

New Mexico District Council of Carpenters and Joiners of America; United Brotherhood of Carpenters and Joiners of America (A.S. Horner, Inc.) and Galen R. Wilson. Case 28-CB-462

June 18, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND ZAGORIA

On March 13, 1969, Trial Examiner E. Don Wilson 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, with supporting arguments, to the Trial Examiner's Decision.

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 made by 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 and supporting arguments, 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, New Mexico District Council of Carpenters and Joiners of America; United Brotherhood of Carpenters and Joiners of America, jointly and severally, their officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

¹The General Counsel's motion to correct certain errors in the transcript of testimony, to which no opposition was filed, is hereby granted.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

E. DON WILSON, Trial Examiner: Pursuant to due notice, a hearing in this case was held before me at Albuquerque, New Mexico, on December 9, 1968. A complaint was issued by the General Counsel of the National Labor Relations Board, herein the Board, on

September 13, 1968, upon a charge and amended charges filed by Galen R. Wilson, herein Wilson, on May 23, 1968, June 10, 1968, and September 4, 1968, respectively against New Mexico District Council of Carpenters, herein the Council, and United Brotherhood of Carpenters and Joiners of America, herein United Brotherhood, and both Respondents herein. Each of the parties was afforded full opportunity to participate at the hearing. Briefs received from General Counsel and Respondents have been fully considered.

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

Findings of Fact

I. THE COMPANY'S BUSINESS

A. S. Horner, Inc., herein the Company, at all material times has been a New Mexico corporation. The Company has maintained its principal office and place of business at Denver, Colorado, and has been engaged in the business of general contracting and highway construction in New Mexico. During the past 12 months, the Company derived revenue in excess of \$350,000, in part from a contract with the State of New Mexico providing for the construction of a portion of Interstate Highway 40, which is a part of the National Interstate Highway program. At all times material the Company has been an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS

The Respondents at all material times have been labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Issues*

1. Did Respondents by filing charges and assessing a fine against the Company's superintendent for urging carpenters to vote for the Company violate Section 8(b)(1)(B) of the Act?
2. Did Respondents attempt to cause the Company to discriminate against nonunion employees and thereby violate Section 8(b)(2) and 8(b)(1)(A) of the Act?
3. Is the complaint barred by Section 10(b) of the Act?

B. *The Facts*

The Council lost an election at the Company on June 5, 1967, by a vote of seven to five.

Before the election, by letter, the Company communicated with all the employees in the Carpenters' unit. The letter asked the employees to vote against the Council. Wilson, along with the president of the Company signed the letter. Wilson was the Company's superintendent. He had substantially all the authority a superintendent generally has on a highway construction job. He hired and fired employees, etc. He had three or four foremen of different crafts working under him. He could and did adjust grievances. Wilson did his hiring either from men who applied to the Company or to him personally. He hired without regard to whether applicants were union or nonunion members. The Company was under no contractual obligation to hire from any union hiring hall. The Company never requested the Council to

refer applicants for employment from its hiring hall. On June 5, 1967, the same day the Council lost the election, Rodell Bloomfield,¹ an admitted agent of the Council, preferred charges against Wilson for violating his "obligation"² under Section 55, paragraph 13 of the Constitution, as a member of the United Brotherhood and the Council. Bloomfield explained the charges in writing by alleging:

Bro. Wilson has violated the obligation by hiring non-union carpenters. He also signed a letter, written to the carpenter employees, asking them to vote against the New Mexico District Council of Carpenters in our representation election held 6-5-67.

On August 9, 1967, Luther Sizemore, the Council's executive secretary, wrote a letter to Wilson advising him of Bloomfield's charges and advising him that the Trial Committee would convene on August 26, 1967. He was advised that his case would be heard whether he was present or not.

On August 23, 1967, Wilson replied to Sizemore's letter. He explained that he had never been offered a copy of the Constitution. He explained among other things that when working as a supervisor he thought his loyalty must first be to his employer. He said that if the Union could fine him for supporting his employer he could not keep his job. He pointed out that it is illegal for the Council to require anyone to hire only union men. He inquired how it could violate the Constitution for him not to do something illegal.

