

United Steelworkers of America, AFL-CIO, and its Local 4338 (Miami Copper Company, Division of Tennessee Corporation) and Hiram C. Case. Case 28-CB-523

April 23, 1971

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS BROWN AND KENNEDY

On May 26, 1970, Trial Examiner Henry S. Sahn issued his Decision in the above-entitled proceeding, finding that Respondent Local 4338 (herein referred to as Respondent Local) 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 further found that Respondent United Steelworkers of America, AFL-CIO, had not engaged in certain other unfair labor practices as alleged in the complaint. Thereafter, Respondent Local filed exceptions and a brief to the Trial Examiner's Decision. General Counsel filed a brief in answer to Respondent Local's exceptions.

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 exceptions and briefs, and the entire record in the case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner only insofar as they are consistent with this Decision and Order.

The complaint alleges that Respondent Local in violation of Section 8(b)(1)(A) and (2) caused Hiram C. Case to lose a preferred job² by filing a grievance on behalf of another employee, Lett, in an attempt to "bump" Case.

The Trial Examiner found that Respondent Local's treatment of Case violated the Act. In reaching this result, he concluded that the action taken against Case

was motivated by Respondent Local's resentment over Case's protected activities, and thus was in contravention of Section 8(b)(1)(A) and (2). He also found that officers of Respondent Local restrained and coerced its members in violation of 8(b)(1)(A) by demonstrating the consequences of opposition to Respondent Local's leadership. The Trial Examiner relied essentially on the Board's decision in *Miranda Fuel Company, Inc.*,³ to support his ultimate findings of violation. We disagree with the Trial Examiner.

In *Miranda* the Board found unlawful certain union activity adversely affecting an employee's job status because such action was predicated on certain arbitrary and invidious grounds and was in obvious conflict with the provisions of the existing, applicable bargaining agreement. The union had failed, the Board held, to comply with its statutory obligation of fair representation for all employees. The Trial Examiner in the instant case does not make a specific finding but instead implies, by means of discrediting testimony going to the reasons for settling the grievance in Lett's favor, that Case's treatment was contrary to the terms of the collective-bargaining agreement. It is not necessary, in our opinion, to resolve whether Case's or Respondent Local's position is contractually more meritorious. Rather, we believe it is sufficient to note here that Respondent Local's construction of the agreement is a reasonable one, not at all contrary on its face to the terms of the collective-bargaining agreement. There is also no contention that Respondent Local's position is contrary to past practice. Indeed, the outcome of the earlier Lett-Hetrick grievance discussed, *infra*, might well be considered as support for Respondent Local's claim. Thus, it would appear that in 1969 Lett did in fact have an arguable claim over Case to the preferred job, within the provisions of the bargaining agreement, on the basis of his allegedly superior seniority. Indeed, Lett's grievance was upheld at the third stage of the grievance procedure.⁴ There is no evidence indicating that Case requested that the grievance be pursued to additional stages, including arbitration. Consequently, we find that Respondent Local did not act unreasonably, arbitrarily, unfairly, in violation of contract, or without legitimate purpose⁵ in seeking Lett's replace-

³ 140 NLRB 181, enforcement denied 326 F 2d 172 (C A 2)

⁴ The General Counsel attempted to prove that Lett's grievance of July 14 was filed without his knowledge or consent. We are of the opinion that such a distinction is immaterial in the facts of this case, since it is undisputed that Lett became aware of the grievance after it was filed, at the least, and made no attempt to withdraw it. Lett thereby adopted the grievance as his own. Moreover, Case himself testified that Davis had told him that Lett had requested the job.

⁵ *Millwright's Local Union 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Planet Corporation)*, 144 NLRB 798, *Armored Car Chauffeurs and Guards, Local Union No. 820, etc. (United States Trucking Corporation)*, 145 NLRB 225, *Houston Typographical Union No. 87, etc. (Houston Chronicle Publishing Company, etc.)*, 145 NLRB 1657, cf. *Miranda Fuel Company, Inc., supra*

¹ Respondent Local has excepted to certain credibility findings made by the Trial Examiner. It is the Board's established policy not to overrule a Trial Examiner's resolutions with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enf'd 188 F 2d 362 (C A 3). We find no such basis for disturbing the Trial Examiner's credibility findings in this case.

