

Washington State Service Employees State Council No. 18 and Local 6, Service Employees Union affiliated with Building Service Employees International Union, AFL-CIO, and Jill Severn. Case 19-CA-4570

March 12, 1971

DECISION AND ORDER

On August 14, 1970, Trial Examiner Martin S. Bennett issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondents filed exceptions to the Trial Examiner's Decision and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner 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 exceptions, brief, and the entire record in the case,¹ 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 adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondents, Washington State Service Employees State Council No. 18 and Local 6, Service Employees Union affiliated with Building Service Employees International Union, AFL-CIO, Seattle, Washington, their officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.²

¹ The Respondent's request for oral argument is hereby denied as the exceptions, brief, and the entire record adequately present the issues and positions of the parties.

² In footnote 5 of Trial Examiner's Decision, substitute "20" for "10" days.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

MARTIN S. BENNETT, Trial Examiner: This matter was heard at Seattle, Washington, on May 7, 1970. The complaint, issued January 15, 1970, and based on charges filed November 12, 1969, and January 14, 1970, by Jill Severn, an individual, alleges that Respondents, Washington State Service Employees State Council No. 18, herein State Council, and Local 6, Service Employees Union, herein Local 6, affiliated with Building Service Employees International Union, AFL-CIO, had in their capacity as an employer

engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by discharging Severn for engaging in concerted activities protected under Section 7 of the Act. Briefs have been submitted by the parties.

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

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS

Washington State Service Employees State Council No. 18 and Local 6, Service Employees Union are labor organizations within the meaning of Section 2(5) and are employers of their own employees within the meaning of Section 2(2) of the Act. Local 6 exercises jurisdiction over Seattle, Washington, and is one of a number of locals in the State which comprise State Council. They are affiliated with Building Service Employees International Union, AFL-CIO, herein the International, whose office is in Chicago, Illinois. The latter has chartered in excess of 259 local unions in various states of the United States and, during 1969 Respondents, together with other affiliated local unions, remitted per capita taxes, a percentage of dues and initiation fees, and other monetary payments in excess of \$250,000 across state lines to the headquarters office of the International. I find that Respondents are engaged in commerce within the meaning of Section 2(6) and (7) of the Act. See *Office Employees International Union, Local 11 (Oregon Teamsters) v. N.L.R.B.* 353 U.S. 313.

II. THE UNFAIR LABOR PRACTICES

A. Introduction; The Issue

Jill Severn was employed by Respondents as an organizer in May of 1969. She was terminated on November 11 after participating in a demonstration with employees of other employers and members of civil rights groups for the purpose of furthering the employment opportunities of minority groups by other employers. This led to the arrest, publicized in the press, of Severn and others for criminal trespass. Respondents admit that she was terminated for this reason, but contend both that this was a source of embarrassment and an activity not protected under Section 7 of the Act. Also at issue herein is whether this was a concerted activity in view of the fact that the record is silent as to any other employees of Respondents participating in this demonstration.

B. Joint Employers

Contrary to the claim that Severn was solely an employee of State Council, the record amply demonstrates that Respondents were joint employers of Jill Severn. Arthur Hare is president of Local 6, secretary-treasurer of State Council and also a vice president of the International. He testified that he hired Severn in May of 1969 to work as an organizer for State Council. Inasmuch as State Council lacks a payroll procedure, Severn was placed upon the payroll of Local 6 and was accordingly paid through Local 6. The record discloses that this was much more than a bookkeeping procedure.

Thus, the checks of Severn were signed both by Hare and by Secretary-Treasurer Eugene Hooper of Local 6. Moreover, Local 6 directly and individually absorbed both Severn's car allowance as well as her medical benefit payment. As Hooper put it, Local 6 agreed to pick up her car

expenses in connection with organizational activities because State Council had no more funds available. It is significant that Severn's organizational efforts were solely with persons who were to join Local 6. This was so because her activities were limited to the city of Seattle and this was precisely the jurisdiction of Local 6.

