

Local 479, Amalgamated Clothing Workers of America, AFL-CIO [Jaymar Ruby, Inc.] and Peggy Jean Ross and Louis Marian Graham. Case No. 25-CB-582 (formerly 13-CB-1663).
March 10, 1965

DECISION AND ORDER

On November 5, 1964, Trial Examiner Max Rosenberg issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order, the Order recommended by the Trial Examiner, and orders that the Respondent, Local 479, Amalgamated Clothing Workers of America, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.¹

¹The Trial Examiner's Recommended Order is modified as follows:

(a) substitute the figure "25" for the figure "13" in lines 23, 31, 36, and 39 on page 6.

(b) substitute the following sentence as the last sentence of the notice:

Employees may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. 534-3161, if they have any questions concerning this notice or compliance with its provisions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before Trial Examiner Max Rosenberg in Michigan City, Indiana, on September 9, 1964, on complaint of

the General Counsel of the National Labor Relations Board and answer of Local 479, Amalgamated Clothing Workers of America, AFL-CIO, herein called the Respondent or the Union.¹ The sole issue framed by the pleading is whether the Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended, by threatening Peggy Jean Ross and Louise Marian Graham, employees of Jaymar Ruby, Inc., herein called Jaymar, with loss of insurance benefits because of their failure to pay a union fine. At the hearing, the parties waived oral argument. Briefs have been received from the General Counsel and the Respondent, which have been duly considered.²

Upon the entire record and my observation of the witnesses, including their demeanor while on the stand, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Jaymar, a corporation organized and existing under the laws of the State of Indiana, maintains its plant and principal place of business at West Michigan Boulevard, Michigan City, Indiana, where it is engaged in the manufacture of men's slacks. During the calendar year 1963, Jaymar, in the course and conduct of its business, sold and shipped from its plant goods valued in excess of \$50,000 to points located outside the State of Indiana. The complaint alleges and I find that Jaymar is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The events*

At all times material herein, Jaymar and the Respondent were parties to a collective-bargaining contract which contained provision for a health, life, accident, and retirement plan for Jaymar's employees. The parties stipulated that, pursuant to this contract, a fund, known as the Amalgamated Cotton Garment and Allied Industries Fund, was created, into which Jaymar contributes a certain percentage of its gross payroll. Neither the employees, nor, so far as appears, the Respondent, contribute to the fund. This fund is administered by approximately 20 trustees, 10 of which are representatives of the Respondent, and 10 of which are representatives of employers who have collective-bargaining agreements with Respondent's parent labor organization, who employ an administrator who is also executive director of the Amalgamated Life Insurance Company. The parties further stipulated that, if an employee wishes to claim benefits under the plan and through the fund, the employee must obtain a blank form from the secretary-treasurer of Respondent. The employee fills out one side of the form and the attending physician executes the reverse side. The form is then returned to Respondent's secretary-treasurer who checks it over for completeness, signs the form, and forwards it to the Amalgamated Life Insurance Company, apparently for payment of the benefits.

It is undisputed that the constitution and bylaws of Respondent provide that all employees of Jaymar who become members of the Union must attend at least one union meeting during each calendar quarter, and that the failure to comply with this requirement will result in the assessment of a union fine in the amount of \$1. Peggy Jean Ross, a Charging Party and an employee of Jaymar, joined the Respondent shortly after her employment in September 1963. She failed to attend a union meeting during the last quarter of 1963, and was fined a dollar which she paid to Sophia Jankowski, Respondent's secretary-treasurer. Louise Marian Graham, who is also a Charging Party and an employee of Jaymar, joined the Union after her employment in February 1962. Like Ross, Graham also failed to attend a union meeting in the last quarter of 1963 and she, too, was assessed a fine of \$1 which she paid to Jankowski. Both Ross and Graham again failed to satisfy the union attendance requirement in the first quarter of 1964, and again a fine was assessed against them.

Graham testified that, on March 30, 1964, or during the first week in April, Jankowski approached Graham at her work station to collect the latter's fine, a task assigned

¹ The complaint, which issued on July 15, 1964, is based on a charge and an amended charge filed on May 12, 1964, and July 13, 1964, respectively.

² The General Counsel's motion to correct transcript, which was unopposed, is hereby granted.

to Jankowski as part of her duties as secretary-treasurer of Respondent. When Graham indicated that she would not pay the fine, Jankowski remarked, "You will have to pay it or you won't receive any insurance benefits while you are sick. . . ." Ross testified that, about April 6, 1964, Jankowski demanded that Ross pay the fine which had been imposed upon her. Ross replied that Louise Graham "said that she wasn't going to pay hers and that my dollar was just as important as Louise's," to which Jankowski retorted "oh, but Louise will have to pay hers or she won't have any insurance benefits." Jankowski went on to state that "there was a fellow downstairs that refused to pay his dollar and he got sick and he didn't get any insurance until he was paid up." About a week later, Ross engaged in a conversation with Jankowski during which she informed the latter that she intended to file an unfair labor practice charge with the Board. When Jankowski expressed indifference, Ross complained that she did not think "it was right for [Jankowski] to hold up our insurance on us if we didn't pay the fine and that after all the company paid for it." Jankowski remarked that this was not so, that the Company paid only a portion of it. Ross concluded the conversation by stating that she would visit the Board's Regional Office in Chicago to ascertain all the facts.