² The advantage of the job, known as a second man "on the hill," is a paid lunch break and a 30-minute earlier quitting time, required by a state 8-hour portal-to-portal mining law. "On the hill" refers to the mining phase of the Employer's operation.

ment of Case.

We also find, contrary to the Trial Examiner, that the evidence does not establish that the grievance filed against Case which caused him to lose his preferred job was related to his protected activities. A careful review of the 1967 incidents relied on by the Trial Examiner to support his finding of discriminatory motive reveals not the slightest hint that Davis, Respondent Local's president, was angry with Case or that he thereafter harbored resentment or vengefulness toward Case. If there was any anger or resentment it appears to have been on Case's part. In fact, more than 2 years expired, during which time Case became job steward, before another incident developed between Case and Respondent Local; namely, the processing of the Hetrick grievance by Case in which it was decided that Lett and not Hetrick was entitled to the job of being Case's relief man on the hill. The record reveals that it was again Case who resented the disposition of the Hetrick grievance. Case demonstrated his anger by resigning as job steward and by attempting to resign from the Union and withdraw his dues checkoff authorization.

There is no suggestion that the grievance filed by Lett in this instance, which appears highly similar on its face to Lett's later grievance filed against Case, was discriminatorily motivated. The only shred of evidence suggesting that Respondent Local filed the July 14 Lett-Case grievance for prohibited considerations was Case's testimony to the effect that while the grievance was being processed, Case told an officer of Respondent Local that it looked like the Union was seeking his job. The official answered, "Well, why shouldn't they. You were one of those three that turned in a paper resigning from the Union." However, even assuming that such animosity played some role in the preparation of the grievance, the fact of the matter, as found above, is that Lett was arguably entitled to the preferred job under the contract. Under these circumstances, to ignore Lett's contractual claim and order the reinstatement of Case might well put the Employer in the position of placing Case in a job that he would not be entitled to under the collective-bargaining agreement.

In view of the foregoing, we conclude that the General Counsel has failed to prove by a preponderance of the evidence that Respondent Local violated Section 8(b)(1)(A) and (2) of the Act. We shall, therefore, dismiss the complaint in its entirety.

ORDER

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

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

HENRY S. SAHM, Trial Examiner: This proceeding was heard in Globe, Arizona, on February 17, 1970. The complaint which issued on December 11, 1969, on an initial charge dated September 25, 1969, alleged that Respondent United Steelworkers of America, AFL-CIO and its Local 4338,¹ herein called Respondent, engaged in unfair labor practices proscribed by Section 8(b)(2) and 8(b)(1)(A) of the Act by affecting the employment status of the Charging Party, Hiram C. Case, because he had antagonized union officials. Respondent Local and the International filed separate answers, which in substance are general denials alleging that Local 4338 processed its members grievances in good faith whereas the International avers that the union officials named in the complaint are neither agents of the International nor authorized to act with respect to all the allegations in the complaint. The issue is whether the Respondent conspired to deprive its member Hiram C. Case of a preferred job by causing the Employer to relegate him to a less desirable job because Case had aroused the union officials' hostility by opposing them. The conflicting contentions of the parties are set forth in their respective briefs which have been fully considered. Upon such consideration, and upon the entire record in the case and from observation of the demeanor of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS

The Employer, Miami Copper Company, a division of Tennessee Corporation, herein called the Company, a Delaware corporation, is engaged in the operation of a copper mine at Miami, Arizona. In the past year, the Company mined and sold products valued in excess of \$50,000 which were shipped directly to various states of the United States other than Arizona. It is found that Miami Copper Company is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act.

The Respondent International and its Local 4338 are labor organizations within the meaning of Section 2(5) of the Act.

A. Background

Prior to a strike which occurred in the spring of 1968, the Charging Party, Hiram Case, became involved in a disagreement with officials of his Union with respect to wage rates being paid to certain employees at the Miami Copper Company. During the strike, Case, while attending a union meeting, got into an argument with Davis, the president of the Local Union, when the latter made a statement that it was the International Union which was paying the strike benefits being received by the strikers. When Case declared Davis' statement was incorrect in that it was not the International's money but money which came from dues collected from the members, an argument ensued.