Local 6, utilizing its own checks, directly paid Severn her monthly salary. It then billed State Council for this amount and Hare, now wearing his hat as secretary-treasurer of State Council, would monthly remit that precise amount to Local 6. While Hare claimed that no one connected with Local 6 supervised Severn, the fact is he, Hare, did supervise her, wearing at least two connecting hats from the two labor organizations, and at no time distinguishing them.

While it could well be argued that Local 6 rather than State Council was the basic employer at the very least, both labor organizations determined the essential terms and conditions of her employment, her activities were basically in behalf of Local 6, she had contacts with officials of Local 6, and Local 6 solely paid at least part of her remuneration. I find that State Council and Local 6 were joint employer of Severn. See *Manpower, Inc.*, 164 NLRB 287.

C. Sequence of Events

Jill Severn, who is white, was hired as an organizer by Respondents in May of 1969. Severn's competency is conceded. Her function was to organize employees of nursing homes and hospitals in Seattle, Washington. Severn testified, and this is not in dispute, that the employees she organized are approximately 50 percent black.

Severn is manifestly a most articulate person and is president of an organization known as Radical Women. This is a local organization in the Seattle area whose function is to alleviate and improve the role of ostensibly deprived or downtrodden females. In that capacity, several days after she entered Respondents' employ, she participated in a picket line sponsored by an unrelated labor organization on strike against an employer in Seattle which was engaged in the finishing of photographs. Severn engaged in this picketing between 6:30 and 8:30 a.m., prior to her normal starting hour of 9 a.m.

This picketing activity by Severn was reflected in the local press. As President Hare of Local 6 put it, he read the news story, told Severn that this type of picketing brought disrepute to Respondents, and said that she was to choose to work for Radical Women or for Respondents. According to Severn, Hare told her that he was prepared to discharge her for this activity in behalf of Radical Women but, after some discussion, reversed himself. Be that as it may, Severn suffered no discipline upon this occasion.

In August of 1969, Severn became interested in an organization known as Central Contractors Association, herein CCA, which was active in promoting job opportunities for underprivileged members of the Seattle black community. Building trades contractors working at the Seattle-Tacoma Airport had agreed with CCA to hire and train underprivileged blacks in the building trades; they then, at least in part, reneged, ostensibly due to pressure from labor organizations representing the building trades.¹ It would appear that the blacks were either not put to work or, on the other hand, were assigned to perfunctory tasks and did not receive the promised training. On November 6, 1969, there was a demonstration at the Seattle-Tacoma Airport by approximately 300, including affected trainees and Severn, in support of those persons who had been allegedly discriminated

against by the contractors and the building trades unions. They sat in front of airline ticket counters with the aim to induce the airlines to intervene in their behalf, and a substantial number were arrested for criminal trespass. No contention is made that this was violent and the record warrants the conclusion that it was peaceful in nature. Severn was one of those arrested and, on the morning of November 7, her arrest was prominently set forth in a morning newspaper.

As Hare put it, he told Severn on November 7 that he was very much disturbed about the incident and would discuss it with her on Monday, November 10; it is undisputed that he was not feeling well on this occasion. On Monday, Hare spoke with Severn and reminded her about the prior picketing incident. He stated that her participation in this type of activity brought disrepute upon local labor organizations and told her that she would have to decide whether to work for State Council or for these other organizations.²

Hare contended that her participation in this outside activity would make her ineffective as an organizer because the employers whose employees she was organizing would point to her as someone who would likely be sent to jail. On the other hand, Severn pointed out, with considerable logic, that the employees she was organizing were approximately 50 percent black and that this outside activity by her, although motivated by more basic factors, would facilitate organizational activities. Hare testified that on the following morning, November 11, Severn came to his office and stated that she had made a decision to expose him to the press and to go to the Labor Board. He then discharged her. Severn's version was that she told Hare she did not consider this a viable alternative and that she believed this issue should be passed upon by the membership of Local 6. Hare responded that she was crazy and that she was discharged.

