

Alliance Manufacturing Company, Inc and International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC and its Local 750 Cases 8-CA-6537, 8-CA-6578, 8-CA-6703, 8-CA-6921, and 8-CA-6982

December 1, 1972

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

On August 17, 1972, Administrative Law Judge¹ Phil Saunders issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions and a supporting brief, and Respondent filed cross-exceptions and a brief in opposition to the exceptions and in support of its cross-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 authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

¹ The title of Trial Examiner was changed to Administrative Law Judge effective August 19, 1972.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

PHIL SAUNDERS, Trial Examiner. This case, initiated by a charge filed on July 26, 1971, and the complaint issued on March 21, 1972, was tried before me at Alliance, Ohio, on June 13, 1972. The amended and consolidated complaint alleges that Alliance Manufacturing Company, Inc., herein the Respondent or Company, violated Section 8(a)(1) of the National Labor Relations Act, as amended, by issuing disciplinary notices, warnings, reprimands, suspensions, terminations, and/or layoffs to certain employees who were absent from work because they chose to honor the sister Local's picket line. Respondent denied that it was in

¹ The transcript has been corrected in accordance with motions received from each of the parties.

² All dates are 1971 unless specifically stated otherwise.

³ The number of employees who were scheduled to work and the number who actually reported for work on the dates on which pickets

violated the statute. Each of the parties filed briefs and I have duly considered the same.¹

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

FINDINGS OF FACT

I THE BUSINESS OF RESPONDENT

Respondent is a corporation organized under the laws of Ohio, with its principal office and place of business situated in Alliance, Ohio, where it is engaged in the manufacture and assembly of garage door openers and motors. Annually, the Respondent manufactures, sells, and ships products valued in excess of \$50,000 from its Alliance, Ohio, plants directly to points located outside the State of Ohio. The complaint alleges, the answer admits, and I find that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II THE LABOR ORGANIZATION INVOLVED

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 750, herein the Union or Local 750, is a labor organization within the meaning of Section 2(5) of the Act.

III THE UNFAIR LABOR PRACTICES ALLEGED

Respondent operates plants in Alliance, Ohio, and Shenandoah, Virginia. Local 750 has been the collective-bargaining agent for the two Alliance plants for many years. These are known as plants 1 and 2. The employees at the Shenandoah plant are represented by Local Union No 174 of the same International Union, and on June 3, 1971, a strike was commenced by Local 174 at Respondent's Shenandoah plant, and continued until November 18, 1971.² On June 7, members of Local 174 picketed plant 1, the largest of Respondent's two Alliance plants, but no further picketing occurred until June 21 when plant 1 was again picketed by Local 174 and on the following 2 days, June 22 and 23, members of Local 174 picketed both Respondent's Alliance plants. Thereafter, no further picketing occurred until July 6. The resumption of the picketing occurred at a time when the Respondent was operating plant 1 with a reduced complement of employees and when plant 2 was closed due to the annual vacation shutdown. Consequently, the picketing, which continued on each working day thereafter, through July 16, was limited to plant 1. Subsequently, no further picketing has occurred. There is no dispute that only members of Local 174 engaged in the picketing of Respondent's plant. This record also reveals that varying numbers of employees at Respondent's Alliance plants refused to cross the picket line on all of the days that pickets from Local 174 appeared.³

The Respondent counted as unexcused absence all days any employee refused to cross the picket line, and the appeared are substantially as follows:

(Continued)

absence of any employee on any day on which there was picketing was treated the same as an absence on any other day. The Company points out that this action was taken pursuant to the provisions of the current contract between the Respondent and Local 750—effective until January 31, 1973, and providing for disciplinary action in connection with absences.⁴ It is admitted that the Respondent's application of its rules regarding absenteeism and discipline included the disciplining of all employees who were absent in excess of 8 days in either, or both, of the calendar quarters' ending on June 30, and September 21, 1971, notwithstanding the dates during these quarters when Respondent's plants were picketed. There is no dispute that the named employees, set out in the amended consolidated complaint, were disciplined in the manner set forth in the complaint, and in accordance with the company policies regarding absenteeism and disciplinary action. It is further stipulated that these disciplined employees reported to the Respondent the reason for his/her absence during the various dates that the pickets were present, with the exception of the vacation period, and that the reasons given by each employee, except for Ellen Evans, are as set forth in Joint Exhibit 2(a) through 2(d). Regarding the vacation period in July, the parties stipulated that each disciplined employee's absence from work during this period was precipitated by and attributable to the employee's individual determination to honor the picket line.