Ross and Graham filed the aforementioned charge and, shortly thereafter, paid the fine which had been levied against them. In midsummer, Ross had occasion to file a claim under the insurance plan, which was processed by Respondent, but Ross was found to be ineligible for any benefits. In June 1964, Graham also filed a claim under the plan for an injury sustained. The claim again was processed by Respondent through Jankowski and Graham was deemed eligible for benefits.

Jankowski testified that both Ross and Graham had been assessed a fine pursuant to the Union's constitution and bylaws for failure to attend a union meeting during the first quarter of 1964. On March 30, 1964, Jankowski demanded that Ross satisfy the assessment, but Ross refused to do so unless Graham also paid her fine. According to Jankowski, she then told Ross that "if Louise Graham is not going to pay hers she is not going to—to be in good standing with the union and in order to be in good standing with the union you have to pay your fines." Jankowski further testified that, on the same date, she entered the thread room at the plant and requested that Graham satisfy her obligation by paying the fine. Graham replied that she would not pay the fine. Jankowski proceeded to leave the room and, on the way out, she overheard Graham state that "you don't have to pay it according to the Taft Hardley [sic] Law." Jankowski testified that she made no response to this comment by Graham "Because I was on the company's time and I don't like to argue with people." Jankowski then categorically denied that she had ever threatened Ross or Graham with loss of insurance benefits if they failed to pay their fines.

Cecelia Bruning is employed as an end seamer by Jaymar and operates a machine directly behind Graham. She testified that, at the end of March 1964, Jankowski approached Graham at her work station and asked Graham to pay her fine. As Jankowski began to leave the area, Graham remarked that she would not pay the fine because the Act relieved her of this obligation. According to Bruning, Jankowski did not reply to Graham's statement, and at no time did she overhear Jankowski tell Graham that the latter would not receive insurance benefits unless she paid the fine. When questioned as to how she could overhear the conversation between Jankowski and Graham above the noise of the sewing machines, Bruning claimed that she stopped her machine long enough to listen to the conversation because she wanted to find out whether or not Graham would pay the fine. According to Bruning, her reason for doing so was because she was "just interested."

Graham and Ross impressed me as honest witnesses whose straightforward testimony I credit and find that, on March 30, 1964, Jankowski demanded that Graham pay her fine on pain of losing her "insurance benefits while you are sick." I also find that, about April 6, 1964, Jankowski made a similar demand on Ross and that, when Ross indicated that she would not pay the fine unless Graham did so, Jankowski remarked that "Louise will have to pay hers or she won't have any insurance benefits" and alluded to another employee who had lost his insurance benefits because of his failure to satisfy an assessment. I further find that these statements to Ross made it abundantly clear to her that she would suffer a similar fate if she persisted in her refusal to pay the assessment.

I do not credit Jankowski's assertion that she told Ross that the payment of the fine was necessary in order to preserve the latter's "good standing" in the Union, and that at no time did she threaten Ross with loss of insurance benefits. Ross' testimony stands uncontroverted that, when she informed Jankowski of her intention to file charges with the Board, Ross complained that it was unfair for Jankowski to withhold Ross' insurance benefits in view of the fact that Jaymar was the sole contributor to the fund, and she informed Jankowski that she would visit the Board's office in

Chicago to ascertain what her rights were. In view of this uncontroverted testimony, I find it inherently improbable that Ross would have visited the Board's office to inquire about her retention of "good standing" in the Union rather than the preservation of her insurance benefits. I also discredit Jankowski's denial that she mentioned the loss of insurance benefits in her conversation with Graham. Jankowski did not assign the preservation of "good standing" as the reason for demanding of Graham the payment of her fine, and Jankowski denied that she uttered any threat at all in requesting payment of the fine. Again, I find it inherently improbable that Graham would have trekked to the Board's office in Chicago to ascertain her rights if, in fact, no threats of any nature had been leveled at her by Jankowski. I also find that Bruning's corroborative testimony falls in the same incredible mold.

In sum, I conclude and find that Jankowski's statements to Ross and Graham constituted verbal threats that the latter would be deprived of insurance benefits under the collective-bargaining contract between the Respondent and Jaymar unless they paid the union fines assessed against them for failing to attend union meetings.³

