

United Brotherhood of Carpenters and Joiners of America, Local 546 (Duffee Forms, Inc.) and James N. Bedwell. Case 25-CB-6471

September 28, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On March 26, 1990, Administrative Law Judge Karl H. Buschmann issued the attached decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

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 as modified.²

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusions of Law 3.

“3. By informing Bedwell that he could not work because he was not a member of the Respondent, the Respondent violated Section 8(b)(1)(A) of the Act.”

AMENDED REMEDY

The Respondent’s obligation to make James Bedwell whole for the discrimination against him requires that he be made whole for any loss of wages and benefits suffered from the date of his discharge to the date of his reinstatement by Duffee Forms, Inc. to his former job or, if that job no longer exists, to an equivalent job, or to the day he secures substantially equivalent employment with some other employer, with interest as provided in the judge’s recommended remedy.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, and orders that the Respondent, Duffee Forms, Inc., Indian-

¹ The Respondent has excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge’s findings that the Respondent violated Sec. 8(b)(1)(A) and 8(b)(2) by causing employee Bedwell to lose his job because he was not a member of the Respondent are consistent with established Board law. See *Laborers Local 332 (D’Angelo Bros.)*, 295 NLRB 1036 (1989).

In adopting the judge’s findings, we find it unnecessary to pass on his statement that a violation would be established here if Business Representative Simmons had “openly implored [the Employer’s project supervisor] not to fire Bedwell on his [Simmons] account”

² We shall conform the judge’s Conclusions of Law, recommended Order, and notice with his findings.

apolis, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified below.

1. Substitute the following for paragraphs 1(a) and (b).

“(a) Informing any employee that he cannot work because he is not a member of the Union.

“(b) Causing or attempting to cause the Employer to discharge or to discriminate against James Bedwell or any other employees because they are not members of the Union.”

2. Substitute the attached notice for that of the administrative law judge.

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 has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT inform any employees that they cannot work because they are not members of our Union.

WE WILL NOT cause or attempt to cause Duffee Forms, Inc. to discharge or discriminate against James Bedwell or any other employees because they are not members of the Union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL make whole with interest James Bedwell for any loss of earnings he may have suffered by reason of our discrimination against him.

WE WILL notify Duffee Forms, Inc., by mail, that we have no objection to the employment of James Bedwell.

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, LOCAL 546

John Petrison, Esq., for the General Counsel.

Charles L. Berger, Esq. (Berger and Berger), of Evansville, Indiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried at Evansville, Indiana, on July 24, 1989. Based on a charge filed by James N. Bedwell on January 6, 1989, a complaint issued on February 17, 1989, alleging that the Respondent, United Brotherhood of Carpenters and Joiners of America, Local 546 violated Sections 8(b)(2) and 8(b)(1)(A) of the National Labor Relations Act (the Act).

The Respondent filed an answer on March 2, 1989, in which it denied the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, United Brotherhood of Carpenters and Joiners of America, Local 546, is admittedly a labor organization within the meaning of Section 2(5) of the Act.

The Company, Duffee Forms, Inc., is an Indiana corporation located in Indianapolis, Indiana. Engaged as a concrete form subcontractor in the construction industry, the Company has performed services valued in excess of \$50,000 in States other than Indiana, and it has purchased products and materials from suppliers who in turn received goods and materials valued in excess of \$50,000 from points outside the State of Indiana (Tr. 20-21). I find that the Company, Duffee Forms, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. FACTS

Duffee Forms, Inc. was a member of the Associated General Contractors of America (AGC), which had a bargaining relationship with various local unions. It is undisputed that Duffee Forms, Inc., through its membership with AGC and the Evansville Contractors Association, Inc., had entered into a collective-bargaining agreement with the Respondent, Carpenters Local 546. The contract provides for a hiring hall procedure for the referral of employees (G.C. Exh. 3).

However, the hiring hall procedure was admittedly not exclusive (Tr. 71).

While the Employer, Duffee Forms, was performing construction work at the Sullivan, Indiana, High School in December 1988 a controversy arose involving the hiring hall procedure. William Wayne Simmons was the business representative of Local 546¹ since 1984 whose jurisdiction included the Sullivan School project. He visited the jobsite on December 2, 1988, about 1 or 2 p.m. and discovered that an employee, James Bedwell, was working at the project without having been referred by the Union. Simmons discussed the matter with Michael P. LeMasters, Duffee's foreman and supervisor on the Sullivan project. Simmons also talked briefly to James Bedwell about his job. As a result, James Bedwell left the jobsite. The precise nature of the conversations are in dispute, as well as the reason for Bedwell's termination from his job.

