

**Allen-Bradley Company and United Electrical, Radio and Machine Workers of America, Local 1111 (UE).** Case 30-CA-1105

August 27, 1970

**DECISION AND ORDER**

BY MEMBERS FANNING, McCULLOCH, AND BROWN

On March 10, 1970, Trial Examiner John P. von Rohr 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 and General Counsel filed exceptions to the Trial Examiner's Decision and briefs in support thereof.

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.

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 this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, but only to the extent consistent herewith.

We do not agree with the Trial Examiner that the evidence supports the Trial Examiner's conclusion that Respondent's suspension of James Dimond was "motivated in substantial part" by its displeasure with Dimond's "zealous" activities as a union steward.

The record shows that on the morning of Friday, September 18, 1969, Dimond went into one of the electrician's rooms shortly after starting time, and while there, upon the arrival of Acting Supervisor Drezdon, accosted Drezdon and accused and berated him for turning in three employees who apparently had continued playing cards for several minutes after the bell had rung ending the lunch hour. The incident was, at the least, a direct affront to a supervisor, who, on the record before us, had performed his duties as required by his employer. Dimond, although a union steward at the time, was not acting as such at the time. The several electrician-employees in the room at the time were not within Dimond's stewardship, he was not representing them, and there is

no showing that he was in any way acting as steward for those employees who had been reported by Drezdon. In short, Dimond had gone out of his way to engage in a confrontation with a supervisor and to rebuke him for performing his duties. In our opinion, Dimond's conduct was, as the Trial Examiner found it, "gross misconduct."

We realize that Dimond, as steward, had created a supervisory substitution situation several weeks earlier, that this situation caused the Respondent a considerable amount of scheduling problems, and that Hutton, Respondent's personnel manager, immediately after suspending Dimond, referred to this incident and called Dimond a big labor boss, a big man on campus. However, we do not feel that these remarks alone, in the face of Dimond's insubordinate conduct, will support a finding that his suspension was motivated by his activities and status as a union steward. In addition, the record shows that several weeks had passed since the supervisory substitution issue without any incidents relating to Dimond, and more importantly, on the very day Dimond was suspended, Hutton told acting Chief Steward Smith that all Dimond had to do to return to work was to apologize to Drezdon and give assurance that he would conduct himself in a businesslike adult manner at all times. That condition, we are persuaded, related to the Drezdon incident. In these circumstances, we are unable to conclude, as urged by the General Counsel, that Dimond's activities relating to his stewardship was a substantially motivating consideration leading to his suspension on September 18, 1969. Accordingly, we shall dismiss the complaint.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed.

MEMBER BROWN, concurring:

While I agree with my colleagues that the complaint herein should be dismissed, I would do so for the following reasons.

For 32 years the Union, which represents a unit of 5,500 employees, has had an harmonious bargaining relationship with the Respondent, during which the employees have been covered by collective-bargaining agreements. When Dimond was suspended on September 18, the contract's grievance procedure was immediately invoked. Grievance meetings were held between September 19 and 22 and Dimond was reinstated on September 23. Further meetings were held to hear Dimond's claim for backpay for the period of his suspension. Upon the denial of this claim, arbitra-

tion was available to Dimond, but it was not sought. Instead, these charges were filed.

Unlike my colleagues, I would not now reach the merits of this case in this proceeding. The parties devised a procedure for resolving matters such as this one and I would require them to abide by their own procedure. Once again I find it necessary to express the view that, in cases like this, the policy of promoting industrial peace and stability through collective bargaining obliges the Board to defer to grievance-arbitration procedures which the parties themselves have established.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

JOHN P VON ROHR, Trial Examiner: Upon a charge and an amended charge filed on September 30 and October 2, 1969, respectively, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 30 (Milwaukee, Wisconsin), issued a complaint on November 4, 1969, against Allen-Bradley Company, herein called the Respondent or the Company, alleging that it had suspended employee James Dimond in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, herein called the Act. The Respondent's answer denies the allegation of unlawful conduct alleged in the complaint.

Pursuant to notice, a hearing was held before me on December 15, 1969, in Milwaukee, Wisconsin. All parties were represented by counsel and were afforded opportunity to adduce evidence, to examine and cross-examine witnesses, and to file briefs. Briefs have been received from the General Counsel and from the Respondent and they have been carefully considered.

Upon the entire record in this case and from my observation of the witnesses, I hereby make the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

Allen-Bradley Company is a Wisconsin corporation with its principal office and place of business located in Milwaukee, Wisconsin, where it is engaged in the manufacture of machinery and electrical products. During the year preceding the hearing herein, Respondent sold and shipped goods manufactured at its Milwaukee, plant valued in excess of \$50,000 to points and places outside of the State of Wisconsin. During the same period it received raw materials valued in excess of \$50,000 which were shipped to it from points and places outside the State of Wisconsin.

