

Providence Stereotypers' Union No. 53 a/w International Stereotypers' and Electrotypers' Union of North America, AFL-CIO and The Evening Call Publishing Company. Case 1-CB-2029

March 5, 1973

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO

On November 15, 1972, Administrative Law Judge Ivar H. Peterson issued the attached Decision in this proceeding. Thereafter, Respondent Union filed exceptions and a supporting brief, and the Charging Party and General Counsel filed briefs in support of the Decision of the Administrative Law Judge.

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,¹ 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 Respondent, Providence Stereotypers' Union No. 53 a/w International Stereotypers' and Electrotypers' Union of North America, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

¹ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions were incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3). We have carefully examined the record and find no basis for reversing his findings.

We note that, due to a typographical error, the Administrative Law Judge in quoting Sec. 8(b)(1)(B) erroneously refers to "employee" instead of "employer."

DECISION

STATEMENT OF THE CASE

IVAR H. PETERSON, Administrative Law Judge: I heard this case in Boston, Massachusetts, on September 21, 1972, based on charges filed by The Evening Call Publishing Company, herein referred to as the Company, on May 26, against the Respondent, Providence Stereotypers' Union No. 53 a/w International Stereotypers and Electrotypers

Union of North America, AFL-CIO, herein called the Respondent. In substance, the complaint, as amended, alleged that the Respondent, commencing on or about March 31 and continuing to date, restrained and coerced the Company in the selection of its representatives for the purposes of collective bargaining and the adjustment of grievances in that on or about May 16 it, through its agent, Thomas Bagley, assessed fines totaling \$105 against Richard Fontaine, a supervisor of the Company, and, since May 16, has refused to refer Fontaine to employers, other than the Company, for "extra work" as a journeyman, as had been its regular practice. Additionally, the complaint alleged that since on or about July 11, the Respondent has threatened Fontaine with further disciplinary action by summoning him to a meeting of the Respondent's executive board to explain why he has not complied with its prior order to pay fines. These acts, according to the complaint, are violative of Section 8(b)(1)(B) of the Act and, in view of the fact that the Company meets the Board's jurisdictional standards, come within the terms of Section 2(6) and (7) of the Act. The Union filed an answer, denying the commission of any unfair labor practices.

On the basis of the entire record in the case, including my observation of the witnesses as they testified and a careful consideration of the briefs filed by counsel for the parties on October 24, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Company is a Rhode Island corporation engaged in the publication of a daily and Sunday newspaper, serving the greater Woonsocket, Rhode Island, area. Admittedly, it comes within the jurisdictional requirements of the Board. I find that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and, also, that the Union is a labor organization within the meaning of Section 2(5) of the Act. In its answer, the Union admitted that the persons listed in paragraph 7(a) of the complaint, some seven in all, occupied positions within the Union and are agents of the Respondent.

II. THE ALLEGED UNFAIR LABOR PRACTICES

For some 31 years the Union has represented a bargaining unit consisting of the Company's stereotype employees and, at present, the parties have a collective-bargaining agreement. Fontaine, foreman of the stereotype department and a member of the Union, thought it necessary on March 8, 1972, to verbally warn Bertrand Boiteau for speaking at length on the telephone during production time. Later, on March 23, Fontaine again warned Boiteau for using the telephone during production time. He issued the warning in writing. Boiteau, apparently displeased with these warnings, filed a complaint with the Union, which later summoned Fontaine to appear before a trial committee. Fontaine declined to attend the hearing and, in his absence, Boiteau's charges were upheld and the trial committee recommended that Fontaine pay a fine of \$100, by 8 p.m. of June 30. The membership of the Union ratified this decision and additionally fined Fontaine \$5 for

failing to appear before the trial committee. Fontaine refused to pay the fines, which resulted in his being summoned by the executive board of the Union to explain why he had not complied with the Union membership's decision.

In consequence of Fontaine's refusals, the Union has not returned his working card which he customarily sends along with his dues in compliance with the regular practice. Moreover, Fontaine received no extra work shifts through the Union from June 3 until the beginning of August. Before June 3, he had received two to three extra shifts per week at other newspapers in the area. Fontaine inquired of Charles D. Walker, president of the Union, why he no longer received extra work, and Walker replied that the reason was that Fontaine had not paid his fines. Fontaine, however, pointed out that the extra work had stopped on June 3 and that his fine was not due until June 30.

There is no question that Fontaine occupies a supervisory position. Fontaine performs the same duties as his predecessor, Edward Bartnick, performed. While Bartnick was employed as foreman of the stereotype department, a question arose as to whether he was a supervisor. In consequence, a unit clarification was requested from the Board, which found that Bartnick was indeed a supervisor. Fontaine has four men under his direction, and he has the authority to hire and fire and, in fact, has hired employees without consulting his superiors. He also has authority to grant overtime and to move employees from job to job, and also can discipline employees. In addition, Fontaine has the authority to and, in fact, has handled grievances. The collective-bargaining agreement provides that the foreman of the stereotype department is solely responsible for his department and may supervise the hiring and firing of all employees within that department. Upon these facts, not contradicted, it is plain and I find that Fontaine is a supervisor within the meaning of Section 2(11) of the Act.

One of Fontaine's responsibilities is to get the newspaper out on time. It is obvious, therefore, that when a stereotype department employee is away from his job the publication process is delayed. Boiteau was aware of this as he had been so informed by Fontaine. Boiteau, as acting president of the Union, had told Fontaine that in that capacity he would on occasion have to use the telephone. Fontaine, so Boiteau testified, replied that this was permissible "as long as [the conversations] were not too lengthy or stopped production." Boiteau received a call on March 28, which took him away from his job for approximately 15 minutes. Fontaine verbally warned Boiteau about this. On March 22, Boiteau spent some 15 to 20 minutes on the telephone. Credible testimony establishes that production was slowed down on these occasions.

As previously stated, Fontaine received no extra shifts for 9 weeks beginning June 3, and, for the weeks of August 19 and 26, he received only one extra shift per week. According to Fontaine, Union President Walker told him that the Union was refusing to give him these additional work opportunities because Fontaine had failed to pay the fines. Walker claimed that he did not know the reason that Fontaine had been denied additional work and stated that Wiley, the hiring chairman for the Union, was responsible. Wiley did not appear as a witness. Walker testified that the

other reasons he asserted for the denial of work to Fontaine were only speculations. Thus, Walker implied that Fontaine may have been cut off because he had more shifts than some other employees. However, he was unable to explain why several other members of the Union who had worked more shifts than Fontaine were not cut off and why Fontaine was the only employee member affected.

Conclusions

Upon the foregoing facts, I conclude and find that Fontaine was denied work opportunities because he had failed to pay the fines levied against him by the Union.

Section 8(b)(1)(B) provides that it is an unfair labor practice for a labor organization or its agents "to restrain or coerce an employee in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances." The Board and the courts have interpreted this provision to prohibit a union from taking any action against a supervisor that might then or later inhibit him as the representative of his employer. Here, it seems clear, that if the Union is permitted to discipline Fontaine, in a situation of this type, Fontaine would, as counsel suggests, "of necessity have second thoughts before taking any future actions as Company representative, for he will know that if for some reason the Union disapproves of his action, it could fine, or expel, or reprimand him." In support of this theory, the Company cites *Detroit Newspaper Printing Pressmen's Union No. 13*, 192 NLRB No. 21, *San Francisco Typographical Union No. 21*, 192 NLRB No. 77, *Dallas Mailers Union v. N.L.R.B.*, 445 F.2d 730 (C.A.D.C.), and *Meatcutters Local 81 v. N.L.R.B.*, 458 F.2d 794 (C.A.D.C.).

In his brief, counsel for the Respondent argues that if the position of Fontaine is accepted, then he would be forever immune from union discipline, and that this would be so in spite of the fact that he continues to work as an ordinary journeyman union member outside of the Woonsocket plant. He further contends that the Union "attempted in good faith to distribute extra work on an equitable basis, recognizing its responsibility" to substitute workers "who depended on the extra shifts for their livelihood."

In the summary of his brief, counsel for the Union states that Fontaine "may not on the one hand demand union benefits such as \$130 a week in extra pay by working extra shifts, and on the other hand state that he is beyond union jurisdiction. So long as he chooses to keep a foot in both camps he must accept the responsibilities that accompany such a peculiar stance. Having chosen not to appear and defend against Boiteau's claim, having chosen not to avail himself of the internal union appellate procedures regarding distribution of extra work, but at the same time having demanded that he receive sufficient extra work to stay within the top 10 recipients of the Union, he must accept the decision of an impartial board that he has wronged a fellow union member." Finally, counsel's brief states that the employer herein "has completely failed to demonstrate the wrongful intent on the part of the union" required by a number of cases previously cited.

While there may be some basis for the attitude of other members of the Union concerning Fontaine's extra work, I am satisfied that the record demonstrates that the Union took the action it did against Fontaine because of the

reprimand given Boiteau. Thus Fontaine's written warning to Boiteau was signed "Stereotype Foreman, Woonsocket all." The record clearly demonstrates that Fontaine had authority to handle grievances as is demonstrated by his handling of the dispute concerning manning requirements involving Arthur Green. Without belaboring the matter, I conclude and find that the Respondent Union violated Section 8(b)(1)(B) of the Act by fining Fontaine and by failing to refer him for extra work.

I further find that in order to remedy the unfair labor practices found and its effect on members other than Fontaine, it is appropriate that the Respondent Union post a notice, and also mail a copy thereof to each of its members, and I shall so direct.¹

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent Union set forth above, occurring in connection with the operations of The Evening Call Publishing Company as described 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.

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 Evening Call Publishing Company is an employer in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Providence Stereotypers' Union, No. 53, a/2 International Stereotypers' and Electrotypers' Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Thomas B. Bagley, secretary of the Respondent Union, is an agent of Respondent Union within the meaning of the Act.

4. By fining Richard Fontaine and restricting his assignment to extra work, the Respondent Union engaged in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER ²

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that the Respondent, Providence Stereotypers' Union No. 53, a/w International Stereotypers' and Electrotypers' Union of North America, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) In any manner restraining or coercing The Evening Call Publishing Company in the selection of representatives chosen by it for the purposes of collective bargaining or the adjustment of grievances.

(b) Fining or otherwise disciplining Foreman Richard Fontaine because of his conduct in performance of work as

a selected representative of The Evening Call Publishing Company for the purposes of collective bargaining or the adjustment of grievances.

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

(a) Rescind all fines and all other disciplinary action against Richard Fontaine, and excise and expunge from all records or other evidence in the Respondent's files connected with or related to the charges against Richard Fontaine arising out of or connected with the warning given by Fontaine to Bertrand Boiteau.

(b) Return to said Richard Fontaine his working card and make him whole for any loss of "extra work" resulting from the disciplinary action taken against him.

(c) Advise Richard Fontaine, in writing, that Respondent has taken the aforesaid action in compliance with paragraph 2(a) above, and that it will cease and desist from the actions forbidden in paragraph 1(a) and (b) of this Order.

(d) Furnish the Regional Director for Region 1, in writing, signed copies of said notice for posting by The Evening Call Publishing Company, if willing, in places where notices to employees are posted.³ Copies of said notice, to be furnished by the Regional Director shall, after being signed by a duly authorized representative of the Respondent, be forthwith returned to the Regional Director for disposition by him.

(e) Post at its business offices, meeting halls, and all other places where notices to members are customarily posted, copies of the attached notice marked "Appendix."

(f) Mail to each of its members, by certified mail, a copy of the attached notice marked "Appendix."

(g) Notify the Regional Director for Region 1, in writing, within 20 days from the receipt of this Decision, what steps Respondent has taken to comply herewith.

¹ The mailing requirement is deemed necessary in order that members actually receive notice as it is not uncommon for only a small percentage of union members to attend membership meetings

² In the event no exceptions are filed as provided by Sec 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes

³ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

APPENDIX

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

The National Labor Relations Board having found, after a trial, that we violated Federal law by fining Richard Fontaine \$105 and restricting his "extra work" assignments and by threatening to discipline him, you are hereby notified:

WE WILL NOT threaten to inflict or in fact inflict, upon any member disciplinary action because he

exercises the rights guaranteed him in Section 7 of the National Labor Relations Act, as amended.

WE WILL NOT in any manner restrain or coerce The Evening Call Publishing Company in the selection of representatives chosen by it for the purposes of collective bargaining or the adjustment of grievances.

WE WILL NOT fine or otherwise discipline Foreman Richard Fontaine because of his conduct and performance of work as the selected representative of The Evening Call Publishing Company for the purposes of collective bargaining or the adjustment of grievances.

WE WILL rescind all fines and all other disciplinary action and excise and expunge all records or other evidence in our files connected with or related to the charges and proceedings against Richard Fontaine arising out of or connected with his warning of Bertrand Boiteau.

WE WILL return to Foreman Richard Fontaine his working card and make him whole for any loss of "extra work" resulting from the disciplinary action taken.

PROVIDENCE STEREOTYPERS'
UNION NO. 53, A/W
INTERNATIONAL
STEREOTYPERS AND
ELECTROTYPERS UNION OF
NORTH AMERICA,
AFL-CIO
(Labor Organization)

Dated _____ By _____ (Representative) _____ (Title)

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

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Seventh Floor, Bulfinch Building, 15 New Chardon Street, Boston, Massachusetts, 02114, Telephone 617-223-3330.