On August 26, 1967, the trial was held. Wilson did not attend.³ Bloomfield testified against Wilson in accord with his charges. Wilson was found guilty of the charges and was fined \$250.

On August 30, 1967, Sizemore advised Wilson that the Trial Committee had found him guilty as charged and that a fine of \$250 had been recommended.

As required by the Constitution to perfect an appeal to the United Brotherhood, Wilson sent a check for \$50 to Sizemore "on account" until his appeal of the fine was decided by the General Executive Board.⁴

On September 22, 1967, Wilson wrote to the General Executive Board of the United Brotherhood, appealing the imposition of the fine. He enclosed a copy of the charges and Sizemore's letter of August 9, 1967. He enclosed a copy of his letter in reply to the charges. He stated he did not know the terms of the "obligation." He stated that he had paid the \$50 "on account" so he could process the appeal. He sent a copy of his appeal to the Council for its information.

On September 28, 1967, the United Brotherhood advised the Council of the appeal and instructed it to file an answer and supply specified information. After the District Council apparently filed one answer, the Council at the request of the United Brotherhood, filed another answer on October 17, 1967. Sizemore stated that as a union member Wilson's loyalty must be to the Union and that to actively work against the Union in a representation election was to refute any loyalty to the Union. He added that it was Wilson's action against the Union which was the basis for the charge, the findings and

the penalty imposed. He admitted that Wilson was refused a chance to see the "obligation" of membership, but stated Wilson should have known it.

On April 16, 1968,⁵ the General Executive Board of the United Brotherhood decided Wilson's appeal and affirmed the Council's action. By this decision the penalty became final. The decision spelled out that Wilson was charged with hiring nonunion carpenters and with working actively against the Council, as superintendent, during the election campaign. It concluded that the Trial Committee was fully justified in finding Wilson guilty as charged.

CONCLUDING FINDINGS

C. *The 8(b)(1)(B) Violation*

As finalized by the decision on appeal the actions of the Council and the United Brotherhood violated Section 8(b)(1)(B) of the Act. The charges and imposition of the fine restrained and coerced the Company in the selection and retention of its representatives for the purposes of collective bargaining and adjustment of grievances. I specifically, in view of the written charges of Bloomfield himself, do not credit his testimony that Wilson's signing a letter to the carpenters before the election was not actually a part of Bloomfield's charge. Bloomfield testified that there was nothing in the Constitution which prohibited such action by Wilson. He said the undefined "obligation" prohibited such action by Wilson. I do not credit Bloomfield's testimony that Wilson was not fined for such activity because of all the documentary evidence to the contrary. It is abundantly clear that one of the reasons Wilson was fined was that as a representative of management he acted in the Company's behalf and against the Union's interest. Neither do I credit Bloomfield's testimony that the only reason the charges were filed was because Wilson did not hire from a nondiscriminatory hiring hall.

By preferring the charges and imposing a fine upon Wilson, Respondents were attempting to force the Company to change its selected representative for the purposes of collective bargaining and the adjustment of grievances from a representative of management's viewpoint to a person subservient to the will of Respondents. The Council itself explained it was fining or bringing charges against Wilson because he placed the Company's interests above those of Respondents. Sizemore in his letter to the General Executive Board of the United Brotherhood stated that Superintendent Wilson's loyalty "must be to the Union." It is clear that Respondents preferred charges against and fined Wilson as a means of disciplining him because he placed the interests of the Company above those of Respondents. This was obviously coercion against the Company because it would tend to require the Company to retain as representatives for collective bargaining and adjustment of grievances only individuals who were subservient to Respondents. That the Company and Respondents had no labor agreement does not detract from this finding. Wilson could and did adjust grievances. Respondents were forbidden by the Act to dictate to the Company whom it should select to adjust employee grievances. Respondents' actions "were designed to change the [Company's] representatives from persons representing the viewpoint of management to persons responsive or subservient to Respondents' will. In enacting Section 8(b)(1)(B) Congress

¹Bloomfield testified in a confused and contradictory manner. I was unfavorably impressed by his demeanor. Documentary evidence showed much of his testimony to be untrue. I do not credit his testimony unless corroborated by documentary evidence or otherwise credited testimony.