Case, who is a heavy-duty mechanic, "bid" on a job referred to by the employees as being "on the hill." This job, awarded on the basis of seniority, entails working in the mines servicing machines. It is considered a preferred job because it has certain privileges; namely, lunch is eaten on company time and the workday ends at 4 o'clock instead of the regular quitting time of 4:30 p.m. Case was assigned to this preferred job as he had more seniority than any other

¹ The name was amended at the hearing.

caterpillar heavy-duty mechanic who exercised their right to bid for the job.²

Case later became union job steward. During his incumbency, an employee named Hetrick filled in for Case "on the hill" on the 2 days which Case had off each week. Tommy Lett, another employee, who had more seniority than Hetrick, then filed a grievance to displace Hetrick as Case's relief man. In the adjudication of the grievance, Lett was represented by the Union and Hetrick by Case in his capacity as job steward. Case argued that Hetrick was entitled to the job because Lett had not bid on the job when it was originally posted. Lett prevailed and Hetrick's right to retain this 2-day-a-week job was disallowed. Case was dissatisfied with the Union's attitude and evidenced what he considered an unfair disposition of the matter by resigning as union job steward. He also attempted to withdraw from the Union and to rescind his authorization for the Company to check off his union dues from his pay and remit it directly to the Union.

Later, the Union filed a grievance on behalf of Lett to replace Case in his job on the hill. Lett's grievance was decided against him at the first stage but when the Union took an appeal, Lett ultimately was successful at the third step of the proceedings and was assigned to Case's job on the hill.

The General Counsel contends and Respondent denies that there was disparate and discriminatory treatment of Case because he had aroused the Union's enmity eventuating in his losing this job, all in violation of Section 8(b)(2) and 8(b)(1)(A) of the Act.³

B Resolutions of Credibility

The witnesses of the General Counsel and Respondent are in conflict in their respective versions as to the circumstances under which the alleged discriminatee, Case, was removed from one job contrary to his wishes and assigned to another less desirable job. Nevertheless, after observing the witnesses and analyzing the record and the inferences to be drawn therefrom, it is concluded that the versions of the witnesses for the General Counsel as to what occurred in this case merit belief, as they appeared to be sincere and truthful witnesses as detailed below.⁴ Moreover, the events narrated by two of the General Counsel's witnesses, namely, Trice and Case, follow a logical sequence, which is consistent with the attendant circumstances in this case.⁵ Furthermore, certain undisputed and demonstrable facts strengthen and fortify this conclusion. On the other hand, the record shows that Respondent's witnesses, Davis and Moore, and a reluctant witness for the General Counsel, Lett, contradicted themselves and one another and that some of their testimony was

not only improbable but in some respects incredible. They did not impress the trier of these facts as forthright witnesses but appeared as not only seeking to color their testimony, but also to be concealing facts in an effort to hide an unlawful motive in an effort to have Case transferred from his job. This credibility conclusion is based also on observation of the witnesses with respect to the accuracy of their memories, the consistency of their testimony with certain undenied facts, their comprehension, and their general demeanor and deportment on the stand in answering questions put to them.

C. The Testimony

Hiram Case, the alleged discriminatee, has been employed by the Miami Copper Company for over 4 years. In the fall of 1966, he transferred from the truck repair shop to the caterpillar repair shop in the capacity of a heavy-duty mechanic.

During the course of a union meeting in 1967, Case opposed a proposal by M. C. Davis, president of Respondent Local 4338, to bring "helpers from the crusher in the mill into the shovel shop at a lesser rate than the prevailing rate." Case testified that he "felt it was unfair to the men there [in the shovel shop] to bring [in] men with lesser wage rates. . . ." Case described the discussion as "pretty heated." A vote was taken and it was decided "to take it to negotiations."