B. *Analysis and conclusions*

The General Counsel asserts that the insurance benefits afforded to Ross and Graham and all other employees under the contract between the Respondent and Jaymar constitute "conditions of employment" within the contemplation of the Act, and that Respondent's threats to deprive Ross and Graham of these benefits for failing to pay the fines levied upon them was violative of Section 8(b)(1)(A) of the Act. Respondent apparently concedes that the insurance benefits which flow to employees from the contract fall within the statutory phrase "conditions of employment." It contends, however, that no violation of that Section should be found on the grounds that: (1) Jankowski did not threaten Ross and Graham with the loss of insurance benefits for failure to pay the fine, and (2) the Respondent, through Jankowski, was unable to effectuate such a threat. Based on the resolutions of credibility and findings of fact heretofore made, I find Respondent's first contention to be unsupported by the evidence and I reject it. With respect to the second, the record clearly establishes that, pursuant to the contractual provision creative of the insurance fund, Respondent's secretary-treasurer is designated as the sole agent for handling benefit claims at the plant level. Thus, an employee who wishes to file a claim must procure the requisite claim form from Jankowski and, after its execution, must return the completed form to Jankowski who inspects it for completeness, signs it, and transmits it to the insurer for ultimate payment. Moreover, the record shows that both Ross and Graham made their claims for insurance in the middle of 1964 through Jankowski. In addition, half of the trustees which govern the fund are representatives of Respondent's international union. In light of the foregoing, I find no record support for Respondent's contention that neither the Respondent nor Jankowski were able to fulfill the latter's threat to Ross and Graham.

In *Amalgamated Local 286, et al (Delta Star Electric Division, A. K. Porter Co., Inc.)*,⁴ which I find is controlling in this litigation, the Board made it patently clear that insurance benefits of the character here involved constituted a "term or condition of employment" within the statutory scheme, and pronounced that:

. . . a union restrains and coerces employees in the exercise of their statutory right to refrain from joining or maintaining membership in a labor organization where it threatens to deprive them of a term or condition of employment unless they maintain their membership in good standing by payment of fines or assessments.⁵

On the basis of the record made before me, and in view of my findings that the Respondent, through its secretary-treasurer Jankowski, threatened employees Ross and Graham with loss of insurance benefits which they enjoyed as a condition of employment unless and until they paid their union fines, I conclude that the Respondent thereby violated Section 8(b)(1)(A) of the Act.

³ I find no merit in Respondent's contention that Jankowski's statements to Ross and Graham were not threats but merely an expression of a good-faith belief that the failure to pay a fine disqualifies an employee for insurance coverage. Jankowski testified that she had been a union member for 30 years and had served as Respondent's secretary-treasurer for 8 years. In her dealings with Ross and Graham, Jankowski displayed a marked awareness of what Respondent's constitution and bylaws provided and required.

⁴ 110 NLRB 371.

⁵ *Ibid* at 374.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of Jaymar Ruby, Inc., described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Jaymar Ruby, Inc., an Indiana corporation, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 479, Amalgamated Clothing Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By restraining and coercing employees of Jaymar Ruby, Inc., in the exercise of rights guaranteed by Section 7 of the Act, the Respondent 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.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that Respondent, Local 479, Amalgamated Clothing Workers of America, AFL-CIO, Michigan City, Indiana, and its officers, representatives, and agents, shall:

1. Cease and desist from:

(a) Threatening employees of Jaymar Ruby, Inc., with loss of insurance benefits enjoyed by them as a condition of employment for failing to pay fines imposed by it.

(b) In any like or related manner, restraining or coercing employees of the above-named Company in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Notify Peggy Jean Ross and Louise Marian Graham, in writing, that it will not threaten them with loss of insurance benefits for failing to pay union fines.

(b) Post at its business office in Michigan City, Indiana, copies of the attached notice marked "Appendix."⁶ Copies of said notice, to be furnished by the Regional Director for Region 13, shall, after being duly signed by an official representative of the Respondent, be posted by Respondent immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Mail to the Regional Director for Region 13 signed copies of the attached notice marked "Appendix" for posting, the above-named Company willing, at the Company's plant in Michigan City, Indiana, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for Region 13, shall, after being duly signed, as provided in paragraph (b) above, be forthwith returned to the Regional Director for said posting.

⁶In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

(d) Notify the Regional Director for Region 13, in writing, within 20 days from the date of receipt of this Decision, what steps Respondent has taken to comply therewith.⁷

⁷ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read, "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF LOCAL 479, AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO, AND ALL EMPLOYEES OF JAYMAR RUBY, INC.

Pursuant to a Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members and employees that:

WE WILL NOT threaten employees of Jaymar Ruby, Inc., with the loss of insurance benefits enjoyed by them as a condition of employment for failing to pay fines imposed by Local 479, Amalgamated Clothing Workers of America, AFL-CIO.

WE WILL NOT, by means of the foregoing, or in any like or related manner, restrain or coerce employees of the above-named company in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL notify Peggy Jean Ross and Louise Marian Graham, in writing, that we will not threaten them with loss of insurance for failure to pay their union fines.

LOCAL 479, AMALGAMATED CLOTHING
WORKERS OF AMERICA, AFL-CIO,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 881 U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois, Telephone No. 828-7572, if they have any question concerning this notice or compliance with its provisions.

Bernard S. Happach d/b/a 14th Street Market and Retail Clerks Union, Local 536 (Retail Clerks International Association, AFL-CIO). *Case No. 38-CA-9 (formerly 13-CA-6000). March 10, 1965*

DECISION AND ORDER

On August 3, 1964, Trial Examiner Paul Bisgyer issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint