

Williams Press, Inc. and Theodore Compagnone

Albany Printing Pressmen Assistants' and Offset Workers Union Local 23, AFL-CIO (Williams Press, Inc.) and Theodore Compagnone

Williams Press, Inc. and Martin Claydon

Albany Printing Pressmen Assistants' and Offset Workers Union Local 23, AFL-CIO (Williams Press, Inc.) and Martin Claydon. Cases 3-CA-4401-1, 3-CB-1635-1, 3-CA-4401-2, and 3-CB-1635-2

March 15, 1972

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND KENNEDY

On November 16, 1971, Trial Examiner Lloyd Buchanan issued the attached Decision in this proceeding. Thereafter, Respondent Union filed exceptions and a motion to reopen the hearing, and the General Counsel filed a motion to strike Respondent Union's exceptions and brief and motion in opposition to request to reopen the hearing. Thereafter, the Respondent Union filed an opposition to the General Counsel's motions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the Trial Examiner's Decision in light of the exceptions, opposition, and briefs and has decided to affirm the Trial Examiner's findings, conclusions, and recommendations as modified herein.¹

We agree with the findings and conclusions of the Trial Examiner that the Respondent Union and Respondent Company, through its control and application of the seniority list in placing Compagnone and Claydon in lesser status than they were entitled and thereby adversely affecting them with respect to shifts,

¹ In view of the fact that the Trial Examiner's Decision was essentially a summary judgment based upon the pleading and that the record contained no testimony or presentation of evidence relating to the alleged violations of the Act as set forth in the complaint, we find that Respondent Union's exceptions in the special circumstances of this case fulfilled the requirements of Section 102.46(b) of the Rules and Regulations, Series 8, as amended. Accordingly, we deny the General Counsel's motion to strike the Respondent Union's exceptions.

As for Respondent Union's motion to reopen the hearing to present certain evidence which it alleges as a defense to the findings of violations of the Act set forth in the Trial Examiner's Decision, we note that the evidence sought to be adduced is vaguely defined and no showing has been made that it is newly discovered, or evidence which had become available only since the close of the hearing, or why it was not previously presented at the hearing. We, therefore, find that the motion fails to meet the requirements of Section 102.48(d) of the Rules and Regulations, and we deny the motion.

vacations, overtime work, and layoffs, violated respectively Section 8(b)(1)(A) and (2) and Section 8(a)(1) and (3) of the Act.² We also agree with that part of the remedy recommended by the Trial Examiner that requires that Compagnone and Claydon be restored to their proper place on the priority list and that they be made whole for any loss sustained by reasons of the discrimination against them, with interest to be computed in the customary manner. However, we find merit in the exceptions of the Respondent Union to that portion of the Trial Examiner's recommended Order that provides that the Union should be "primarily liable" for any loss sustained by the employees in question. The issue of sole or primary culpability was not litigated and we find no basis in the pleading or the record to support such remedy. Accordingly, we shall revise the recommended Order and notices, as indicated below, to provide the usual remedy for violations of this nature by making the Union and the Company "jointly and severally" liable to make the employees involved whole for any loss suffered by them.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent Williams Press, Inc., Menands, New York, its officers, agents, successors, and assigns, shall:

² The complaint alleges, *inter alia*, that Respondent Union engaged in this conduct "arbitrarily and capriciously, and for unfair, irrelevant and invidious reasons, thereby breaching its duty to fairly represent the employees. . . ." Respondent Union failed to deny either by answer before the hearing or at the trial the allegations in the complaint. Respondent Employer admitted in its answer and at the trial that it acquiesced in the acts and conduct of the Respondent Union and thereby violated the Act.

³ Member Kennedy dissents from his colleagues' failure to affirm the Trial Examiner's conclusion that in the circumstances of this case an order making the Union primarily liable for making the discriminatees whole would be appropriate.

The Trial Examiner found that in exercising control over the priority list the Union placed the two employees, Compagnone and Claydon, who had occupied number three and number one positions, respectively, on the priority list, in a lesser status than they were entitled to, and caused the Company to place them in such a lesser status. These two employees were thereby adversely affected with respect to shifts, vacations, overtime work, and layoffs. The Trial Examiner concluded that the Union breached its duty to represent these two employees fairly and caused and attempted to cause the Company to discriminate against them. In concluding that the Union should be made primarily liable for making whole these two employees, the Trial Examiner expressly found that the Company resisted the Union's action, telling the Union that the lowering of the two employee's positions on the priority list was improper. The Company believed this, and told the employees that they could have recourse to the Board.

In the foregoing circumstances, I am of the view that the Trial Examiner was clearly correct in recommending that the Union be made primarily liable for making the employees whole. *Zoe Chemical Co., Inc.*, 160 NLRB 1001, 1002-03, *J. J. Hagerty, Inc.*, 139 NLRB 633, 639; *N.L.R.B. v. Local 138, Operating Engineers [Nassau & Suffolk Contractors' Assn.]*, 293 F.2d 187, 199 (C.A. 2)

1. Cease and desist from:

(a) Encouraging or discouraging membership in Albany Printing Pressmen Assistants' and Offset Workers Union Local 23, AFL-CIO, or in any other labor organization, by acquiescing in the placement of employees in a lesser priority status than they are entitled to or by placing them in such lesser status, or discriminating in any other manner in respect to their hire or tenure of employment or any term or condition of employment.

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

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

(a) Restore Martin Claydon and Theodore Compagnone to the top and third positions respectively on the priority list for Prep. Room pressmen.

(b) Jointly and severally with Respondent Union make whole the above-named employees for any loss sustained by reason of the discrimination against them, with interest to be computed in the customary manner.⁴

(c) Post at its place of business in Menands, New York, copies of the attached notices marked "Appendix A" and "Appendix B."⁵ Copies of said notices, on forms provided by the Regional Director for Region 3, shall be posted by the Company, after being duly signed by the Company's and the Union's representatives respectively, immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 3, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent Company has taken to comply herewith.

B. Respondent Albany Printing Pressmen Assistants and Offset Workers Union Local 23, AFL-CIO, Rensselaer, New York, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Placing employees, or causing or attempting to cause Williams Press, Inc., or any other employer to place employees in a lesser priority status than they are entitled to or otherwise to discriminate against employees in violation of Section 8(a)(3) of the Act.

(b) In any other manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Restore Martin Claydon and Theodore Compagnone to the top and third positions respectively on the priority list for Prep. Room pressmen.

(b) Jointly and severally with Respondent Company make whole the above-named employees for any loss sustained by reason of the discrimination against them, with interest to be computed in the customary manner.⁶

(c) Notify Williams Press, Inc., Menands, New York, and mail copies of such notice to Claydon and Compagnone, that it has restored those two employees to the top and third positions respectively on the priority list for Prep. Room pressmen.

(d) Post at its offices and meeting halls copies of the attached notices marked "Appendix A" and "Appendix B."⁷ Copies of said notices, on forms provided by the Regional Director for Region 3, shall be posted by the Union, after being duly signed by the Company's and the Union's representatives respectively, immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Union to insure that said notices are not altered, defaced, or covered by any other material.

(e) Promptly furnish to the Regional Director for Region 3 copies of Appendix B for posting by the Company at its place of business in Albany, New York.

(f) Notify the Regional Director for Region 3, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent Union has taken to comply herewith.

⁴ See fn 4

⁷ In the event that this 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"

APPENDIX A

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

WE WILL NOT encourage or discourage membership in Albany Printing Pressmen Assistants' and Offset Workers Union Local 23, AFL-CIO, or in any other labor organization, by acquiescing in the placement of employees in a lesser priority status than they are entitled to or in placing them

⁴ *F.W. Woolworth Company*, 90 NLRB 289, *Isis Plumbing & Heating Co.*, 138 NLRB 716.