Shortly after this dispute and during the time that the Union had called a strike against the Company in 1967, Davis, at a union meeting, stated that the strike funds of the Local Union were seriously depleted and that the International Union was donating supplemental strike funds to the Local. Case's testimony continues as follows "I took the floor and stated that I didn't feel the International was giving us funds. I felt that those were dues and money paid in from Locals and people like us." In the ensuing argument, Killingsworth, a staff representative of the International, who was present at the meeting, stated Davis was "right." Davis, testified Case, threatened to "disqualify" him from receiving any strike benefits whereupon Case "disqualified" himself from receiving any further strike benefits.

In April 1968, there was a vacancy existing for the second job "on the hill" and Case who bid for the job obtained it on the basis of his seniority over all others who had applied. He retained this job for a "short time" until an employee named Caldwell replaced Case, but Caldwell held the job for only 3 weeks when he voluntarily returned to the truck shop. Case again bid on the vacant job following its posting and again was awarded the job on the hill.⁶

After Case became job steward on January 1, 1969, he filed a grievance on behalf of Martin Hetrick on May 16, 1969, opposing a grievance filed by Tommy Lett who sought to oust Hetrick as Case's fill-in man on the hill 2 days each week when Case was regularly scheduled to be off work. See G. C. Exh. 7. The record is not clear, but it appears that Hetrick bid for and obtained this job and his grievance was based on Lett not being entitled to the job because when the job was

² Bidding is the action of an employee in seeking a vacant job on a seniority basis following the posting of notice of the job vacancy. *CCH Dictionary of Labor Law Terms*, Second Edition, p. 16.

³ Sec. 8(b)(2) reads

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership

Sec. 8(b)(1)(A) reads

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7. *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein

⁴ *Universal Camera Corp v NLRB*, 340 U.S. 474, 494-497. *Deepfreeze Appliance Division v NLRB*, 211 F.2d 458, 462 (C.A. 7)

⁵ Lett, who was subpoenaed by the General Counsel, was requested to meet with Counsel prior to the hearing to review his knowledge of the facts in this matter, but he did not appear

⁶ In answer to a question on cross-examination, Case testified that Caldwell succeeded in replacing him because "According to the contract, when a job comes open it is to be posted for five days, and the senior qualified man can bid on the job. They went down the seniority list and Mr. Caldwell was the first man who took it by coming in there within five days after the job was open. [Caldwell] had more occupational seniority [than Case]." Case explained that originally he filled the job on the hill temporarily while it was being posted and applicants bid on the vacant job. Caldwell had more seniority than he and was awarded the job. Caldwell decided 3 weeks later to give it up and then Case bid for the job again and since he had the most seniority of all qualified employees who applied for the job during the open period he obtained the hill job.

posted Lett did not bid for it. Lett prevailed when Hetrick's grievance was disallowed. See G. C. Exh. 8. Case testified that awarding these 2 days of work on the hill to Lett which Hetrick had performed for some months was "unfair" and he so informed Davis, the president of the Local, at a grievance hearing. Case testified that he asked Davis "what other steps could be taken . . . [under] the contract; you have more than one step to take, and I thought that we should be able to take this to a higher place. Mr. Davis told me that it was as far as he could take it. There was nothing else we could do about it."

Case was so incensed by the decision that he resigned as job steward and attempted to withdraw from the Union⁷ and to rescind his authorization for the Company to check off his union dues from his salary and send it to the Union "because [he] felt there was a conflict of interest because the union officers were working for the Company."

Case telephoned Davis on July 12, 1969, and asked him "if it was true that the Union was giving Mr. Lett my job. . . . Mr. Davis said Mr. Lett had come down there on Thursday [July 10]." The following day, testified Case, he spoke to Moore, the financial secretary and the Union's grievance committee chairman, and asked him "if it was true that the union was giving my job to Mr. Lett and Mr. Moore said that we sure are. I [Moore] made the grievance and signed it myself. He said that the letter of resignation [Case] sent the union, 'I take it personally.' I am quoting Mr. Moore. He said he made up the grievance. I didn't know there was a grievance until that time. But that was the grievance that was filed the 14th [July]. . . . Moore said: 'That [he] signed it himself.' He said, 'The resignation that you presented to the union, I take personally.'" Thereafter, Case met with Trice, the Company's master mechanic, and Davis, the Union's president, under step two of the grievance procedure.¹⁰ According to Case, "Mr. Trice said that he would not give a favorable answer on it because he didn't feel that Lett was entitled to take the job." A few days later, Case testified that he spoke to Martin, the vice president of the Union, at work and told him, "it looked like the union was trying to give Mr. Lett my job. Mr. Martin said, 'Well, why shouldn't they. You were one of those three that turned in a paper resigning from the union.'" ¹¹