The General Counsel produced six or seven witnesses to explain their own personal reasons for not reporting to work on the days in question, and their explanation was that they did not want to cross the picket line. Wanda Mohr admitted that she was not ill on the days during the picketing when she reported off "sick." She explained that the presence of the pickets, and her experience in situations involving picketing, prompted her to report off "sick" rather than report for work during the period that the picketing was in progress. No stipulation was agreed upon between the parties concerning the reasons for Ellen Evans' absence on June 7, 21, 22, and 23. However, the Respondent's records indicate that Evans reported off "personal" on June 7, and "sick" thereafter. Evans then testified she reported off for "personal" reasons on all of

Date	Alliance Plant No. 1		Alliance Plant No. 2	
	Number Worked	Number Scheduled	Number Worked	Number Scheduled
June 7	169	615	31	35
June 21	57	615	30	35
June 22	69	615	1	35
June 23	91	615	2	35
July 6	78	157	0	0
July 7	82	157	0	0
July 8	107	157	0	0
July 9	107	157	0	0
July 12	109	146	0	0
July 13	116	146	0	0
July 14	113	146	0	0
July 15	122	146	0	0
July 16	116	146	0	0

⁴ These express provisions of the current agreement are as follows:
11.1 An employee shall be disciplined as follows:

11.1.1 He shall be given a written reprimand by the Company after the first infraction of rules and regulations established and published by the Company. Copy of this reprimand shall be given to his Steward.

11.1.2 In the event of a second such infraction, written notice of a three-day layoff shall be given to the employee. A copy of this notice

shall be given to his Steward.

11.1.3 In the event of a third such infraction, an employee may be discharged in the discretion of the Company. The reason for his dismissal shall appear on his discharge notice.

11.2 A first reprimand shall not be used against the employee's record after a six-month period has elapsed, provided the employee does not receive another reprimand within that period. If a second reprimand is received within the six-month period, it will not be used against the employee's record after a twelve-month period has elapsed, except that in the event of a third infraction occurring within an eighteen-month period, the employee may be subject to discharge.

B. Any employee who is absent from work more than eight (8) days in any period of three (3) consecutive months, shall receive a written warning for the first offense and a written reprimand in accordance with Article 11 of the Agreement for each subsequent offense. A written reprimand will be issued for the first offense if the employee received a written warning.

The rules and regulations referred to above are also incorporated in the present contract, and paragraph B of these rules has been set forth in Paragraph C of the rules specifically enumerated the five (5) exceptions to paragraph B. See Jt. Exh. 1.

the days in question and explained that her personal reason was, in fact, that she "wouldn't go across the picket line."

The current contract between the Respondent and Local 750, Joint Exhibit 1, also contains a no-strike provision. This provision states as follows:
18.1 Should differences arise between the Company and the Union, as to the interpretation or application of the provisions of this Agreement, or should any dispute of any kind arise, it is agreed that there shall be no work stoppages, walk-outs, or slowdowns, until the entire grievance procedure has been exhausted, except in the matter of reopening the contract for the renegotiation of wages. There shall be no lock-outs during the term of this Agreement.

In addition to the above clause, the current contract also contains, in Article 2.1, a "purpose" clause and which, in pertinent part, reads as follows:
Therefore, this agreement has been written to eliminate lock-out, strikes, slowdowns, and work stoppages of all kinds and to make possible satisfactory adjustment of any differences which might arise.

The provisions of Article 16 "Arbitration," provides as follows:
16.1 Any grievances arising out of, or relating to, this agreement, may be submitted by the union to an arbitration Panel, provided it shall not have been satisfactorily settled after following the complete grievance procedure contained in the agreement.

16.2 The arbitration Panel shall be empowered to rule on all grievances pertaining to the interpretation of this agreement, but shall not have the power to add to, or subtract from, or modify the terms of this agreement or any other agreement made supplementary thereto. The grievance procedures are contained in section 15.1 of the contract, and provide for several steps of intermediate appeal before reaching arbitration.
The General Counsel produced testimony through several of his witnesses to the effect that each employee independently decided whether to work or honor the picket line, and contends the record testimony clearly establishes that the Union did not attempt to interfere with, instruct, or influence its members concerning their individual decision regarding whether or not to honor Local 174's

shall be given his Steward.