⁵ In the event that this 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"

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Ninth Floor, 111 West Huron Street, Buffalo, New York 14202, Telephone 716-842-3100.

TRIAL EXAMINER'S DECISION

LLOYD BUCHANAN, Trial Examiner: The consolidated complaint herein (all charges filed March 11, 1971) alleges that the Company has violated Section 8(a)(1) and (3) and the Union Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, 73 Stat. 519, as amended, by the Company's delegation to the Union of control over the priority list which governs company Prep. Room pressmen's preference for shifts, vacations, overtime work, and the order and duration of layoff; and by the Union's exercise of such control by placing, and causing the Company to place, Prep. Room pressmen Compagnone and Claydon on said list in a lesser status than they were entitled to, thereby adversely affecting them with respect to shifts, vacations, overtime work, and layoffs. The Company's answer admits the allegations of violation. Although appearing at the trial and requesting "a full hearing . . . to get the proper answer" with respect to the priority list, the Union filed no answer.

The case was tried before me in Albany, New York, on September 20, 1971. Pursuant to leave granted to all parties, a letter has been filed by the Union, with a request that it "should be considered the Union's brief," the time to do so having been extended.

With the allegations of the complaint admitted by the Union by its failure to deny either by answer or at the trial and by the Company in its answer as amended at the trial with respect to purely formal denials, I reserved decision on the General Counsel's motions for summary judgment, to await the Union's more detailed statement of its position. The motions are hereby granted in accordance with the following findings, conclusions, and recommendations.

Upon the entire record in the case, I make the following:

FINDINGS OF FACT (WITH REASONS THEREFOR) AND CONCLUSIONS OF LAW

I THE COMPANY'S BUSINESS AND THE LABOR ORGANIZATION INVOLVED

The facts concerning the Company's status as a New York corporation, the nature and extent of its printing business, and its engagement in commerce within the meaning of the Act are admitted; I find and conclude accordingly. I also find

and conclude that the Union is a labor organization within the meaning of the Act.

II. THE ALLEGED VIOLATION OF SECTION 8(a)(1) AND (3)

The unit has been recognized by the Company as exclusive bargaining agent for a unit of employees at its plant including, among others, Prep. Room pressmen. Exclusive control over a priority list as alleged and described above has been delegated by the Company to the Union, and the latter has exercised such control.

In exercising control over the priority list, the Union on or about February 18, 1971, placed Compagnone and Claydon, who we were informed without contradiction had occupied number three and number one positions respectively on the priority list, in a lesser status than they were entitled to and caused the Company to place them in such lesser status; and the two employees were thereby adversely affected with respect to shifts, vacations; overtime work, and layoffs.

The Union breached its duty to represent these two employees fairly and caused and attempted to cause the Company to discriminate against them, in violation of Section 8(b)(1)(A) and (2); I so find and conclude. I also find and conclude that the Company interfered and discriminated against them in violation of Section 8(a)(1) and (3).

Whatever the Union's internal problems, they remain internal. They are not in issue here and are not before us. Even in its brief the Union has not urged facts which, were there denial of complaint allegations, could be weighed to indicate whether its representation of these employees was fair and lawful. Denials being absent, proof of culpability was not sought; and exculpatory proof or explanation not reached or at any time offered.

It appears without contradiction that the Company resisted, telling the Union that the latter's action in lowering the two employees' positions on the priority list was improper; the Company believed this and told the employees that they could have recourse to the Board.

Under the circumstances, as the General Counsel requested, Compagnone and Claydon should be restored to their proper places, number three and number one respectively, on the priority list and should be made whole for any loss suffered as a result of the interference and discrimination found, the Union to be primarily liable for making them whole.¹

[Recommended Order omitted from publication.]

¹ *Zoe Chemical Co., Inc.*, 160 NLRB 1001