

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 114 and M & S Pipe and Supply Company, Incorporated.
Case 31-CC-1818

30 October 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
DENNIS AND JOHANSEN

On 13 August 1985 Administrative Law Judge Gerald A. Wacknov issued the attached decision. The General Counsel filed exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 114, Santa Maria, California, its officers, agents, and representatives, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

¹ The General Counsel excepts to the judge's deviating from the broader language of his cease-and-desist order by limiting the notice to work being performed at one particular jobsite. We find merit in the exception and shall, therefore, revise the notice accordingly.

APPENDIX

NOTICE TO EMPLOYEES AND 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 threaten, coerce, or restrain M & S Pipe and Supply Company, Incorporated, where

an object thereof is to force or require it to cease doing business with Marv's Plumbing.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 114

Arthur Yuter, Esq., for the General Counsel.
Jeffrey L. Cutler, Esq. (Richard J. Davis Law Corporation), of Los Angeles, California, for the Respondent.
Wayne A. Hersh, Esq. (Hersh and Stoll), of Newport Beach, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing with respect to this matter was held before me in Santa Maria, California, on 4 June 1985. The initial charge was filed on 2 April 1985 by M & S Pipe and Supply Company, Incorporated (the Employer).

Thereafter, on 19 April 1985, the Regional Director for Region 31 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging a violation by United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 114 (the Respondent) of Section 8(b)(4)(ii)(B) of the National Labor Relations Act.

The parties were afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Counsel for the General Counsel, in lieu of a brief, argued the matter orally at the hearing. Since the close of the hearing, briefs have been received from counsel for the Respondent and counsel for the Charging Party.

On the entire record,¹ and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

1. JURISDICTION

The Employer, a California corporation, with an office and place of business located in Santa Maria, California, is engaged in the industrial fabrication and supply business. In the course and conduct of its business operations, the Employer annually purchases and receives goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California, and annually derives gross revenues in excess of \$500,000.

¹ The Charging Party's unopposed "Motion to Augment the Record and File Documentary Evidence" is granted, and the attachment thereto, namely, the 27-page document entitled "Master Agreement for the Plumbing and Piping Industry of Southern California," is received into evidence.

It is admitted, and I find, that the Employer is now, and has been at all times material herein, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted that the Respondent Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issue*

The principal issue raised by the pleadings is whether the Respondent, in violation of Section 8(b)(4)(ii)(B) of the Act, threatened the Employer with picketing and other economic reprisals in an effort to cause it to remove a nonunion plumbing contractor from a construction project.

B. *The Facts*

The Employer hired a general contractor, Rarig Construction Company, to construct a new warehouse on its property in Santa Maria, California. The general contractor subcontracted the plumbing work to Marv's Plumbing, a nonunion plumbing contractor. Work on the project commenced on 12 March 1985. The gravamen of the complaint involves the substance of telephone conversations between Al Allocca, the Respondent's business agent, and two officials of the Employer, namely, Sam Berkowitz, chairman of the board of directors, and Martin Berkowitz, president.

Sam Berkowitz testified that on 18 March 1985² he received a phone call from Allocca, with whom Berkowitz had been acquainted for many years. Berkowitz gave the following account of the conversation:

A. I received the call and he tells me who he is, and naturally, I recognize his voice. And he goes on to say "What do I hear, you have a construction job going on, and you have a non-union plumber involved?"

Q. Was anything else said?

A. Yes, he did. And I said to him, "We directly have nothing to do with it. We have a general contractor." He goes on to say, "If you don't do something about it," or a similar conversation, "do you want a little strike? And I go on to say, "You will have to talk to [Martin Berkowitz] on this." I said, "Call him in the morning." He says to me, "Don't worry. I will." And then we parted.

Immediately thereafter the Employer contacted its attorney regarding the matter and on the same date the Employer's attorney sent a telegram to the Respondent advising that a reserved gate system had been established and that "If you wish to picket primary employers while

they're working on the project you are instructed to limit your picketing to gate number one."³

Two days later, on 20 March 1985, Martin Berkowitz received a phone call from Allocca. Martin Berkowitz testified as follows regarding the conversation:

A. After exchanging a few pleasantries, "Hi, How are you? How is your family, your children, mom and dad?" he went on to tell me that he understands that we have got a construction site, that we have a job going on, and that we are using non-union help.