Respondent concedes, and I find, that it is engaged in commerce within the meaning of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

United Electrical, Radio and Machine Workers of America, Local 1111 (UE) is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

Employee James Dimond was suspended from his job on Friday, September 18, 1969.<sup>1</sup> He was reinstated on Tuesday, September 23. The sole issue in this case is whether Dimond was suspended for cause or whether this action was substantially prompted by his activities as a union steward.

With certain minor exceptions, herein noted, the facts in this case are not in material dispute.

#### A. Dimond's Activities as a Union Steward

James A Dimond has been employed with Respondent as an electrical technician in Department 452 for 4<sup>1</sup>/<sub>2</sub> years. For about 6 months prior to his suspension on September 18, Dimond acted as steward for the approximate 50 electricians in his department.

The basis for the General Counsel's case principally arises out of Dimond's role in processing a grievance with respect to Respondent's practice of appointing rank-and-file employees to the status of acting supervisors on those occasions when the regular supervisors went on vacation or took time off and did not come in for work. This issue arose on a day early in June when Dimond and Robert Gaulke, the chief steward, met with Ted Hutton, the personnel manager, and asked that he discuss a pay increase for employees for the time spent when they thus filled in as acting supervisors. According to the unrefuted testimony of Dimond, Hutton at this time refused to discuss the matter, stating "that it was not in the bargaining unit so, therefore, he didn't have to talk about it." Shortly thereafter Dimond met with the electricians at the union hall and informed them that Hutton had refused to discuss any pay increase for acting supervision. Dimond testified that these employees thereupon took a vote and decided that they would not accept the acting supervisory jobs until the Company indicated a willingness to negotiate a pay increase for these positions.

Apparently on the day following the above meeting one of the electricians refused to fill in as acting supervisor, because on this date the assistant foreman of the electrician's department, William Byer, came up to Dimond and asked "if there was anything he could do to get the electricians to take acting supervision."<sup>2</sup> After a brief discussion, Dimond told Byer that he did not think Byer had authority to speak for the Company and that he would not discuss the matter any further unless it was with someone vested with such authority.

Thereafter, and apparently continuing to the date of the hearing herein, the employees have engaged in a persis-

<sup>1</sup> All dates herein refer to the year 1969.

<sup>2</sup> Unrefuted testimony of Dimond.

tent refusal to take the position of acting supervisor. Dimond's uncontroverted testimony reflects further that this practice spread from the electrician's department to all other departments in the plant.<sup>3</sup>

In the early part of August, Earl Richardson, the manager of Respondent's electrical maintenance department, met with Dimond and eight other electricians Present also in Richardson's office where this meeting took place were Supervisors Kenneth Byer and Kenneth Pennington According to Dimond's uncontroverted testimony, either Richardson or Byer stated that since none of the employees would take an acting supervisors job, "no electrician ever again would be considered for permanent promotion to supervision" Richardson, who had several typewritten pages in his hand, further stated "That from here on they were going to go strictly by the book, by the contract" He illustrated by stating that from thenceforth no one would be permitted to leave early other than in case of emergency. One of the employees asked if the employees could leave early for dental appointments, as they had in the past. Richardson responded that they could not. Byer spoke up to say that the Company had need for acting supervision at least 20 weeks out of the year Dimond rejoined that if the Company needed another supervisor it could take its pick from the men in the room. With this the meeting ended.

Chief Steward Robert Gaulke testified without contradiction that in late summer Byer asked if he could do something about getting an electrician to take an acting supervisor's job for a night-shift supervisor who was leaving on vacation Byer added that if one of them did not take the job he would be required to transfer the night-shift electricians to the day shift during the period of time the supervisor was on vacation. Gaulke told Byer that he would not try to tell the employees what to do, but that he recognized the problem and would speak to Dimond about it Gaulke did discuss the matter with Dimond and Dimond in turn conferred with the electricians. However, the electricians informed Dimond that they would not change their minds about filling the acting supervisors job As a result, the Company was required to transfer all but two of the night-shift electricians to the day shift during the night supervisor's absence

In addition to the foregoing, Dimond took up an alleged grievance of a different nature Thus, at some point in August the Respondent let it be known that some electricians would be asked to work during the Labor Day weekend When Dimond and Gualke met with Hutton to discuss the matter, Dimond raised an objection to the men being required to work. As his reason therefore, Dimond asserted that a number of men were called to work on the previous 3-day holiday weekend but were sent home after working a total of only 4 hours. This, he asserted, needlessly broke up the men's long weekend. Hutton told Dimond that

he was wrong on the point. Shortly thereafter Hutton again met with Dimond and Gaulke and this time produced records to show that the men in fact had worked no less than 13 or 14 hours on the previous holiday weekend. Gaulke credibly testified that this satisfied Dimond and that the matter was resolved with Dimond stating that he would withdraw his objection and that he would notify the employees that the Company would give them as much overtime as possible.