It is clear and I find, on either version, that Hare presented Severn with a choice of working for Respondents or for outside organizations, announcing that the two were incompatible. Severn refused to make such a choice and Hare then discharged her because of the airport incident and because of her refusal to commit herself to abandon all outside activity of this nature.

D. Was This a Concerted Activity?

Initially considered is whether Severn's activity was "concerted" activity within the meaning of Section 7 of the Act. So far as the record discloses, no other employee of Respondents participated in the demonstration at the Seattle Airport. But employees of other employers were present and active, and, more particularly, the trainees who were present and participated are employees within the meaning of the Act. See *Phelps Dodge Corp. v. N.L.R.B.* 313 U.S. 177, wherein attention was directed to the language of the Act that the term employee "shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise . . ." and pointing out further that the use of this term was not fortuitous. See also *Fort Wayne Corrugated Paper Co. v. N.L.R.B.*, 111 F.2d 69 (C.A. 7), censuring a threat of discipline to an employee for activities in behalf of the employees of another company. Indeed, the Board in that case flatly held that the Act did not limit an employee to activities on behalf of his own employer.

And Section 7 does not place any limitation upon the

² Severn took compensatory time off to demonstrate on this occasion, having so notified Hooper. Respondent contended that she was not authorized to do this, but ultimately conceded this was not an operative factor in her termination.

¹ There were several projects underway including a new post office.

term "concerted" which would warrant a conclusion that a combination of employees as that present herein was not protected by Section 7. The record further discloses that Respondents through Hooper were on notice that Severn intended to participate in the demonstration, this manifestly not being a single person operation. Indeed, Hare was on notice thereof, through the press story, when he discharged Severn. I find that this was a concerted activity under Section 7 of the Act.

E. *Was This an Activity for Mutual Aid and Protection?*

The purpose of the nonviolent demonstration was to protest the failure of the building contractors at the Seattle-Tacoma Airport to live up to employment pledges to hire minority groups on their construction projects. One of these projects was the construction of a Federal Post Office and it would certainly seem that Federal funds were involved in runway construction also under way. Thus, the activity was also in support of Federal policy against racial discrimination.

The Board has held in *Tanner Motor Livery, Ltd.*, 148 NLRB 1402, that protests and picketing to induce one's own employer to hire blacks are a protected Section 7 activity.³ See also *Mason and Hanger-Silas Mason Co.*, 179 NLRB 434.

There is authority that Severn was protected even though the demonstration was not aimed at the hiring practices of her own employer. *N.L.R.B. v. Peter Cailler Kohler Swiss Chocolates Co., Inc.*, 130 F.2d 503 (C.A. 2). The employees of that employer, a chocolate manufacturer, published a newspaper protest in support of another labor organization which was engaged in a "milk strike" against an association which sold milk to their employer. The sole issue was whether this was a protected concerted activity and the court concluded that it was. The court conceded that concerted activities with employees of other employers may be highly prejudicial to an employer "but the Statute forbids him by a discharge to rid himself of those who lay such burdens upon him." In *General Electric Co.*, 169 NLRB 1101, the Board found protected the collection by employees of money for agricultural workers of other employers who were not even employees under the Act. And, in *Bob's Casing Crews, Inc.*, 178 NLRB 3, the Board found a violation where an employer refused to employ one who had engaged in a protected concerted activity, namely walking off a job, while working for another employer.

Nor is there any substantial evidence that this activity was truly inimical to Respondents' business activities as labor organizations. Cf. *N.L.R.B. v. Local 1229, IBEW (Jefferson Standard)*, 346 U.S. 464. There is no showing that Hare had been contacted by the building trades unions or that the latter dealt with Respondent. Stated otherwise, at best, Hare did not want to be party to activity directed at a sister labor organization. Severn uncontrovertedly testified that the employees whom she attempted to organize were approximately 50 percent black. This suggests that her extraneous activity, when publicized, would rather be helpful to her as an organizer. And Hare's final remarks to her at the time of her discharge disclose rather a lack of personal sympathy on his part with Severn's views rather than a true policy concern over relations with other labor organizations. Finally, as I view it, on either reason, Severn would be equally protected.