Trice, the Company's master mechanic, handled the grievance at the second stage at which time he decided in favor of Case, but at the third stage he was overruled by Hughes, the assistant general manager of the Company. As a consequence, Case was removed from his job on the hill and supplanted by Lett.

Lawrence Trice, who has been the Company's master mechanic since 1956, testified that the two jobs on the hill, which are in the mine department, are filled by caterpillar repair shop heavy-duty mechanics on the basis of seniority. The successful hill job applicant, testified Trice, acquires permanent status when he puts in 51 percent of his time on this job for a 90-day period. Trice stated that Case complied with this 51-percent provision and thus acquired permanent status with respect to this hill job so that he could not be removed

from that job unless he voluntarily relinquished it or was discharged by the Company for good cause. Trice acknowledged that Lett had greater occupational seniority than Case,¹² but when the hill job was vacant and posted, continues Trice's testimony, Lett chose not to bid for the job and when Case, who had the second highest seniority of the applicants, was awarded the job, he could not be involuntarily displaced as long as he performed satisfactorily. Trice testified that if a qualified employee with the most seniority passes up the opportunity to bid on the hill job he cannot later claim it until such time as the applicant who obtained the job voluntarily relinquishes it. Trice testified that ever since 1956 that has been the way it has been done and the only time this precedent was not followed was in the instant case when Lett's grievance was upheld by Hughes, the Company's assistant general manager, which resulted in Case losing his hill job.

Tommy Lett, a heavy-duty mechanic, has been employed by the Company for approximately 5 1/2 years and was Case's immediate predecessor as union job steward. He transferred to the Caterpillar shop in 1967. Some time thereafter, Lett spoke to Davis and Moore, union officials, with respect to his interest in obtaining one of the two jobs on the hill. When he was asked what they told him, he answered that the Union's officials advised him he was not eligible to apply for it as Case had the job.

When Lett was shown his grievance¹³ filed by the Union in Lett's name to replace Case in the hill job, the following appears in the record:

Q. And when did you first learn that this grievance was filed in your name to bump Case off the hill?

A. When I knew it was filed; when I found out that it had been filed. Mr. Moore gave the grievance to me to read.

It was then pointed out to him that he stated in his affidavit which he gave to the Board the following:

I did not know a grievance was filed on my behalf for the preferred job until about a month or so after it was filed. I did not ask that a grievance be filed.

* * * * *

Q. It was after it was filed that it was brought to you and shown to you?

A. I am sure it was . . . That is true. I did not know they were filing it.

Charles Moore, financial secretary and chairman of Local 4338's grievance committee, was lacking in candor and generally unimpressive as a witness. He testified that Davis, the president of the Union, told him to see Lett with respect to filing a grievance for Lett to obtain Case's job. He saw Lett at a time he does not recall, drafted the grievance, and filed it in July. Moore's testimony reads as follows:

Q. And what took place in that conversation; give it to us as well as you can; not your impression, but what was actually said by you, said by Mr. Lett?

A. When I took the grievance back to him to look at?

Q. What transpired on that occasion, and on that occasion only?

A. I don't know.

Q. You don't remember the conversation?

⁷ See art. VIII of the collective-bargaining agreement executed by the Company and the "United Steelworkers of America, for and on behalf of its Local No. 4338, hereinafter referred to as the 'Union.'" G.C. Exh. 2 at p. 1 and art. VIII, p. 23-26.

⁸ Case testified he was informed by a company official that under the contract, he could not resign from the Union at that time. Hetrick and another employee, Hank Belt, also attempted to resign from the Union. Arizona is a "right to work" state.

⁹ See G.C. Exh. 6 signed by Union Officials Davis and Moore.