A summary of the relevant testimony shows that the Respondent was responsible for Bedwell's discharge. James Bedwell testified that he heard about the job at Duffee Forms from his brother, Randy Bedwell, who was already employed at the Sullivan School project. On December 2, 1988, James Bedwell was hired by Mike LeMasters to work as a carpenter. According to Bedwell, Simmons came to him while he and his brother were working on the roof about 2 p.m.

¹Local 546 resulted from a merger of several local unions and was part of the Southern Indiana District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, Evansville, Indiana.

Simmons initially inquired how Bedwell obtained his employment there and then told him that he was not permitted to work. Bedwell described the incident as follows (Tr. 44):

He [Simmons] just wanted to know how I got there. And I told him. And he told me that I couldn't work there, that I was out of my jurisdiction. I was no longer a member in their local, you know. . . .

He just went down, climbed down off the ladder, and went, talked to Mike [LeMasters] then.

Bedwell testified that after his conversation with Simmons, LeMasters came to him and said to him "that Wayne [Simmons] told him that I couldn't work there because it was out of my jurisdiction." (Tr. 44.) Bedwell explained that he left his job under the following circumstances (Tr. 45):

I told him I didn't really care, you know, whatever he thought of it; that I was going to go ahead and leave because the fact I didn't want to stir up no trouble between him and the hall because they might be wanting more people later on, and didn't want to cause no problem there.

His brother, Randy Bedwell, who had earlier been referred by Simmons to the Sullivan High School pursuant to the hiring hall procedure, testified that he overheard both conversations on December 2 at 2 p.m. while working with his brother on the roof of the high school. According to Randy Bedwell, "Wayne [Simmons] came up there and asked him [James Bedwell] how he got out on that job; and told him that he was out of his jurisdiction; that he would have to leave the job" (Tr. 95). Randy Bedwell further testified that LeMasters then approached his brother, and "said Wayne had talked to him [LeMasters] and told him that Jim was out of his jurisdiction, and that he would have to leave the job" (Tr. 96).

LeMasters' testimony shows that he hired James Bedwell on December 2 as a carpenter and that he was pleased with his work. He testified as follows about the episode on the afternoon of that day when Simmons visited the building site (Tr. 81):

Well, I was on, using the telephone. I was talking to a girl in the office, Duffy's office. And while I was on the phone, he asked me if that was our office I had on the telephone. I said yes. He said, well, that's good, because we have some serious problems on this job. And I told him to hold a minute and, you know, I got off the phone. And then he told me—asked him what the problem was. And he said that I had a carpenter out there on this job that couldn't work on this job, you know. I said, well why? He said, you know, he belongs to the union. And he told me that he didn't belong to that local. I said, I don't have any idea about that.

LeMasters, accompanied by Simmons, then walked to the area where the Bedwells were working and in LeMasters' words he "went up and told Jim that the business agent was down there and said he couldn't work on this job, you know. He might go talk to him and see if we can get this thing

straightened out” (Tr. 82). Bedwell then left the job. LeMasters completed a separation notice form on that day, stating as reason for the termination: “Business Rep. said he did not belong to this local” (G.C. Exh. 4).

The testimony of Wayne Simmons differed from that of the other witnesses. Simmons testified that he visited the job-site on December 2 as part of his weekly routine. He explained the sequence of events as follows (Tr. 73):

I went up on the roof. I drove up. I wear glasses, so I couldn’t tell who it was. I knew how many people I had out there. I went up on the roof, and Jim was there. And I was a little upset. I asked where the foreman was. They said he was in the trailer. When I got to the trailer, the foreman was on the phone.

I told the foreman that I had an agreement with their company that they would call the hall for the people, because . . . I had so many people out of work, and that was our agreement. And he says, well, I’ll just lay him off. He got mad. I said, no, don’t lay him off on account of me.

Simmons also called the Union’s steward, LeRoy Bardon, to the jobsite. According to his testimony, Simmons told LeMasters “don’t lay him off on account of me. . . . I know the law. I know what it says. . . . I’m not down here to get you to lay him off.” (Tr. 74.) In short, Simmons denied that he sought the discharge of Bedwell.

