

**Local Union No. 673, International Union of Operating Engineers, AFL-CIO (Westinghouse Electric Corporation) and Isaac L. Blackwell.** Case 12-CB-1639

May 17, 1977

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND  
WALTHER

On February 7, 1977, Administrative Law Judge Max Rosenberg issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering 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 briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, as modified below, and to adopt his recommended Order.

We agree with the Administrative Law Judge that the Respondent did not violate Section 8(b)(1)(B) of the Act, which proscribes a labor organization from restraining or coercing an employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances. The Administrative Law Judge based his conclusion on the finding that Isaac Blackwell, the Charging Party and the Employer's master mechanic at its project in East Palatka, Florida, was not a supervisor within the meaning of Section 2(11) of the Act. Consequently, the Administrative Law Judge concluded, Blackwell was not an employer representative for the purposes of collective bargaining or the adjustment of grievances. In reaching this conclusion, the Administrative Law Judge relied on the principle enunciated in the *Toledo Blade* case<sup>1</sup> that persons who are supervisors within the meaning of the Act are also employer representatives within the meaning of Section 8(b)(1)(B).<sup>2</sup> We agree with the Administrative Law Judge's finding that Blackwell was not a supervisor. However, we base that finding on reasons different from those set forth by the Administrative Law Judge.

<sup>2</sup> This principle has been stated more recently in the following cases: *Operating Engineers, Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO (Redi-Mix Products, Inc., d/b/a Visalia Redi-Mix)*, 219 NLRB 531 (1975), and cases cited therein at 537, fn. 11; *Wisconsin River Valley District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Skippy Enterprises, Inc.)*, 211 NLRB 222, 226 (1974).

Section 2(11) of the Act sets forth several indicia of the existence of supervisory authority.<sup>3</sup> Some of the testimony by Blackwell, the Employer's project manager (Charles Reep), and its construction superintendent (Jim Smith) appeared to suggest that Blackwell possesses certain types of supervisory authority—namely, the authority to hire, fire, transfer, promote, discipline, assign, responsibly direct employees, adjust their grievances, or effectively recommend such actions. However, the bulk of this testimony was conclusionary in nature. Moreover, these conclusions were not generally supported by the facts in their fullest context as extensively developed at the hearing and set forth below.

For example, Reep and Smith both testified that Blackwell had authority to hire. Their conclusions were based upon Blackwell's duty to call the union hiring hall for operating engineers and then to sign them up for work. However, the actual decision to hire is made by the construction superintendent, not by the master mechanic. Blackwell himself admitted that the master mechanic merely carries out the superintendent's decision to hire. The same arrangement exists concerning firing. Reep himself stated that he uses the master mechanic to effectuate his decision to discharge an employee. Similarly, with respect to assigning employees to certain equipment or jobs, Blackwell once again merely executes the decisions of the Employer's officials. His duties in that regard are like those of a "starter" to whom employees come to find out their assignments. This function is similar in nature to another of Blackwell's duties, which he himself characterized as "keeping the time" of the operators.

Reep and Smith also testified that Blackwell had the authority to adjust employee grievances. These conclusions were based almost exclusively on Blackwell's involvement in rectifying errors in operators' paychecks. But, adjustments of these payroll errors are actually mere routine administrative matters involving no discretion or independent judgment, and do not constitute adjustments of employee grievances. Such matters are appropriately directed to the master mechanic in his role as the employees' timekeeper. Blackwell also resolved a matter relating to compensatory pay for an equipment oiler. However, this matter is also related to his duties as timekeeper and/or starter. In addition, Blackwell testified that he had the authority to grant overtime. Yet, he qualified this claim by stating that the

<sup>3</sup> Sec. 2(11) provides: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

construction superintendent directs the master mechanic to operate equipment on an overtime basis, and the craft foremen determine which operators receive extra work. Thus, Blackwell merely performs routine duties as a starter and timekeeper with respect to the assignment of overtime work as well.

Additionally, Blackwell and Smith testified that the former had the authority to and actually did transfer employees to different equipment or different jobs. The record, however, demonstrates that Blackwell merely acted as a liaison between the Employer and/or Union on the one hand and the employees on the other, presenting requests for transfers on behalf of the latter group. Moreover, Blackwell implemented such transfers only after receiving authorization from company officials or the union business agent.

Blackwell did, nevertheless, effectively recommend to Smith that a particular employee, Clayton Willis, Jr., be promoted to a job (in addition to his regular work) requiring his services once or twice per week operating an air compressor. Soon after the promotion, Blackwell reprimanded Willis for failing to stay in proximity to the equipment when the employee was needed to operate it. Thereafter, Blackwell recommended Willis' demotion. This represents the sole instance of an actual exercise of supervisory-type authority by Blackwell in the entire 13 months in which he acted as master mechanic.

With the exception of the Willis incident, none of Blackwell's functions can be characterized as requiring the use of his own independent judgment. Nor does the record support a finding that Blackwell responsibly directs employees. On the contrary, the testimony is clear that Blackwell merely acts as the conduit through which certain officials of the Employer are able to execute their decisions. Moreover, Blackwell's duties as a starter and timekeeper are routine in nature.