¹⁰ See p. 24 of G.C. Exh. 2.

¹¹ See fn. 8.

¹² It was Trice's testimony that Case had more seniority than Lett in the Caterpillar shop which is "occupational" seniority but that Lett, who has been employed by the Company longer than Case, had more "company-wide" seniority. However, stated Trice, all hill jobs are filled by Caterpillar shop heavy-duty mechanics.

¹³ G.C. Exh. 6, dated July 14, 1969.

A. No, I don't

Moore testified that the meeting with Lett resulted in him drafting a grievance for Lett at his request, which Lett read and approved. He also stated he does not recall any conversation between himself and Lett in which Moore indicated he wanted Lett to file a grievance rather than Lett indicating he wanted Moore to file a grievance for him.

Moore testified Case telephoned him after Lett's grievance was filed and that Case accused him "of being out to get his job," and that [Case] criticized his ability to represent the Local and that Case told him "[he] didn't know what union brotherhood meant." Moore testified that he assured Case there was nothing "personal . . . it was strictly business."

On cross-examination, Moore was shown Lett's affidavit which reads as follows:

I did not know a grievance was filed on my behalf for the preferred job until about a month or so after it was filed.

I did not ask that a grievance be filed. I found out when Charley Moore, agent of Local 4338, told me on August 19, 1969 that they were filing a grievance for me to get me the hill job.

When he was asked if he knew "of any good reason" why Lett so stated the above in his affidavit, Moore answered: "I have no control over what Mr. Lett testified to . . . No, I can't."

M. C. Davis, president of Local 4338 for approximately 12 years, testified that Lett came to him and inquired whether he could file a grievance to obtain Case's job and that he answered he could. Davis suggested that Lett see Moore and have him prepare a grievance. After the grievance was drafted, Davis signed it and was present at the various stages of processing the grievance. Davis testified that when the grievance was decided against Case the latter told Davis "it wasn't right for the union to take his job away from him and give it to someone else. I tried to explain to him that it wasn't necessarily his job any more than it was anyone else's job. It belonged under the seniority clause, my job, his job or anyone else's."

On cross-examination, Davis was shown Lett's affidavit which reads as follows:

When I first went into the Cat shop, I was after M. C. Davis, president of Local and Charley Moore about the preferred job. They told me at the time that I could not get the job because this man Case was on the job that I had turned it down once before, so I could not get it.

When Davis was then asked to explain this statement, he testified, Lett was "mistaken" and that Lett did not speak to him about getting Case's job on the hill when Lett transferred to the Caterpillar shop.

When Davis was shown Lett's affidavit which states that he did not know a grievance was filed on his behalf by Davis and Moore for Case's job until a month after it was filed and that Lett did not request that a grievance be filed, Davis was then asked by counsel for the General Counsel if he can explain why Lett should have made this statement under oath. Davis replied: "I don't know of any reason why he should say it. But it is there and it is incorrect."

Robert P. Hughes, assistant general manager of the Miami Copper Company, was management's representative at the third step of the grievance proceeding in the matter of Lett versus Case.¹⁴ Hughes was shown the collective-bargaining agreement, specifically article VI, pages 16 and 17. (G C. Exh. 2.) Hughes, whose testimony was quite disjointed, lacking in clarity, and gave the impression that he was engaging in purposeful obfuscation, testified that each shop has its own

procedure for days off, seniority is not specifically denied in the contract but the Union and the Company through long practice have established certain procedures. Excerpts from his testimony read as follows.

