

Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union and Associated Food Stores, Inc. Case 20-CB-2877

September 26, 1975

SUPPLEMENTAL DECISION AND ORDER

On May 20, 1974, the Board issued a Decision¹ in the above-entitled proceeding in which it affirmed the rulings, findings, and conclusions of Administrative Law Judge Martin S. Bennett, as contained in his Decision of October 30, 1973, and ordered that Respondent take the action set forth in his recommended Order.

Subsequently, on May 13, 1975, the Board advised the parties of its decision, *sua sponte*, to reconsider the above-mentioned Decision in light of the Supreme Court's decision in *Florida Power & Light Co.*,² and the Board's decision in *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*.³ At the same time the Board invited the parties to file supplemental briefs. Such supplemental briefs were filed by the Charging Party and by the General Counsel.

The Board has duly reconsidered the matter and has decided, for the reasons set forth below, to reaffirm its prior conclusion that Respondent violated Section 8(b)(1)(B) of the Act by instituting disciplinary proceedings against Supervisors I. Dudley, R. C. Russell, Bob Hamilton, Doyle Satterfield, and J. Pryor for crossing its picket lines; by fining and suspending from membership each of the foregoing individuals except Hamilton who was not suspended; and by expelling Supervisor John Seals from membership for the same reasons.

Although the amount of unit work performed by the above-named supervisors, both before and during the strike, was not a relevant consideration in our prior Decision, it has become so as a result of our interpretation of the Supreme Court's decision in *Florida Power* in recent decisions of this Board.⁴ Nevertheless, in our prior decision in this matter, we adopted the unchallenged findings of the Administrative Law Judge that during the strike "some supervisors apparently performed their customary percentage of unit work and did not augment this in any manner" and that "they did not perform any unit work beyond that normally performed" by them be-

fore the strike. In this respect, the record establishes that before the strike Hamilton, Satterfield, Dudley, and Pryor normally spent from 40 percent to 50 percent of their normal working time performing unit work, while Seals performed no unit work and Russell devoted only about 2 percent of his working time to performing unit work.

In our view, the facts of this case fall squarely within the scope of our recent decision in *Skippy Enterprises*.⁵ In *Skippy*, the Board distinguished the problem, present in *Florida Power*, of determining whether a union violates Section 8(b)(1)(B) when it disciplines a supervisor-member for crossing a picket line during a strike and performing rank-and-file struck work, from a case, such as here, where the rank-and-file work normally performed by the disciplined supervisors did not increase during the period of the strike. The Board concluded that, in cases where the amount of rank-and-file work—namely, work normally performed by the nonsupervisory employees then on strike—performed by the disciplined supervisors does not increase with the onset of the strike, the Board would apply the rationale of *A. S. Horner*⁶ rather than the Supreme Court's decision in *Florida Power* as the controlling precedent to determine the legality of a union's conduct.

In *Horner*, the union fined a supervisor-member because he refused to accede to the union's demand that he cease working for a company which did not have a contract with the union. The Board concluded that the union's disciplinary action violated Section 8(b)(1)(B) because compliance by the supervisor with the union's demand would have required him to quit his job with the employer and hence have "the effect of depriving the company of the services of its selected representative for the purpose of collective bargaining or the adjustment of grievances."⁷

In *Skippy*, the union fined a supervisor who disobeyed its "no contract-no work" order even though the supervisor's normal share of rank-and-file work (about 30 percent) was not augmented during the strike. Relying on *Horner*, and noting that the duties and work performance of the supervisors had not been affected or increased during the course of the strike, the Board concluded that the respondent-union's disciplinary action violated Section 8(b)(1)(B) of the Act.

As stated, the normal amount of rank-and-file work performed by the disciplined supervisors in the instant case was not augmented during the course of

¹ 210 NLRB 666.

² *Florida Power & Light Co. v. International Brotherhood of Electrical Workers, Local 641*, 417 U.S. 790 (1974).

³ *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)* 216 NLRB No. 149 (1975).

⁴ See *Hammond Publishers, supra*; and *New York Typographical Union No. 6, International Typographical Union, AFL-CIO (Daily Racing Form, a subsidiary of Triangle Publications, Inc.)*, 216 NLRB No. 147 (1975).

⁵ *Wisconsin River Valley District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Skippy Enterprises, Inc.)*, 218 NLRB No. 157 (1975).

⁶ *New Mexico District Council of Carpenters and Joiners of America (A. S. Horner, Inc.)*, 177 NLRB 500 (1969), enfd. 454 F.2d 1116 (C.A. 10, 1972).

⁷ *A. S. Horner, supra* at 502.

the strike. Thus, the supervisors here, as in *Skippy*, were put in a position wherein compliance with the Union's demand would have deprived the Employer of the services of its selected representatives for the purposes of collective bargaining or the adjustment of grievances. Therefore, upon reconsideration, and upon the rationale more fully explicated in *Skippy Enterprises, supra*, we affirm our previous finding that Respondent violated Section 8(b)(1)(B) 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, Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union, San Francisco, California, its officers, agents, and representatives, shall take the action set forth in our original Order.

MEMBER FANNING, concurring:

I agree with the result reached by Chairman Murphy and Member Jenkins to find an 8(b)(1)(B) violation as to the fining and disciplining of six supervisors who crossed the picket line, but do so for a different reason. My colleagues base their result squarely on *Wisconsin River Valley District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Skippy Enterprises, Inc.)*, 218 NLRB No. 157 (1975), in which I dissented, where a supervisor was fined for disobeying a "no contract-no work" order. They emphasize the fact that the normal amount of rank-and-file work performed by these supervisors who were disciplined by Respondent was also not augmented during the strike, hence the finding of a violation is justified. The cause of the strike as justification for the finding of violation is not referred to by them.