²Never defined by a Respondent witness.

³He was a member of another Local.

⁴On the record as a whole, I find this was not part payment of the fine.

⁵Within the 10(b) period. All other action was outside the 10(b) period.

sought to prevent the very evil involved herein — union interference with an employer's control over its own representatives. [Citation] That Respondent[s] may have sought the substitution of attitudes rather than persons, and may have exerted [their] pressure upon the [Company] by indirect rather than direct means, cannot alter the ultimate fact that pressure was exerted here for the purpose of interfering with the [Company's] control over its representatives. Realistically, the [Company] would have to replace its [superintendents] or face *de facto* nonrepresentation by them." *San Francisco-Oakland Mailers' Union No. 18*, 172 NLRB No. 252.

Respondents have urged that its internal disciplinary actions against its members are not within the purview of Section 8(b)(1)(B). It claims that the "employee" may disagree with many of the decisions made by the Union, but he is bound by them. Citing *Allis-Chalmers Mfg. Co.*, 388 U.S. 175. The Board in the *San Francisco-Oakland Mailers'* case, *supra*, disposed of Respondents' contentions. The Board, after reviewing the Supreme Court's decision, held that the proviso to Section 8(b)(1)(A) "is limited to Section 8(b)(1)(A) of the Act only and is not a part of Section 8(b)(1)(B) . . . the purpose and effect of Respondents' conduct literally and directly controvened the statutory policy of allowing the [Company] an unimpeded choice of representatives for collective bargaining and the settlement of grievances. In our opinion it fell outside the legitimate internal interests of the Union . . ."

By fining Wilson, Respondents did so because he chose to act as a management representative, which he was.

D. *The Violations of Section 8(b)(2) and 8(b)(1)(A) of the Act*

As had been set forth above, the United Brotherhood finalized the fine against Wilson also because Wilson had hired nonunion employees. I have already dismissed as untruthful Bloomfield's testimony that in fact he was fined for failing to use the Council's so-called nondiscriminatory hiring hall. The documentary evidence establishes that Wilson was fined for hiring nonunion employees. Bloomfield admitted that the charge would be improper if it had alleged that Wilson failed to use a nondiscriminatory hiring hall.

Respondents' imposition of this fine upon Superintendent Wilson for hiring nonunion employees was an obvious attempt to cause him, as the Company's representative, to violate the Act and discriminate against nonunion applicants for employment. It is manifest that by preferring the charges against and fining Wilson, Respondents attempted to cause the Company to discriminate against employees in violation of Section 8(a)(3) of the Act and Respondents violated Section 8(b)(2) and 8(b)(1)(A) of the Act.

E. *The Allegations of the Complaint are not Barred by Section 10(b) of the Act.*

The Charges against Wilson, the hearing before the Trial Committee and the assessment of the fine by the Council all occurred more than 6 months before the filing of the original charge herein. However the General Executive Board did not decide the appeal and sustain the Council's actions until April 16, 1968, a date well within the 6 months period prior to the filing of the original charge.

Section 57, paragraph A, of the Constitution specifically provides that "The penalty imposed by a Local Union or District Council shall not be effective while an appeal to the General Executive Board is pending . . ." Until April 16, 1968, Wilson's appeal was pending and the imposition of the fine was not effective. It became effective only on April 16, 1968.

Section 57, paragraph B, of the Constitution provides that when a fine is imposed by a Council and an appeal is taken, said fine shall be held by the body assessing same "until said appeal is finally and completely decided."

Although Respondents' efforts to restrain and coerce the Company in its choice of representatives and to cause and attempt to cause the Company to discriminate against nonunion employees began before the 10(b) period they became efficacious within the 10(b) period when the General Executive Board sustained the Council and dismissed Wilson's appeal. *Chauffeurs, Teamsters and Helpers "General" Local No. 200, (State Sand and Gravel Company)*, 155 NLRB 273,274. Respondents' violations were not finalized until April 16, 1968, when the United Brotherhood handed down its decision.