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The rules and regulations referred to above are also incorporated in the present contract, and paragraph B of these rules has been set forth in Paragraph C of the rules specifically enumerated the five (5) exceptions to paragraph B. See Jt. Exh. 1.

picket line The Business Agent of Local 750, John Gusbar, testified that at the start of the picketing at the plants in Alliance he received numerous inquiries from his members concerning the picketing and whether they should honor the picket line According to Gusbar, he answered these inquiries by informing the members that Local 750 had a contract to honor, that the individuals had to decide for themselves whether to honor the picket line, and told them the Union was not in a position to tell them what to do

On June 15, and again on June 22, Local 750 distributed leaflets to its members The first leaflet stated as follows

Recent Company literature has caused many members to inquire concerning their rights and obligations where the Alliance plant is picketed by members of another Local union

The Local union is obligated to and will abide by the Contract which is currently in effect We have notified the Company of our intentions to comply with all the various provisions of the contract

Local 750 is also obligated to inform you of your legal rights The law gives you, as an employee, the right to individually and on your own, to refuse to cross a picket line established at the plants Any decision not to cross a picket line must be your own

The second union leaflet dated June 22 stated

Company announcements state that employees honoring the recently established picket lines are subject to discipline under the eight (8) day rule This company announcement is legally in error Normally employees have the right on an individual basis to refuse to cross a picket line Local 750 previously informed employees of their right in a June 15 leaflet because of a prior company misrepresentation

While employees have the right individually and on their own to refuse to cross the picket line established at the plants, the local union is obligated to and will abide by the contract currently in effect and will honor all its provisions

On June 25 and on one other subsequent occasion in July, the Respondent's personnel director, Ralph Reeder, sent letters to employees who were absent from work on one or more of the dates when Respondent's plants in Alliance were being picketed The employees were advised that the contract with Local 750 forbids strikes or work stoppages, and that anyone participating in such activities would be engaging in an unlawful act, and the fact that there were pickets did not alter these basic facts The employees were also informed that the Respondent would not condone or excuse such conduct, and that their absence would be charged against them as unexcused⁵

It is General Counsel's position that in refusing to cross the picket line at the plants in Alliance these employee-members of Local 750 were assisting their sister Local 174, which at the time was engaged in a strike of Respondent's Shenandoah plant The General Counsel maintains and concedes that none of the employees would have been disciplined had there been no picketing as this was the reason for their failure to report for work, states that the no-strike provision in the current contract does not operate as a waiver of the employees' statutory right to honor

another union's picket line, and further contends that the no-strike clause contemplates only work stoppages which arise over matters subject to the grievance and arbitration procedures

The Charging Party reasserts some of the arguments by the General Counsel, but specifically states the following

This case turns solely upon the issue of waiver If there is no waiver of statutory rights by the Union, the Employer is in violation of Section 8(a)(1) in its discipline of employees who individually on their own refused to cross the lawfully established picket line

In other contentions the Charging Party also maintains that read in context, the no-strike clause in the instant case only contemplates no walkouts, slowdown, or strikes on matters subject to the grievance procedure, and also maintains that disputes beyond the scope of the grievance procedure are not restricted by the no-strike provision

The Respondent's position is that the Alliance employees were not engaged in protected activity, and rests its position on the two sets of explicit provisions in the current contract—the provisions regulating absenteeism and the agreed plan of discipline for it, and the explicit no-strike provisions, as aforesaid

Conclusions

This is another in a series of cases where employees are faced with a picket line at their place of work, and acting in the time-honored tradition of organized labor deciding not to cross the picket line even though the union conducting the picketing is not their own bargaining representative Nevertheless, as the Board held in *Redwing Carriers, Inc*, 137 NLRB 1545, modifying 130 NLRB 1208, *affd sub nom Teamsters, etc Local Union No 79 v NLRB*, 325 F 2d 1011 (C A D C), such "employees engage in protected concerted activity when they respect a picket line established by other employees Such activity is literally for 'mutual aid or protection' as well as to assist a labor organization within the meaning of Section 7"

From the above it follows that the employees in the instant case, absent additional circumstances, had a protected right in refusing to cross a peaceful picket line set up by another union—Local 174—and in which they had no direct interest, but the issue here is whether Local 750 has contracted away or waived that right with the inclusion of no-strike provisions in its contract with the Respondent

There is considerable evidence and testimony in this record bearing on whether or not the employees here involved individually or in "concert," made their decisions to honor the picket line All those who testified for the General Counsel said they made their own decision The Respondent introduced various exhibits showing numerous correspondence and other contacts between Local 750 and Local 174, and made a showing of strong backing and support for the pickets, both financially and otherwise, by members of Local 750 The Charging Party contends that Local 750 did not engage in a strike However, regardless of the possible ramifications on these questions and on whether or not Local 750 had actually or technically called a strike—the employees were most certainly engaged in

⁵ Jt Exhs 3 and 4

concerted activity by staying off the job, and therefore, the pivotal issue still remains as to whether the concerted action was protected or whether it had been waived.

It is well recognized that rules applicable to the construction of contracts in general apply to bargaining contracts. The contract must be construed as a whole, and effect must be given to the mutual intention of the parties involved. In the instant case it appears to me that section 18 1 in the contract is a rather explicit no-strike provision, and I agree with the Respondent that this provision was clearly meant and understood to be exactly that. As pointed out during the picketing, agents of Local 750 indicated that they understood the no-strike clause to prohibit participation in work stoppages—see General Counsel Exhibits 2 and 3, as previously set forth herein—and the same is true as reflected in the testimony of Union Representative Gusbar who related telling employees that the Union “had a contract to honor,” and that the Union “was not in a position to tell them what to do.”

Another sure indicator that the contract clearly expressed an explicit or broad prohibition against work stoppages was confirmed by the Union’s efforts to change the no-strike provision in the negotiations which led to current agreement. It appears that sections 2 1 and 18 1 have been included in the Company-Union agreements for many years and these provisions were also included in the 1968 agreement which preceded the current contract. However, in the negotiations which led to the present 3-year agreement, Local 750 suggested changes or modifications in the no-strike provisions and proposed that the Union be relieved of its no-strike pledge under three circumstances:

A The parties engage in negotiations upon a proper subject of collective bargaining not covered by this contract.

B The parties are unable to reach agreement.

C The matter in dispute is not subject to the grievance and arbitration provisions of this contract. Throughout the negotiations Local 750 persisted in these modifications, but the Respondent took the position that it wanted no changes, and in final settlement, Local 750 abandoned its efforts to modify the no-strike provisions, and sections 2 1 and 18 1 were continued without the modifications.

Section 18 1 in the contract states, in part, that there are to be no work stoppages “until the entire grievance procedure has been exhausted.” The Respondent suggests several possible interpretations of this language—one being that in respect to matters that could be processed through the grievance procedure, there could be no work stoppage or strikes until the grievance procedure was exhausted—and further suggests there could be no strike or stoppages with respect to a matter that could not be processed through the grievance procedure.

The General Counsel suggests that the no-strike clause contemplates only work stoppages on the matter subject to the grievance procedure, maintains that this interpretation is supported by the arbitration and grievance provision in the current contract, and inasmuch as there is no

contractual provision governing a situation where individual employees refuse to cross the picket line of another union, there is no dispute cognizable under the contractual grievance provision, and hence, no grievance could be filed which would bring the grievance exhaustion provision of article 18 1 into effect, and it therefore follows that the arbitration clause could not be invoked and in such situations the no-strike prohibitions were inapplicable.

The General Counsel and the Union might have been successful in these arguments had the contract merely contained the above clause. However, this contract must be construed as a whole, and when the pertinent part of article 2 1, the purpose clause, is read, “to eliminate work stoppages of all kinds,” it becomes clear that the position advanced by the Respondent is the most plausible one—that the no-strike provision says in effect, that on matters not subject to the grievance procedure there can be no strike, and on matters which are subject to the grievance procedure, there cannot be a strike until the grievance procedure is exhausted.

The Respondent’s position is further substantiated by noting and evaluating the negotiations leading up to the existing contract. The latest bargaining history between the parties reveals that Local 750 wanted to be relieved of its no-strike pledge when matters in dispute are not subject to the grievance and arbitration provisions, but the Company would not go along and the former provisions were again put in the contract, as detailed previously herein. It appears to me that this bargaining history is particularly helpful here because the effort made by Local 750 to modify the no-strike provision clearly shows their understanding of a no-strike restriction or ban on all matters not subject to grievance, and, of course, it is fully recognized by all the parties that the controversy involved herein is not a grievance matter. In view of the above, the intentions of the parties became readily apparent, and the overall arguments by the General Counsel and the Union that the no-strike clause did not apply to matters not within the grievance provisions must be rejected.

Attorney Ronald Janetzke testified his purpose in requesting a modification of the no-strike clause was in an effort to handle situations and matters pertaining to working conditions which are not covered in the contract. He said that for years the employees have received a Christmas bonus, but this subject matter is not covered in the contract, and under the no-strike provision, an employer could propose a change in this bonus and then bargain to an impasse, and under such conditions, the Union would not have a right to strike. He stated that the proposed modification was to overcome situations of this type, but was not meant to have anything to do with employees refusing to cross a picket line.

This bargaining history again shows the overall application of the no-strike clause involved herein, and it seems to me, further denotes a broad no-strike commitment with definite limitations of restricting strike actions to only contractual items specifically enumerated in the contract, and on all other matters there is a strict and unbinding prohibition against strikes and work stoppage.⁶

⁶ The bargaining history and factual circumstances in the instant case make it clearly distinguishable from cases cited by the Union and the

General Counsel. In *Kellogg Company*, 189 NLRB No. 123, the Charging Party and Respondent intended and understood that the no-strike clauses