Aside from Dimond's above activities as a union steward, Dimond also was involved in an incident of a different kind As indicated hereinafter, this incident was one of the matters referred to by Hutton at the time of Dimond's suspension on September 18 and for this reason I relate it here Thus, on August 22, a Friday, Dimond spoke to Richardson and asked if he could leave work 1 hour before his usual quitting time because he and his family were leaving on a vacation trip He explained that the reason for his request was that recently Father Groppi had been leading demonstrators around the plant in mid-afternoons and that he wanted his family to call for him at the plant before this occurred<sup>5</sup> According to Dimond, Richardson denied the request, stating that this was not a valid excuse for getting off early. A short while later Dimond took his request to Hutton. Hutton also turned him down. Dimond finally talked to Chief Steward Gaulke and explained the situation. Gaulke told Dimond to go ahead and leave early, that he would handle the situation. Gaulke testified that later that day he took the matter up with Hutton and that Hutton finally assented to Dimond's being permitted to leave early. However, the record reflects that although Hutton in fact left early, he did so without being informed by Gaulke's foregoing conversation with Hutton. In short, Dimond left early notwithstanding the fact that Richardson and Hutton had denied his request that he be permitted to do so.

#### *B. Dimond's Suspension; Conclusions*

Respondent asserts that the sole reason for Dimond's suspension arose out of his insubordinate conduct toward a supervisor on the morning of September 18, 1969. The supervisor involved was Ronald L. Drezdon, an acting supervisor in the electrician's department,<sup>6</sup> and the incident occurred in a small electrician's room about 7:10 a.m. In addition to Dimond and Drezdon, five other employees were present and witnessed the occurrence. The incident, as conceded by Dimond, is best set forth in his own words as follows.

Mr. Drezdon come into the room and he asked whose chair it was at his desk and I said it was his chair, it was a baby's chair. Then I asked him how he could face the guys in the room after he had turned in three of his workers for playing cards after the

<sup>3</sup> Dimond explained that when an acting supervisor was needed, the Company would ask one man to take the job and if he declined, they would go down the line and ask the next man until the job was filled. As indicated, however, none of the employees accepted the position since June 1969

<sup>4</sup> Testimony of Dimond

<sup>5</sup> Dimond testified that he finished work at 3 30 p.m. and that the demonstrators appeared shortly before 3

<sup>6</sup> It is undisputed that Drezdon was a supervisor within the meaning of the Act. It is evident that his status was different than that of a regular employee who occasionally volunteered to temporarily fill in as an acting supervisor, as discussed elsewhere herein

noon bell had rang, and he replied he hadn't turned in three men, he turned in four, and did I want to congratulate him then or later. I told him he made me sick to my stomach and I thought I might vomit. He said to go ahead and get sick. Before I left the room I closed the tester, thanked the people in the room for the tester, and I turned to Mr. Drezdon, and I said, "Mr Drezdon, don't you ever talk to me again." And then I left

About 9 a.m Dimond was summoned to Hutton's office by Richardson. Dimond testified that the first thing he did was to ask for the chief steward, but that Hutton replied he could be summoned "after it was over." Hutton proceeded to bring up the incident which occurred between Dimond and Drezdon. In addition to mentioning the facts which Dimond conceded in his testimony set forth above, Richardson also charged Dimond with having called Drezdon a "dirty——." Dimond responded that he did not call Drezdon any such name.<sup>8</sup> At or about this point in the conversation, Hutton told Dimond that he was being suspended indefinitely.<sup>9</sup> However, Dimond testified that the conversation then proceeded as follows:

Mr. Hutton said it was me and only me that was responsible for the men refusing acting supervision and overtime, and I told him this wasn't true, that it was all the men, and he insisted it was just me and only me again, and he said that I was a big shot union leader, a big man on campus. He brought up the fact that I left early, an hour early on a previous occasion, and proceeded on to call me a big muscle man and said let's see me flex my muscles in the street

Hutton did not refute the foregoing testimony but indeed conceded bringing up the matters as thus testified to by Dimond. He also conceded that during this conversation he referred to Dimond as a "big man on the campus" and a "labor boss."<sup>10</sup> Near the end of the meeting Hutton told Richardson to clock Dimond out, whereupon Dimond again asked that the chief steward be brought in. Hutton this time telephoned and had the chief steward paged.