I find that Wilson's payment of \$50 was in the nature of an appeal bond rather than a partial payment of his fine. Respondents' Constitution, Section 57, paragraph C provides in part that "No appeal can be entertained by the General Executive Board where any sum of money in excess of fifty dollars (\$50) is involved unless the appellant has first paid to the Local Union or District Council fifty dollars (\$50) on account, to be held until the appeal is decided by the General Executive Board, . . ." Prior to April 16, 1968, Wilson's fine was uncollectible and unenforceable. Wilson's payment of the \$50 was merely a part of the appeal procedure. It was not until the appeal was decided that the Council obtained any apparent control of the \$50.

Respondents' violations are not barred by Section 10(b) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents, set forth in section, III, above, occurring in connection with the operations of the Company, 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 of commerce.

V. THE REMEDY

Having found that Respondents have engaged in unfair labor practices, I shall recommend that they jointly and severally 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 upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of the Act.

2. Respondents are labor organizations within the meaning of the Act.

3. By preferring charges and assessing a fine against Wilson, a management representative of the Company because of conduct engaged in as a supervisor, Respondents restrained and coerced the Company in the selection and retention of its representatives for collective bargaining and adjusting of grievances, and engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

4. By preferring charges and assessing a fine against Wilson, a management representative of the Company, for hiring nonunion employees, Respondents caused or attempted to cause the Company to discriminate against employees within the meaning of Section 8(a)(3) of the Act and have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(2) and 8(b)(1)(A) of the Act.

5. The allegations of the complaint are not barred by Section 10(b) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, I recommend the Respondents, jointly and severally, their officers, agents, and representatives, shall:

1. Cease and desist from restraining and coercing the Company in the selection and retention of its representatives for collective bargaining and adjustment of grievances and from causing or attempting to cause the Company to discriminate against employees within the meaning of Section 8(a)(3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Repay to Wilson the \$50 which he posted as an appeal bond.

(b) Rescind the fine imposed upon Wilson and excise its imposition from Respondents' records and all reference thereto and expunge from their records all reference to the proceedings in which Wilson was fined.

(c) Advise Wilson in writing of the action taken by them as required in (b) above.

(d) Post at their business offices and meeting halls copies of the attached notice marked "Appendix." Copies of the notice on forms to be provided by the Regional Director for Region 28, shall be duly signed and posted by Respondents immediately upon receipt, and shall be maintained, in conspicuous places, including all places where notices to members are customarily posted for 60 consecutive days. Reasonable steps shall be taken to insure that the notices are not altered, defaced, or covered by any other material.

(e) Mail or deliver to said Regional Director signed copies of said notices for posting by the Company, if willing.

(f) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.⁷

⁷In the event that this Recommended Order is 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 is 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."

⁸In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 28, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith."

APPENDIX

Pursuant to the 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 you that:

WE WILL NOT restrain and coerce A. S. Horner, Inc., the Company, in the selection and retention of its representatives, including Galen R. Wilson, for purposes of collective bargaining and adjustment of grievances.

WE WILL NOT cause or attempt to cause the Company to refuse to hire nonunion employees in violation of Section 8(a)(3) of the National Labor Relations Act.

WE WILL repay Wilson the \$50 he posted with the New Mexico District Council as an appeal bond in processing his appeal from the fine unlawfully imposed upon him.

WE WILL rescind the \$250 fine imposed upon Wilson and excise or blot out all reference to its imposition from our records and expunge from our records all reference in our files to the proceedings in which Wilson was fined.

WE WILL advise Wilson in writing of the action taken by us as required herein.

NEW MEXICO DISTRICT
COUNCIL OF CARPENTERS
AND JOINERS OF AMERICA
(Labor Organization)

Dated

By

(Representative)

(Title)

UNITED BROTHERHOOD
OF CARPENTERS AND
JOINERS OF AMERICA
(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.

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 500 Gold Avenue, Room 7011, P.O. Box 2146, Albuquerque, New Mexico 87103, Telephone 843-2555, Ext. 2556.