Upon reconsideration of this case, I view the strike itself to be in violation of Section 8(b)(1)(B) because the work stoppage—which most of the employees declined to terminate even when assured that fellow employee Garcia had not been discharged—grew directly out of the Charging Party's attempt through full-time Supervisors Sears and Russell to discuss with Garcia his work performance and habits. The remaining four supervisors who were fined for crossing the ensuing picket line were clothed with similar authority, though somewhat more limited, to act for the Charging Party in handling grievances. As this strike was a direct protest of the efforts of Supervisors Sears and Russell, it also had an 8(b)(1)(B) impact on the potential grievance-adjusting functions of Hamilton, Satterfield, Dudley, and Pryor as well.

In the original decision I alluded in my concurrence to the employee discharges meted out by Charging Party after the work stoppage started on the afternoon shift of December 8. These discharges may well have contributed to the continuation of the strike but do not obscure the direct relationship between the strike and the attempt through Sears and Russell to take up with Garcia and an appropriate union representative what were considered undesirable work results and habits. That attempt was the spark which ignited the strike.

The problem of Board reconsideration, though undertaken because of *Florida Light & Power* and its progeny, is affected thereby only to the extent that the Supreme Court stressed the true import of Section 8(b)(1)(B) and reviewed the case history of its implementation. Here the strike itself was precipitated by employee and union reaction to lawful attempts by the Employer to carry out its management responsibilities with respect to a unit member, a right protected by Section 8(b)(1)(B), with respect to which Respondent Union was not entitled to interfere as it did. We need look no further than the genesis of the strike to determine the 8(b)(1)(B) violation. To use the Employer's words, no "complex evaluation" of union motivation *vis-a-vis* the performance of bargaining unit work by supervisor-members is here required.

In *San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications, Inc.)*,⁸ the Board found a union's coercion of an employer's bargaining representatives or grievance adjusters designed to make such persons responsive to the will of the union rather than to the will of their employer constituted restraint and coercion of the employer in the selection of his representatives. In the instant case, Respondent Union, acting through its agent, Steward Darnall, was dissatisfied with the Employer's method of dealing with the unsatisfactory work performance of one of Respondent's members. Darnall induced employees to stop work in order to force the Employer's representatives to deal with the matter in a different manner, thus bringing direct economic pressure against the Employer in order to impose upon it the Respondent's method of dealing with the disciplinary problem in place of the method chosen by its representatives. It seems to me that such direct economic action against the Employer for the purposes described is as much a restraint and coercion of the Employer in the selection of his representatives as were the fines imposed on the representatives in the *Oakland-Mailers* case. Inasmuch as the fines in issue here were imposed on the Employer's supervisors,

⁸ 712 NLRB 2173 (1968)

each of whom had collective-bargaining or grievance-adjustment responsibilities, because of the failure to support the Respondent's work stoppage—itself a form of restraint and coercion forbidden by Section 8(b)(1)(B)—I am of the view that the fines also violated that section.

I therefore concur in the result reached by my colleagues and in the Order issued by them.

MEMBER PENELLO, dissenting in part and concurring in part:

For the reasons set forth in my dissenting opinion in *Skippy Enterprises*,⁹ I disagree with my colleagues' decision which finds that Respondent violated Section 8(b)(1)(B) of the Act in the disciplining of Supervisors Dudley, Hamilton, Pryor, and Satterfield who, during the strike, spent approximately 40–50 percent of their time performing unit work. In agreement with my colleagues, however, I would find that Respondent violated Section 8(b)(1)(B) as alleged with respect to Seals, who performed no unit work, and with respect to Russell, who performed an insubstantial amount of unit work.

In *Chicago Typographical Union No. 16 (Hammond*

Publishers, Inc.),¹⁰ the Board decided, in view of the Supreme Court's decision in *Florida Power & Light Co. v. International Brotherhood of Electrical Workers, Local 641*,¹¹ that a union violated Section 8(b)(1)(B) of the Act when it disciplined supervisor-members who performed substantially supervisory functions and only a minimal amount of rank-and-file work during a strike. The rationale employed in *Hammond* requires that the complaint with regard to Dudley, Hamilton, Pryor, and Satterfield be dismissed. This follows since they, unlike the supervisor-members of *Hammond*, performed much more than a minimal amount of rank-and-file work during the strike.¹² In reaching this conclusion, I reiterate the view which I expressed in *United Brotherhood of Carpenters & Joiners of America, Local Union No. 14, AFL-CIO (Max M. Kaplan Properties)*,¹³ and in *Skippy Enterprises, supra*, that in determining whether Section 8(b)(1)(B) has been violated, it is irrelevant whether the disciplined supervisor-member had performed rank-and-file work, in either the same or a different proportion, before the employer-union dispute. This follows since the only relevant inquiry is what the supervisor-member did during the employer-union dispute.

¹⁰ 216 NLRB No. 149 (1975)

¹¹ 417 U.S. 790 (1974)

¹² *Bakery and Confectionery Workers International Union of America, Local Unions 24 and 119 (Food Employers Council, Inc.)*, 216 NLRB No. 150 (1975)

¹³ 217 NLRB No. 13 (1975).

⁹ *Wisconsin River Valley District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Skippy Enterprises, Inc.)*, 218 NLRB No. 157 (1975).