I find that Severn was engaged in a concerted activity for mutual aid or protection within the meaning of Section 7 of the Act. I further find, in view of all the foregoing considerations, that by discharging Jill Severn for this reason Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

III THE REMEDY

Having found that Respondents have engaged in unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondents violated Section 8(a)(1) of the Act by discharging Jill Severn on November 11, 1969. I shall therefore recommend that Respondents offer Severn immediate and full reinstatement to her former job, or if this job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges. See *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827.

I shall further recommend that Respondents make her whole for any loss of earnings she may have suffered as a result of her discharge, by payment of a sum of money equal to that she normally would have earned from said date to the date of Respondents' offer of reinstatement, less net earnings during such period, with backpay and interest thereon to be computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716. As part of Severn's remuneration was an unspecified medical premium payment, she is to be made whole for any medical expenses she has incurred which would have been paid for her under the medical plan or coverage.

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

CONCLUSIONS OF LAW

1. Respondents, Washington State Service Employees State Council No. 18, and Local 6, Service Employees Union, affiliated with Building Service Employees International Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) and are employers with respect to their own employees within the meaning of Section 2(2) of the Act.

2. By discharging Jill Severn on November 11, 1969, because she engaged in concerted activities to protest racially discriminatory hiring policies and practices, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. 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

On the basis of the foregoing findings of fact and conclusions of law, it is recommended that Respondents, Washington State Service Employees State Council No. 18 and Local 6, Service Employees Union, affiliated with Building Employees International Union, AFL-CIO, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or threatening to discharge its employees because they engage in concerted activities to protest racially discriminatory hiring policies and practices.

³ Remanded twice on other grounds in *N.L.R.B. v. Tanner Motor Livery, Ltd.*, 349 F.2d 7, and 419 F.2d 216 (C.A. 9)

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

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

(a) Offer to Jill Severn immediate and full reinstatement to her former job, or if this job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges.

(b) Make Jill Severn whole for any loss of pay and benefits she may have suffered as a result of her discharge in the manner set forth above in the preceding section entitled "The Remedy."

(c) Preserve and make available to the National Labor Relations Board and its agents, upon request, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to determine the amount of backpay due under the terms of this recommended order.

(d) Post at their offices copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 19, shall, after being duly signed by Respondents, be posted by them immediately upon receipt thereof and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to their employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 19, in writing, within 20 days from the date of receipt of this Decision, what steps they have taken to comply herewith.⁵

⁴ 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, recommendations, 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. In the event 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 be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁵ In the event this Recommended Order is adopted by the Board this provision shall be modified to read: "Notify the Regional Director for Region 19, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith."

APPENDIX

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

WE WILL NOT discharge or threaten to discharge our employees because they engage in concerted activities to protest racially discriminatory hiring policies and practices.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL offer Jill Severn immediate and full reinstatement to her former position, or if it no longer exists, to a substantially equivalent position without prejudice to her seniority or other rights and privileges.

WE WILL make Jill Severn whole for any loss of pay and benefits she may have suffered as a result of her discharge.

WASHINGTON STATE SERVICE
EMPLOYEES STATE COUNCIL No. 18, af-
filiated with BUILDING SERVICE EM-
PLOYEES INTERNATIONAL UNION,
AFL-CIO

Dated _____ By _____
(Representative) (Title)

LOCAL 6, SERVICE EMPLOYEES UNION,
affiliated with BUILDING SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Republic Bldg., Tenth Floor, 1511 Third Avenue, Seattle, Washington 98101, Telephone 206-583-7473.