The Board has consistently held that persons who merely transmit and execute directions from management, engage in routine functions, and keep time records are not supervisors within the meaning of the Act. See, e.g., *Florida Steel Corporation*, 220 NLRB 225, 229 (1975); *Riverside Industries, Inc.*, 208 NLRB 311, 312 (1974); *Lawson-United Feldspar & Mineral Co.*, 189 NLRB 350, 354 (1971). Moreover, with respect to the Willis incident, the Board has held that isolated instances of supervisory authority are insufficient upon which to base a finding that an individual is a statutory supervisor. See, e.g., *Golden West Broadcasters-KTLA*, 215 NLRB 760, 761 (1974); *Highland Telephone Cooperative, Inc.*, 192 NLRB 1057, 1058 (1971); *Commercial Fleet Wash, Inc.*, 190 NLRB 326 (1971). Thus, based on the

record as a whole, we adopt the Administrative Law Judge's finding that Isaac Blackwell is not a supervisor within the meaning of Section 2(11) of the Act.

The principle established in *Toledo Blade* does not, however, also stand for the negative proposition that every individual who is *not* a supervisor is therefore *not* an employer representative for the purposes of collective bargaining or the adjustment of employee grievances. Thus, in order to properly conclude that the Respondent did not violate Section 8(b)(1)(B), the Board must make an independent finding that Blackwell was not an employer representative within the meaning of that section of the Act. We hereby make such a finding, based on (1) the credited testimony, cited by the Administrative Law Judge, that Blackwell did not engage in collective bargaining on behalf of the Employer, and (2) the analysis, set forth above, that Blackwell did not adjust employee grievances on behalf of the Employer. Accordingly, we also adopt the Administrative Law Judge's conclusion that the Respondent did not violate Section 8(b)(1)(B) of the Act.

#### 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.

#### DECISION

MAX ROSENBERG, Administrative Law Judge: With all parties represented, this proceeding was heard before me in Jacksonville, Florida, on April 8 and 9, 1976, on a complaint filed by the General Counsel of the National Labor Relations Board and an answer interposed thereto by Local Union No. 673, International Union of Operating Engineers, AFL-CIO, herein called the Respondent.<sup>1</sup> The sole issue presented relates to whether Respondent violated Section 8(b)(1)(B) of the National Labor Relations Act, as amended, by certain conduct to be chronicled hereinafter. Briefs have been received from the General Counsel and the Respondent, which have been duly considered.

Upon the entire record made in this proceeding, including my observation of the witnesses as they testified on the stand, I hereby make the following:

#### FINDINGS OF FACT AND CONCLUSIONS

##### I. THE BUSINESS OF THE EMPLOYER

Westinghouse Electric Corporation, herein called the Employer, is a Pennsylvania corporation licensed to do

<sup>1</sup> The complaint, which issued on January 28, 1976, is based upon a charge filed on October 28, 1975, and served on October 29, 1975.

business in the State of Florida where it is engaged in the construction of an electric power generating station in East Palatka, Florida, herein called PACE, for the Florida Power and Light Company. During the annual period material to this proceeding, the Employer purchased and received goods and materials valued in excess of \$50,000 for its PACE jobsite, which were shipped to said site from points located outside the State of Florida. The complaint alleges, the answer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that Respondent violated Section 8(b)(1)(B) of the Act when, on October 22, 1975, it caused the Employer, the prime contractor on the PACE project, by instigating, condoning, and/or ratifying the action of operating engineers employed by the Employer in engaging in a strike, to terminate the employment of Charging Party Isaac L. Blackwell as a master mechanic on the jobsite. According to the General Counsel, such conduct thereby restrained and coerced the Employer in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances. For its part, Respondent denies the commission of any labor practices proscribed by the statute.

Section 8(b)(1)(B) provides that:

It shall be an unfair labor practice for a labor organization or its agents — to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

Hence, the threshold question in this proceeding revolves around whether Isaac L. Blackwell, the Employer's master mechanic, occupied the status of a statutory supervisor on October 22, 1975, when members of the Respondent engaged in a work stoppage at the PACE site which successfully effected the removal of Blackwell from his job.

At the times material herein, Respondent and the Northeastern Florida Chapter of the Associated General Contractors of America were parties to a compact which the Employer adopted, and which provided in article XX, section 6, that:

Local No. 673 reserves the right to place a master mechanic on jobs when the job reaches the state where there are eight (8) men working out of this Local on any one shift. This master mechanic shall be a qualified operating engineer. Master mechanics will not be allowed to operate machines or use tools, except in emergencies. There shall be an assistant master mechanic when 20 or more operating engineers are employed on any one shift. The assistant master mechanic may use his tools but not operate equipment. If job works overtime the master mechanic shall also be

employed provided two (2) or more pieces of equipment are used by operators of Group I. This will apply on any shift where there are eight (8) men working out of this Local. [Emphasis supplied].