LeRoy Bardon, who was the vice president of Carpenters Local 546 and the steward on the Sullivan project, testified that he was at home on December 2 when he received a telephone call from Simmons requesting his presence at the job-site. Bardon testified he was present for only part of the conversation between Simmons and LeMasters and that he overheard the following (Tr. 103):

He [Simmons] said something about what I could catch that he was supposed to call the hall for men. And Duffy’s foreman said that—or something like that—and then Duffy’s foreman said, well, I can lay him off. Wayne said, Don’t lay him off on my account. That was it.

The General Counsel argues that while it is clear that the Employer clearly discharged Bedwell, any “reasonable interpretation of the facts make clear that the Respondent attempted to cause the Employer to . . . discharge Bedwell because he [Bedwell] was not a member of the Respondent at the time of his hire.”

The Respondent argues that Simmons “merely inquired about the hiring of a non-union carpenter . . . out of concern for members of the Local 546 . . . [and] that it was not the Local 546’s intent to cause Mr. Bedwell to be discharged.” (R. Br. 14). The most reasonable inference that can be made, according to the Respondent “is that it was the employer’s representative (LeMasters) that made this statement.” The Respondent also attacks the credibility of Bedwell, particularly his testimony that he was advised by Simmons himself that he (Bedwell) could not work there.²

² I have no reason to discredit Bedwell’s testimony. It was corroborated by that of his brother and appeared consistent and plausible.

A fair evaluation of the record shows that Bedwell lost his job as a result of the Respondent’s intervention with the Employer. The hiring hall procedure of the bargaining agreement was admittedly not exclusive. Accordingly, the Employer was free to hire Bedwell without going through the hall. Bedwell’s job performance was fine, according to Duffee’s foreman. After Simmons appeared at the jobsite on the afternoon of December 2, he was admittedly upset on discovering that Bedwell, not a member of Local 546, had been hired as a carpenter. Simmons found it necessary to call Bardon, Respondent’s vice president and job steward, “to come over to the job pretty quick” (Tr. 102). Simmons admittedly discussed the matter with Duffee’s foreman. Following these discussions, LeMasters spoke with Bedwell who then left his employment. These facts alone suggest that the Respondent’s conduct had the necessary coercive impact to effectuate the termination of Bedwell’s employment. Even assuming arguendo that Simmons openly implored LeMasters not to fire Bedwell on his (Simmons) account, the record reveals that Simmons’ conduct was consistent in all other respects with the actual consequences of his visit. Simmons was admittedly upset about Bedwell’s employment, he instantly summoned another union official to the jobsite and admittedly made reference to his understanding that Duffee would call the hall for employees because so many people were out of work. The record does not suggest any other reasons why Bedwell lost his job. Moreover, I credit the consistent and plausible testimony of LeMasters to the effect that Simmons clearly told LeMasters that Bedwell could not work there because he was not a member of Local 546. LeMasters complied with the Union’s demands and so informed Bedwell, who followed his supervisor’s directive and left the job.

CONCLUSIONS OF LAW

1. The Respondent, United Brotherhood of Carpenters and Joiners of America, Local 546, is a labor organization within the meaning of Section 2(5) of the Act.
2. Duffee Forms, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. By restraining and coercing James Bedwell in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent violated Section 8(b)(1)(A) of the Act.
4. By causing or attempting to cause the Employer to discriminate against an employee, James Bedwell, because of his union affiliation, the Respondent violated Section 8(b)(2) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent violated Section 8(b)(1)(A) and (2) of the Act, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. The Respondent shall make whole James Bedwell for any loss of earnings that he may have suffered as a result of the discrimination against him with interest computed thereon in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Hori-*

zons for the Retarded, 283 NLRB 1173 (1987).³ The Respondent shall be required to post the appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, United Brotherhood of Carpenters and Joiners of America, Local 546, Evansville, Indiana, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Requesting persons not referred out of Respondent's hiring hall to quit their jobs or otherwise coerce or restrain them because they are not members of Respondent Union.

(b) Causing or attempting to cause the Employer to discharge or in any other manner to discriminate against James Bedwell or other employees in violation of Section 8(b)(2).

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

³Under *New Horizons for the Retarded*, supra, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

⁴If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Make whole James Bedwell for any loss of earnings or other rights and benefits he may have suffered because of the discrimination against him in the manner set forth in the remedy section of this decision.

(b) Promptly notify the Employer by mail, postage prepaid, that the Respondent has no objection to the employment of James Bedwell.

(c) Post at the Respondent's hiring halls copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Furnish the Regional Director sufficient signed copies of the attached notice marked "Appendix" for posting at the Employer's premises and projects, if it is willing.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁵If 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."