that there had been some conflict between Carrier and him as to whether Carrier was to take orders from Bennett, who was his foreman, or from one of the journeyman employees on the job.

Once again, Assistant Business Manager Williams came to the Pendleton jobsite. Williams told Bennett that, from the Respondent's point of view and from the apprentice's

point of view, Bennett should not have fired Carrier. Bennett testified that Williams "told me again that this was the only local man I had on the job and I should have laid off the travelers I had before I laid off the local men." Williams asked Bennett to hire back Carrier, and Bennett refused to do so. Williams told Bennett that he was going to pull everybody off the crew and that he was going to talk to the men during the lunch hour and ask them to quit as a personal favor to him. Bennett observed Williams go to the men during the lunch hour, but he did not overhear any of the conversations. No work stoppages occurred.

The Employer rehired Carrier, who remained working on the job.

The foregoing findings of fact are based upon the uncontradicted testimony given by Bennett. As noted earlier, Williams did not testify in this proceeding.

As to the timing of the second conversation between Bennett and Williams, Bennett placed this event as happening 2 to 3 weeks, or a month, after the first conversation. The General Counsel's complaint alleges that the incident took place during the month of June 1976. The complaint also alleged and the parties stipulated at the hearing that Singleton was employed by the Employer as a journeyman electrician on or about May 30, 1976. Bearing in mind the stipulated facts and bearing in mind that Bennett was attempting in January 1977 to recall the time of an event in late spring or early summer of 1976, I find that the second conversation took place during the month of June 1976 as alleged in the complaint.

C. *The Events in Kennewick, Washington*

1. The first and second conversations between Bennett and Elgin

The first conversation pertinent to this proceeding between Foreman Bennett and Business Manager Elgin took place on the telephone. Bennett called Elgin and asked him if he could transfer his crew from the Pendleton job to a job in Kennewick, Washington. Elgin said "yes."

In July 1976, Bennett was in the Respondent Union's hall when Williams asked Bennett to talk with Elgin. Bennett related the following conversation with Elgin:

> I went into his office and he told me that we had kind of a touchy situation here, there was a strike at Hanford and there was [sic] men out of work and the local men could look right across the street and see that I had travelers on the job and they didn't like it. He asked for my cooperation, if I would lay them off, so we could put the local men on the job.
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> I told him he would have my cooperation and I left.

The foregoing findings of fact are based upon the testimony of Bennett. The recollection of Business Manager Elgin varied from the version given by Bennett — particularly in the absence of any mention of a request by Elgin that Bennett lay off the two travelers, Singleton and Wiggins. Elgin gave this version:

> Bennett did contact me and stated for me that our local people that were working for them in Pendleton did not desire to come to Kennewick and he did tell me that he was going to bring the other two people who were working for him at that time. The gist of the conversation was that I could tell him that we had approximately 60 people, due to the strike, on the out-of-work roll. This new store is right across the street from the union hall office and I was sure there was going to be a problem for me, for my local people to be in there looking for a job, and seeing travelers across the street. That was the gist of it.

George Elgin has worked in the electrical industry for 36 years. He progressed from an apprentice electrician to a journeyman and then to a foreman and a general foreman. He has been associated with the International Brotherhood of Electrical Workers, AFL–CIO, during this time and for the past 17 years he has been associated with Local 112. He has held local union offices, and for the past 6 years he has held his present position of business manager. Elgin said that in his position he has acquired some familiarity with the prohibitions of the National Labor Relations Act. Elgin pointed out that prior to the strike in the summer of 1976 the number of local members and the number of travelers was approximately the same, around 500 in each category. Elgin asserted that there had been no discrimination against the travelers.

The Board has given guidance in resolving credibility conflicts in its decision in *Northridge Knitting Mills, Inc.*, 223 NLRB 230 (1976). In that case, the Board discussed various criteria other than the factor of the demeanor of the witnesses. The Board stated (at 235):

> Nonetheless, it is abundantly clear that the ultimate choice between conflicting testimony also rests on the weight of the evidence, established or admitted facts, inherent probabilities, reasonable inferences drawn from the record, and, in sum, all of the other variant factors which the trier of fact must consider in resolving credibility. See, e.g., *Retail, Wholesale and Department Store Union, AFL–CIO [Coca-Cola Bottling Works, Inc.]* v. *N.L.R.B.*, 466 F.2d 380, 386–387 (C.A.D.C., 1972).

With the foregoing criteria enunciated by the Board in mind and, in addition, based upon the demeanor of the witnesses, I have found the testimony given by Bennett to be the complete and accurate account of these events. I have given consideration to the fact that the Respondent Union's agents protested Bennett's actions in terminating Couch and Carrier. Bennett readily acknowledged at the hearing that he thought that he was correct in taking those actions, but he said that he bore no ill will against the Respondent.

It can be argued that the latter statement is self-serving and should be examined closely. That is what I have done. I am persuaded that the record in this proceeding does not reveal such bias on the part of Bennett as would cause him to fabricate his versions of these events. Accordingly, for all of the foregoing reasons, and notwithstanding the fact that Elgin is an experienced union official who is aware of

the Act's prohibitions, I have credited Bennett's testimony throughout this proceeding. I have based the findings of fact in this section on his version.

2. The conversation among Bennett, Singleton, and Wiggins

Following his conversation with Elgin, Bennett spoke with Singleton and Wiggins, who were the only persons working on the Kennewick job at that time.

Bennett told them that the business manager of the Respondent Union wanted him to lay them off from work because they were travelers. Bennett asked them what they wanted to do and whether they wanted to stay on the job. They said that they did not want to be laid off.

Bennett did not lay off either Singleton or Wiggins, and the Respondent did not take any action.

As noted earlier, Singleton and Wiggins filed the unfair labor practice charge in this case on July 22, 1976. Wiggins testified that he based the charge on what he had been told by Bennett, and that he did not speak with Elgin or Williams prior to filing the charge. Singleton did not testify in this proceeding.

The foregoing findings of fact are based upon the testimony given by Bennett and by Wiggins who are credited.

3. The third conversation between Bennett and Elgin

About the end of July 1976, Bennett had still another conversation with Elgin. Bennett had gone to the Respondent Union's hall to make a request for two additional men. Elgin called Bennett into his office. Bennett testified:

> . . . he wasn't happy that I had gone and told Don and Dennis. He said that the Labor Relations Board had had a filing against them.
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> He said he assumed it would be confidential between him and myself and he didn't expect me to go over and tell them. He said, "Now we are going to have to go to court." That he wasn't sure if he could find me anybody that would work on a job because the other men in the union would know that their dues were going to have to go for a lawyer to fight the case.
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> He did say it was kind of a touchy situation that we were going through. I said yes, I knew. I told him I thought it was against the law and he said it was. And he asked me if I would lay Don Singleton off.

Bennett said that he did not respond to the last question and that he left.

At a later point in his testimony, Bennett related that Elgin "told me that Don Singleton was a known troublemaker and he would advise me to let him go." Bennett acknowledged that Elgin used the word "advised" in their conversation and that he took it as advice which he chose to disregard. Bennett stated that nothing happened as a result of his disregarding such advice.

Bennett said that he told Singleton and Wiggins that Elgin had asked him to fire them because they had filed a charge with the Board.

Singleton continued to work for the Employer, as did Wiggins, who took over as foreman of the Kennewick job for 1-1/2 months while Bennett went to another job. Singleton and Wiggins were laid off when there was no further work for them to do.

The foregoing findings of fact are based upon the credited testimony of Bennett. Elgin recalled the conversation differently. He testified:

> Well, Dick came into the office and I'm not sure whether the assistant asked him to come back but anyhow we ended up in my office. I did tell Dick that I sure didn't appreciate what happened out of our last discussion and I made him aware, which he was already aware, that charges had been brought against us, against the local union, and that was basically it. At no time did I tell him to lay off Singleton or Wiggins.
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> * * * * *
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> The only thing that was possibly said, and I'm not sure I have got it in the right context, but again this was our last discussion. Their new store just started there in Kennewick and I did make him aware that probably the members of 112 were not going to look too favorable at working there when they knew they had people there with charges against Local 112. That was really basically it.

At the hearing Elgin pointed out that Singleton and Wiggins have since used the Respondent Union's hiring hall facilities, and that no directives have been issued to the Respondent's employees to treat Singleton or Wiggins any differently from anyone else.

Elgin also stated that an earlier unfair labor practice charge against the Respondent had been filed by Singleton. He said that the earlier charge had been dismissed by the Regional Director for Region 19 for lack of merit. Elgin indicated an awareness of the prohibitions of the Act against a union seeking the discharge of a person by an employer because that person had filed a charge against the Union.

Elgin claimed that he had no ill will towards Singleton and Wiggins, and he recalled an event 2-1/2 or 3 years ago when the Respondent waived one of its requirements to enable Wiggins to qualify to become an electrical contractor.

After considering the foregoing and for the reasons previously indicated, I have credited the testimony of Bennett and based the findings of fact on his version of the conversations.

D. *Conclusions*

Based upon the credited testimony of Bennett, I conclude that the Respondent did attempt to cause the Employer to discharge Singleton and Wiggins on the various dates specified herein — at first because they were

travelers instead of members of the local union and, ultimately, because they had filed an unfair labor practice charge under the Act against the Respondent.

Specifically, I conclude that the evidence shows that: (1) in April 1976 at the Pendleton jobsite, Assistant Business Manager Williams attempted to cause Bennett, as the foreman electrician of the Employer, to terminate Wiggins because Wiggins was a traveler; (2) in June 1976 at the Pendleton jobsite, Assistant Business Manager Williams attempted to cause Bennett to terminate Singleton and Wiggins because they were travelers and in this connection Williams told Bennett that he would attempt to cause the other employees to cease work; (3) in July 1976 at the Respondent's office in Kennewick, Business Manager Elgin attempted to cause Bennett to terminate Singleton and Wiggins because they were travelers; and (4) about the end of July 1976 at the Respondent's office in Kennewick, Business Manager Elgin attempted to cause Bennett to terminate Singleton and Wiggins because they had filed an unfair labor practice charge under the Act against the Respondent, and Elgin warned Bennett that members of the Respondent would not perform work for the Employer because of the pending unfair labor practice charge if the Employer continued to employ Singleton and Wiggins.

In *George Williams Sheet Metal Co.*, 201 NLRB 1050, 1055 (1973), the Board adopted the findings and conclusions of the Administrative Law Judge who recommended dismissal of the complaint alleging 8(a)(1) and (3) violations by the respondent employer and 8(b)(1)(A) and (2) violations by the respondent union in that case. The allegations involved, *inter alia*, whether the union had attempted to cause and did cause the employer to discharge Rodney L. Tweedy. The allegations were dismissed by the Administrative Law Judge who concluded that: "The Union functioned as a conduit for relaying the employees' sentiments by informing the Company that Tweedy would have to be removed from the Project in order to induce the men to return to work."

In the Respondent's brief it is urged that a situation similar to the *George Williams* case exists here where, in the Respondent's view, Elgin's comments referred only to the probable attitude of the individual members of the Respondent and did not purport to be a demand or instruction from the Respondent itself. However, in the *George Williams* case it was noted that the effort to remove Tweedy from the project had begun a week before the filing of the unfair labor practice charge and, additionally, it was noted that the discharge of Tweedy was not sought because he was not a union member. Instead, it appears that certain employees found Tweedy to have an abrasive personality in their opinion. The Administrative Law Judge stated at 1053–1054:

> What the testimony in this case shows is that the sheet metal workers found Tweedy's personality abrasive. They considered Tweedy arrogant, domineering, and overbearing and found it offensive working with him. As Tweedy worked at a substantially faster pace than the other employees undoubtedly this served to aggravate their irritation with him.

It appears from the foregoing that the *George Williams* dispute concerned more of a personality problem than anything else. The Administrative Law Judge noted that the union in that case did not endorse or condemn the threats made by the employees regarding their quitting work and merely relayed the information to the company. The work stoppage was a spontaneous action which was taken without consultation or approval by the union agents.

After considering the foregoing, I find the *George Williams* case to be distinguishable from the facts in the present proceeding. Here the Respondent's agents were not merely relaying information about a personality clash among the employees, but instead they were actively seeking the termination of Singleton and Wiggins. In one instance the Respondent's agent supported his attempt to bring about the discharge of Wiggins by stating to Bennett that he would attempt to cause a work stoppage among the other employees at the Pendleton jobsite. In another instance there was the warning that union members would not work for the Employer unless the Employer complied with the Union's request to discharge the persons who had filed the charge against the Union. It is noteworthy that, at the very time that the warning was made by Elgin, Bennett had come to the union hall to request that the Union refer two more persons to work for the Employer at the Kennewick jobsite.