<sup>7</sup> Hutton testified that at the time of this conversation he had not spoken to Drezdon, but received a report of the entire incident from Richardson. Neither Richardson or Drezdon testified at the hearing.

<sup>8</sup> I credit Dimond's testimony that he in fact did not call Drezdon any such name. Further, Respondent states in its brief "Respondent does not contend that its suspension of Dimond was based upon his alleged use of that word."

<sup>9</sup> Although there is some difference in the testimony between Dimond and Hutton as to just what point in the conversation Dimond was told of his suspension, I do not deem this as significant in determining the issue herein.

<sup>10</sup> Substantially similar to the testimony of Dimond set forth above, the context under which these remarks were made were brought out during cross-examination as follows:

Q (By Mr Sweet) Now, Mr Hutton, after you went through with Mr Dimond relating to his particular stance regarding acting supervision and overtime, again, this is during the September 18 discussion you had with him when you suspended him, you told him you felt he was giving the impression he was a big man on campus and a labor boss by his stance regarding these two issues, did you not?

A Yes

However, when it was ascertained that he could not be located, Dimond was dismissed from the office.<sup>11</sup>

Grievance meetings with respect to Dimond's suspension between Respondent and the Union were held on September 19 (a Friday) and September 22, the end result of which was that Dimond was reinstated on September 23. Insofar as pertinent here, these meetings may be summarized as follows. On September 19, Hutton met with Robert Smith, the latter filling in for Chief Steward Gaulke who was on vacation. Advising Smith that Dimond had been suspended for harassing Drezdon, Hutton also told Smith that "his (Dimond's) attitude reflects that of the big labor boss." According to the undisputed testimony of Smith, Hutton thereupon elaborated by stating that "Dimond was the one who was the cause of the employees not taking acting supervisory jobs in department 452, that [he] had dealt with Mr Dimond on various other matters and that he was familiar with Dimond, and Dimond had a bad attitude." Hutton finally told Smith that Dimond could return to work if he would apologize to Drezdon and if he would give assurance that he would conduct himself in a business-like adult manner at all times.

Chief Steward Gaulke returned from vacation on the morning of Monday, September 22, and requested that Dimond be called to the plant for a meeting that afternoon. This request was granted, whereupon a meeting was held at that time with those present including Hutton, Gaulke, Dimond and the president of the local union. Gaulke at this time succeeded in persuading the Company to abandon its position that Dimond must apologize to Drezdon. After further discussion the meeting culminated, as Gaulke testified, with "the union and Dimond agreeing that we would conduct ourselves in the future in an adult and businesslike manner with the understanding that certainly we felt that responsibility also was to be practiced by members of the management team, the foreman, and supervisors." Pursuant to the agreement thus reached, Dimond returned to work the following morning.

Further grievance meetings were held on September 23 and 25 during which union representatives tried unsuccessfully to have the Company expunge Dimond's suspension from its records and to give him backpay for time lost. While the Respondent gave various valid reasons for refusing to do so, it is significant to note that at the September 23 meeting Hutton also told Gaulke that he was "dissatisfied with Jim Dimond's attitude and his actions in the area of not filling in for supervisors and the overtime thing, and [his] attitude and position in going home earlier on August 22."<sup>12</sup>

### C. Conclusions

In my opinion, Dimond's insubordinate conduct toward Foreman Drezdon on the morning of September 18, 1969, undoubtedly afforded Respondent justifiable grounds for taking whatever disciplinary action against him it ordinarily might deem appropriate. Unfortunately for the Respondent,

<sup>11</sup> Actually Gaulke was absent that day and it was the acting chief steward who was paged.

<sup>12</sup> The credited and unrefuted testimony of Gaulke.

however, the evidence establishes that this was not the only motive involved in the suspension of this employee. While I have considered Hutton's testimony that Dimond's conduct in the Drezdon incident was the sole reason for his suspension, I think it clear that Hutton's own words at the time of the suspension, as well as the statements made by him during subsequent grievance meetings, all of which are hereinabove set forth, patently demonstrate that he was also displeased with Dimond's activities as a union steward. His pointed and specific references to these activities at the time of the suspension, and also during the grievance meetings held on September 19 and 23 with Acting Chief Steward Smith and Chief Steward Gaulke, respectively, compel me to conclude and find that his displeasure at these activities was a contributing reason for the action taken. In order to supply a basis for inferring discrimination, it is necessary to show that one reason for a discharge in that the employee was engaged in protected activity. It need not be the only reason but it is sufficient if it is a substantial or motivating reason, despite the fact that other reasons may exist. *N.L.R.B. v. Whittin Machine Works*, 204 F.2d 883 (C.A. 1).<sup>13</sup> Accordingly, since I conclude and find that Dimond's suspension was motivated in substantial part by Respondent's displeasure with his zealous activities as a union steward, I find that Respondent thereby violated Section 8(a)(1) and (3) of the Act.<sup>14</sup>