In early 1974, the Employer embarked upon the construction of a \$64 million project to construct the PACE installation for the Florida Power and Light Company. Blackwell, who had been a member of Respondent since 1961, and was classified as a Class I operator, obtained a job in this capacity with a subcontractor known as Dupont in March 1974. On September 6, 1974, he became a cherry-picker operator for the Employer and he continued to toil in that classification until September 25, 1974, when, pursuant to a request expressed by Respondent's then Project Manager Varnay, and concurred in by Project Superintendent James Smith, Blackwell was appointed as a master mechanic by Respondent's then Business Manager R. U. Brooks. Prior to this appointment, and for some months thereafter, Blackwell also acted as a steward on the project for Respondent.

On October 13, 1975, Blackwell seized upon an opportunity to vacation in Hawaii. Meanwhile, on October 6, 1975, he decided for some unexplained reason to draft a letter informing Respondent's current Business Manager P.R. Russ of his impending departure on vacation for the period of October 13 to 22, 1975, and a copy of the letter was given to Project Superintendent Smith. During Blackwell's absence, a C. B. McClean was designated, pursuant to the existing collective-bargaining agreement by Respondent's business manager, to act as the master mechanic until Blackwell's return.

While Blackwell was away and, on October 21, 1975, the operators on the PACE site initiated and circulated a petition manifesting their intention not to work for Blackwell any longer. When Blackwell returned from his holiday in Hawaii on the evening of October 21, 1975, he learned from some friends of the existence of the signed petition. Whereupon, he telephoned Respondent Manager Russ to inquire about the situation, and was directed by Russ to report for work the next morning. Blackwell complied with the directive and reported for duty early on October 22, 1975. Upon his arrival, and according to Blackwell, he was met by Job Steward Conner who told the former to desist from going to work because the operators had indicated via the petition that they would not work for Blackwell. Blackwell insisted that he would remain on the job. Although there is a conflict of testimony on this issue, for the purposes of this Decision I will accept Blackwell's testimony that, thereupon, Conner turned his hard-hat backwards, a signal for all operators to leave the job. In consequence, the men walked out of the gate. Conner then telephoned Russ to report this intelligence. Russ instructed Conner to order the operators to resume work which, at approximately 9 a.m., they did. Shortly thereafter, Blackwell placed a call to Russ to relate that the men had walked off the job. Russ replied that he was constrained to terminate Blackwell's employment as a master mechanic at PACE because the latter had been accused of harassing the operators. Blackwell remonstrated that "somebody had to give me a termination slip before I left the job," and announced that he would remain on the site until he

received one. Russ agreed to comply with this request. Blackwell remained in his project shed until 12 noon when an operator delivered a letter from Russ. This communication recited:

Dear Brother Blackwell:

It has been brought to my attention that labor problems have developed on the Westinghouse job (Pace Project) in East Palatka, Fla. involving a large majority of our members. These men have refused to work for you as Master Mechanic and 37 of these men have signed a petition that you have used unfair practices in dealing with them which is causing disharmony and threatening our relations with a fine contractor (Westinghouse).

It is my responsibility to ask for your termination as of this date, October 22, 1975.

While Blackwell awaited Russ' letter, he informed Project Superintendent Smith and Project Manager Charles Reep of the letter, to which they responded that they did not wish to become involved in union matters and that they hated to see Blackwell depart. Although Blackwell stated that he could have remained on the job despite the termination by Respondent as master mechanic, he had decided to comply with Russ' report and left that afternoon.

After a careful review of the record, I am not convinced that the General Counsel has established that, even if Respondent had instigated, condoned, or ratified the actions of its members either in formulating the petition to oust Blackwell on October 21, 1975, or engaging in the work stoppage on the morning of October 22, 1975, to accomplish the same goal, Respondent thereby violated Section 8(b)(1)(B) of the Act by restraining or coercing the Employer in the selection of its *representatives* for the

<sup>2</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.

purposes of collective bargaining or the adjustment of grievances. For, in my opinion, Blackwell's own testimonial words belie any assertion that he was a statutory supervisor during his tenure as a master mechanic at the PACE project. Thus, during his testimony, Blackwell denied that he had ever been told by any official of the Employer that he could sit at the bargaining table and represent it in collective bargaining with any labor organization; denied that in actuality he had ever done so; denied that he possessed or exercised the power to discharge, promote, transfer, suspend, lay off, or discipline the operators. Moreover, Blackwell confessed that, in all actions taken by him with respect to operating personnel, he merely acted as a messenger to execute decisions reached by officials in the Employer's hierarchy. Similarly, Project Manager Reep, not an unsympathetic witness on Blackwell's behalf, admitted that with respect to the firing of operating engineers, the latter simply was a conduit to effectuate Reep's personnel determinations.

In short, I find and conclude that Blackwell was not a supervisor within the meaning of Section 2(11) of the Act, and hence was not a "representative" of the Employer whose selection for the purposes of collective bargaining or the adjustment of grievances on the Employer's behalf was impeded by any asserted restrictive or coercive action taken by Respondent on October 21 or 22, 1975, in violation of Section 8(b)(1)(B). I shall therefore dismiss the complaint herein in its entirety.

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

#### ORDER<sup>2</sup>

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

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.