In light of all the circumstances, I conclude that the Respondent's actions amounted to more than a "bare request" and, although the Respondent was not successful, the Respondent did attempt to cause the discharge of Singleton and Wiggins. See *International Brotherhood of Carpenters and Joiners, Local 1092 (Walsh Construction Company)*, 219 NLRB 372 (1975); see also the Board's note with regard to a "simple request" which, unlike the instant case, was an effective request in *San Jose Stereotypers' and Electrotypers' Union No. 120, International Stereotypers' and Electrotypers' Union of North America, AFL–CIO (Dow Jones & Company, Inc.)*, 175 NLRB 1066, fn. 3 (1969).

After considering the foregoing, I conclude that the Respondent violated Section 8(b)(1)(A) and (2) of the Act in attempting to cause the Employer to discharge Singleton and Wiggins because they were travelers instead of members of the Local Union.

Turning now to the other basis for the General Counsel's complaint, it is clear that both Singleton and Wiggins had the right of access to the use of the Board's processes. As the Supreme Court stated in *N.L.R.B.* v. *Industrial Union of Marine & Shipbuilding Workers of America, AFL–CIO [United States Lines Co.]*, 391 U.S. 418, 424 (1968): "Any coercion used to discourage, retard, or defeat that access is beyond the legitimate interests of a labor organization." In the instant case, the coercion is found in the Respondent's attempt to cause the Employer to discharge them after they had filed an unfair labor practice charge against the Respondent. That attempt was coupled with the warning that members of the Union would not work for the Employer because of the charge having been filed. I am not unmindful that Elgin's final request was specifically to lay off Singleton in that particular conversation. However, in the context of that last conversation, I find that the attempt

was being made to cause the Employer to terminate both Singleton and Wiggins since both persons had, in fact, jointly filed the same charge against the Union. I conclude that the Respondent thereby violated Section 8(b)(1)(A) and (2) of the Act.

Finally, the fact that Charging Party Singleton did not testify in this proceeding would not, by itself, be a basis for dismissing the allegations of the complaint as to him. *Riley Stoker Corporation,* 223 NLRB 1146 (1976); *Bechtel Power Corporation,* 223 NLRB 925 (1976), and *Satra Belarus, Inc.,* 226 NLRB 744 (1976).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

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

CONCLUSIONS OF LAW

1. International Brotherhood of Electrical Workers, Local 112, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. Ajax Electric Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. By attempting to cause Ajax Electric Company to terminate Dennis M. Wiggins in April 1976 because he was a traveler; by attempting to cause the Employer to terminate Donald E. Singleton and Wiggins in June 1976 because they were travelers; by attempting to cause the Employer to terminate Singleton and Wiggins in July 1976 because they were travelers; and by attempting to cause the Employer to terminate Singleton and Wiggins about the end of July 1976 because they had filed an unfair labor practice charge under the Act against the Respondent, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7)of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

Because the attempts by the Respondent to cause the Employer to terminate Singleton and Wiggins were not successful, and because the record shows that Singleton and Wiggins did not suffer any loss of wages attributable to the actions of the Respondent, I shall not recommend the award of backpay in these circumstances.

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

ORDER[1]

The Respondent, International Brotherhood of Electrical Workers, Local 112, AFL–CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Attempting to cause Ajax Electric Company to terminate Donald E. Singleton and Dennis M. Wiggins because they are travelers or because they filed an unfair labor practice charge under the Act against the Respondent.

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

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Notify Ajax Electric Company that the Respondent does not object to the employment of Singleton and Wiggins by the Employer.

(b) Post at its business office and meeting halls copies of the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by the Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members or applicants for referral are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material.

(c) Furnish to the Regional Director for Region 19 signed copies of the aforementioned notice for posting by Ajax Electric Company, that Employer being willing to do so, at all locations where notices to its employees are customarily posted.

(d) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[1] 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.

[2] In the event that the Board's 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."