The complaint further alleges that Respondent violated Section 8(a)(1) of the Act by refusing Dimond's request to have the chief steward present during his meeting with management at the time of his suspension on September 18. The record discloses that apparently at the outset of the meeting Dimond requested that the chief steward be brought in but that Hutton at this time refused the request.<sup>15</sup> Assuming this to be true, the fact remains that Hutton did attempt to comply with Dimond's request before the meeting was over. I do not deem it necessary to engage in a discussion here as to whether an employee has an absolute right to have union representation whenever there is an occasion for disciplinary action. Suffice it to say that under all of the circumstances of this case, including

<sup>13</sup> See also *N.L.R.B. v. Lexington Chair Co.*, 361 F.2d 283, 285 (C.A. 6), *N.L.R.B. v. Symons Mfg. Co.*, 328 F.2d 835 (C.A. 7)

<sup>14</sup> As further evidence that Respondent was resentful to Dimond's stewardship activities, Hutton testified that at the time of the suspension he spoke to Dimond concerning "what I personally saw or felt was a bad or poor attitude on the part of an employee and a union steward." Elaborating upon this statement, Hutton went on to say, *inter alia*

Number two was in the area of the acting supervisors. My evaluation of the situation was that Jim Dimond was wrong in taking the approach that if we can't get more money for being acting supervisors, then we'll all just refuse to be acting supervisors. I had discussed that topic at length with Bob Gaulke, the chief steward, and I personally thought that he was taking the wrong stand on that issue for the welfare of the employees who were involved in that department, that he was doing more harm than good to the employees who were concerned with promotional opportunities.

<sup>15</sup> Although Hutton testified that the only time Dimond requested the presence of the chief steward was at the end of the meeting, I am inclined to credit Dimond's testimony that this request was first made at the outset of the meeting. Moreover, Dimond testified without contradiction that he asked for the chief steward while Richardson was bringing him to the office.

Hutton's attempt to locate the chief steward before the meeting ended. I find the evidence insufficient to support this allegation in the complaint. Accordingly, I shall recommend that the allegation be dismissed.

#### IV. THE REMEDY

Having found that Respondent engaged in unfair labor practices by its suspension of James Dimond, I shall recommend that Dimond be made whole for the time lost during the appropriate 3-day suspension period and that all references to the said suspension be removed from its personnel records.

While it is normally the practice of the Board to require the posting of an appropriate notice as a part of the remedy for the commission of unfair labor practices, I shall recommend that under all the circumstances of this case the Respondent not be required to do. My reasons for so recommending are threefold. First, the Respondent has had a long history of collective bargaining with the Union. Thus, the Company has enjoyed a harmonious relationship with the Union for approximately 32 years. Except for occasional periods while bargaining was taking place, the parties have had collective-bargaining agreements throughout this period. Moreover, it is noteworthy that there are approximately 5,500 employees in the bargaining unit. These are represented by approximately 105 plant stewards. As Chief Steward Gualke conceded, there has been no other instance where a steward was disciplined by the Company, this notwithstanding that heated discussions between the stewards and management was not an uncommon occurrence.<sup>16</sup>

Secondly, I think due recognition should be given to the fact that the parties invoked the grievance procedure under the contract and that as a result of the bargaining which ensued, Dimond was restored to his job with a minimum of delay. Such willingness to follow the collective-bargaining principle is, in my opinion, a further factor in Respondent's favor.

Finally, it is hard to overlook the fact that Dimond, in the presence of five other employees, engaged in grossly insubordinate conduct toward a supervisor on the morning of September 18. Although the evidence establishes that Respondent's disciplining of this employee involved mixed motives, it cannot be said that Dimond would not have been disciplined even absent the unlawful factors present here.

Accordingly, and in view of all the foregoing, I do not find it necessary for the effectuating the policies of the Act to recommend the posting of notices in this case.

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and the Union is a labor organization within the meaning of Section 2(5) of the Act.

<sup>16</sup> It should be stated that all of the above factors have been considered in my determination of the merits herein.

2. By discriminating with respect to the hire and tenure of employment of James Dimond, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication ]