

**Adams Construction Corporation and United Mine Workers of America. Case 9-CA-8965**

September 25, 1975

**DECISION AND ORDER**

BY CHAIRMAN MURPHY AND MEMBERS JENKINS  
AND PENELLO

Upon a charge filed on November 21, 1974, and amended on January 6, 1975, and March 27, 1975, by the United Mine Workers of America, herein called the Union, and duly served on Adams Construction Corporation, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 9, issued a complaint on January 31, 1975, and an amended complaint on April 16, 1975, against Respondent alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. Copies of the charge and amended charges, complaint and notice of hearing, and amended complaint and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that Respondent violated Section 8(a)(1) and (3) of the Act by threatening employees with discharge unless they signed dues checkoff authorization cards for United Steelworkers of America, AFL-CIO, and by discharging employees Hobie Castle and Dorsey Carty for refusing to sign such authorization cards.

On February 7, 1975, Respondent filed an answer to the complaint and an amended answer thereto in which it admitted the factual allegations of the complaint but contends in substance that, although its conduct was in violation of the Act, it was unintentional and was engaged in as a good-faith effort to comply with the obligations of its contract with United Steelworkers of America, AFL-CIO. The amended answer further alleged that both discharged employees had been reinstated on January 17, 1975. On May 23, 1975, counsel for the General Counsel filed directly with the Board a motion for judgment on the pleadings. The Board, on June 3, 1975, issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion should not be granted. In a letter dated May 27, 1975, Respondent's attorney stated that the memorandum attached to counsel for the General Counsel's motion was factually correct and that his client had no desire to file a response to the motion.

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.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment<sup>1</sup>**

Although Respondent filed a timely answer which admitted certain allegations and denied certain allegations of the complaint, an amendment to its answer admitted all factual allegations of the complaint which constituted elements of the violations charged therein and further admitted that Respondent's conduct was violative of the Act. After the General Counsel's Motion for Summary Judgment had been served on Respondent, Respondent's attorney, in a letter of May 27, 1975, conceded the accuracy of the memorandum filed by counsel for the General Counsel in support of the motion which substantially reiterated the allegations of the complaint, and stated that his client did not wish to file a response to the Notice To Show Cause. Since there is thus no issue to be litigated, we shall grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record the Board makes the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE RESPONDENT**

Respondent, a Kentucky corporation with its place of business in Allen, Kentucky, is engaged in the processing of coal and gravel. During the past 12 months Respondent sold goods valued in excess of \$50,000 directly to customers located outside the State of Kentucky and shipped such goods from its place of business in Allen, Kentucky.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

**II. THE LABOR ORGANIZATION INVOLVED**

United Mine Workers of America and United Steelworkers of America, AFL-CIO, are labor orga-

<sup>1</sup> We shall treat General Counsel's motion for judgment on the pleadings as a Motion for Summary Judgment and shall utilize such designation hereinafter

nizations within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Independent 8(a)(1) Violations*

Commencing on or about the last week in October 1974, and continuing through various dates thereafter, Respondent, through its supervisors, threatened various and numerous employees with discharge if they refused to sign dues checkoff authorization cards for United Steelworkers of America, AFL-CIO. We find that by the aforesaid conduct Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and that by such conduct Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

#### B. *The 8(a)(3) Violations*

On or about November 2, 1974, and November 10, 1974, respectively, Respondent discharged its employees Hobie Castle and Dorsey Carty because of their failure or refusal to sign dues-checkoff authorization cards for United Steelworkers of America, AFL-CIO. We, accordingly, find that, by the aforesaid conduct, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent violated Section 8(a)(3) of the Act by unlawfully discharging employees Hobie Castle and Dorsey Carty on November 2 and November 10, 1974, respectively, and by failing and refusing to reinstate said employees until on or

about January 17, 1975, we shall order that Respondent make whole said employees for any loss of earnings suffered as a result of such unlawful conduct by payment to each of them a sum of money equal to that which each normally would have earned as wages from the date of discharge to the date of reinstatement, less net earnings during such period, with backpay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, 294 (1950), and with interest thereon as prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

The Board, on the basis of the foregoing facts and the entire record, makes the following:

### CONCLUSIONS OF LAW

1. Adams Construction Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Steelworkers of America, AFL-CIO, and United Mine Workers of America are labor organizations within the meaning of Section 2(5) of the Act.

3. By threatening employees with discharge if they failed to sign dues checkoff authorizations for United Steelworkers of America, AFL-CIO, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discharging employees Hobie Castle and Dorsey Carty on November 2 and November 10, 1974, respectively, and failing and refusing to reinstate them until on or about January 17, 1975, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) 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

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Adams Construction Corporation, Allen, Kentucky, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge for failure to sign union dues checkoff authorizations.

(b) Discharging and refusing to reinstate employees for failure or refusal to sign union dues checkoff authorizations.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of rights

guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole employees Hobie Castle and Dorsey Carty for loss of earnings caused by their unlawful discharge and delayed reinstatement in the manner set forth in the Remedy section herein.

(b) Post at its Allen, Kentucky, plant copies of the attached notice marked "Appendix."<sup>2</sup> Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

<sup>2</sup> 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 read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

## APPENDIX

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

WE WILL NOT threaten employees with discharge unless they sign dues checkoff authorizations for United Steelworkers of America, AFL-CIO, or for any other Union.

WE WILL NOT discharge and refuse to reinstate employees for failure or refusal to sign union dues checkoff authorizations.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole employees Hobie Castle and Dorsey Carty for loss of earnings caused by their unlawful discharge and the delay in reinstating them to their former jobs.

ADAMS CONSTRUCTION CORPORATION