As far as the company is concerned, we recognize the seniority is sacred to the union. They make an appeal to us about seniority, and if it doesn't interfere with our operations, we agree to it . . . Up until the grievance [in this case] was filed, we thought we had a procedure. Then we got into this disagreement over the movement of a man who bid an opening in the Cat shop and the truck shop, truck shop mechanic. [That would be] Mr. Lett. There was a vacancy in the Cat shop that was posted and he bid it, and that is how he got over there. After he got over there, then he began to exercise his occupational seniority for some of the privileges in that particular crew . . . Lett exercised his right of seniority to go up on the hill. I know that if [the man on the hill] goes up there over 51 percent of his time over a certain three month period, he then is considered permanently in that job with respect to going home at 4.00 o'clock daily . . . and having his lunch on company time. Then another three-month period is reviewed, and that privilege is taken away from him if he is not spending 51 percent of his time. So he can go in and out of the second job. He qualifies for the following three months to go home at 4.00 o'clock if he put in over 51 percent in the 90-day period. Mr. Case is the oldest man in the crew, but he is not the senior man in the occupation . . . I based my decision on the fact that this had been pursued through this many steps of the grievances and we could find a logical reason for using seniority in this way, and the company had no argument against it . . . We thought there was a lack of agreement or anything else to back up our position; that this was a fair way to settle it . . . Our position was that the man was trying to exercise super seniority. The company thought it was fair to exercise the seniority in the Cat shop crew and it would be in order of the length of service in that crew, but we had no agreement with the union on that. We never operated that way. There was nothing written down, except that the Cat shop crew, the shovel shop crew, and truck shop crew, as far as seniority within those groups. For lack of an agreement like that, this is the way we settled it.

Concluding Findings

It has been established by a preponderance of the probative evidence that Case lost his job on the hill by incurring the enmity of the union officials for no reason other than his protected activities. Such activities consisted of Case taking issue with Davis at a union meeting of Davis' description of the International's strike benefits and Case resigning as job steward and attempting to rescind the checkoff of his union dues, as well as his effort to withdraw from the Union. Moreover, Case antagonized the union officials by opposing them when they succeeded in dislodging him from his job on the hill and then accusing them of unfairness in the Hetrick matter. The record and the inferences to be drawn therefrom reveal that Case's conduct and actions provoked the union officials and the discrimination that followed stemmed from these protected activities. It is found, therefore, that the Union was motivated by proscribed reasons when it caused Case to be deprived of his job on the hill. The union officials, Davis and Moore, also restrained and coerced its union members in violation of Section 8(b)(1)(A) by showing them what might happen to them if they opposed the officers and incurred their displeasure by demonstrating the power of the Union to pro-

¹⁴ At the final or fourth step, which it appears this matter never reached, the management representative is the plant manager and representing the Union is an official of the International

tect the job security of its members at the expense of others who had antagonized the hierarchy. For all of the foregoing reasons, the Respondent Local 4338 violated Section 8(b)(2) and (1)(A) by knowingly and discriminatorily denying Case the job on the hill to which he was entitled by bringing pressure on the Company to supplant him with Lett. *Miranda Fuel Company, Inc.*, 140 NLRB 181.

There is no evidence to link the International Union with the actions of Local 4338's officers. Accordingly, it will be recommended that the complaint be dismissed as to the Respondent United Steelworkers of America, AFL-CIO.

CONCLUSIONS OF LAW

The Respondent Local Union 4338, by denying and depriving Case of his job in the course of administering the contract with the Miami Copper Company, restrained and coerced him in the exercise of his rights under Section 7 to engage in concerted activities for his aid and protection and caused or attempted to cause the Miami Copper Company to discriminate against him in violation of Section 8(a)(3), thereby engaging in unfair labor practices affecting commerce within the meaning of Sections 8(b)(1)(A) and (2) and 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent Local 4338 has engaged in unfair labor practices, it shall be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It shall be recommended that the Respondent make Case whole for any loss of pay he may have suffered as a result of Respondent Local's having caused the said discriminatee to be deprived of his job on the hill by payment to him of a sum of money, plus interest,¹⁵ equal to that which he would have earned as an employee on the hill.

It will be recommended also that the Order contain an injunction against any form of restraint or coercion by Respondent Local 4338. It shall, therefore, be recommended that the Respondent be ordered to cease and desist from causing or attempting to cause the Miami Copper Company or any other employer, as defined in the Act, within its jurisdictional, territorial, and geographical area to deprive employees of their jobs to which they are entitled on a seniority basis and for which said employees are qualified, except in accordance with the provisions of Section 8(a)(3) of the Act.

[Recommended order omitted from publication.]

¹⁵ *Isis Plumbing & Heating Co.*, 138 NLRB 716; *F. W. Woolworth Company*, 90 NLRB 289.