I said, "Al, what are you talking about?" He said, "Come on, Marty. I know, you guys are putting up a new warehouse." And I said, "That is correct. A new warehouse is being built for us." And he said, "Well, you have got a non-union plumber out there." And I said, "No, Al. We don't have a non-union plumber. We are dealing with a general contractor, Rarig Construction. He was hired based on his bid. Whoever he put on to the job was it."

And then, he said, "Marty, you have got Marv's Plumbing out there. They are non-union. You have got to get them off. It is non-union. You can't have this." And I said, "Al, you have got to deal with them, and that is all there is to it." And then, he proceeded to tell me, "Marty, if you don't get them off of there, I am going to hate to have to call all my boys at Vanderberg [Air Force Base] and see that you don't sell anything out there again." He said, "I will call all my guys in purchasing."

Q. Was anything else said in this conversation?

A. I asked him if he was threatening me, because I felt very threatened by Mr. Allocca at that time. And he said, "No, Marty. I know better than to threaten you." At that point, I said, "Al, then you certainly won't mind if I record this conversation." His comment to me was, "Aw, screw it," and slammed the phone.

Allocca testified that when he learned from various union plumbing contractors and union members that a nonunion plumbing contractor had been awarded the work on the warehouse project he phoned Sam Berkowitz to advise him, as a friend, that "this could cause him problems." During the conversation Allocca admits stating that "You are leaving yourself open for any craft to put a picket line on you," but denies that he asked Sam Berkowitz whether he wanted "a little strike." At the end of the brief conversation, Allocca was advised to call Martin Berkowitz.

Allocca testified that during the 20 March 1985 conversation with Martin Berkowitz he asked Martin the same question he had asked Sam, advising him that he was "opening a door" by permitting a nonunion contractor to work on the project when he sells to many union contractors. Martin asked if Allocca was threatening him and Allocca said no. Martin then asked whether he could record the conversation. Allocca said no, and

² On this date, four contractors, including Marv's Plumbing, were on the jobsite.

³ Gate number 1 was reserved exclusively for the use of the general contractor and Marv's Plumbing

hung up. Allocca admits that he may have mentioned Vandenberg Air Force Base in explaining that he acquired the information regarding Marv's Plumbing from some union members in purchasing positions who worked at Vandenberg.

C. Analysis and Conclusions

Sam and Martin Berkowitz impressed me as credible individuals with accurate recollections of the brief phone conversations in question. Allocca's testimony, on the other hand, was neither entirely consistent nor convincing, and, given the various versions of the conversations, I have no hesitancy in crediting the accounts given by Sam and Martin Berkowitz. Contrary to Respondent's contention, the fact that Martin Berkowitz stated, in an affidavit to the Board, that Allocca asked Sam Berkowitz whether he wanted "a little picket," rather than "a little strike," does not warrant a different credibility resolution. I specifically credit Martin Berkowitz who testified that he uses the terms "strike" and "picketing" interchangeably, and that his father, when relating the conversation to him, told him that Allocca asked whether he wanted "a little strike."

I therefore find that, as alleged, Allocca threatened the Employer with picketing and with the cessation of further purchases by purchasing agents at Vandenberg Air Force Base, with whom the Employer regularly did a substantial amount of business, in an effort to cause the Employer to remove Marv's Plumbing from its warehouse project. Such threats of picketing and other economic repercussions directed to a neutral employer are clearly violative of Section 8(b)(4)(ii)(B) of the Act. I so find. See *Sheet Metal Workers Local 418 (Young Plumbing & Supply)*, 227 NLRB 300, 311-312 (1976); *Food & Commercial Workers Local 506 (Coors Distributing)*, 268 NLRB 475, 478 (1983); *Carpenters Local 639 (American Modulars)*, 203 NLRB 1112 fn. 1 (1973).

CONCLUSIONS OF LAW

1. M & S Pipe and Supply Company, Incorporated is an employer and person engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4)(ii)(B) of the Act.

2. The Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 114, is a labor organization within the meaning of Section 2(5) and Section 8(b)(4)(ii)(B) of the Act.

3. By threatening, coercing, and restraining M & S Pipe and Supply Company, Incorporated, as found herein, with an object of forcing or requiring it to cease doing business with Marv's Plumbing, the Respondent has engaged in unfair labor practices proscribed by Section 8(b)(4)(ii)(B) of the Act.

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

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices proscribed by Section 8(b)(4)(ii)(B) of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

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

ORDER

The Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 114, Santa Maria, California, its officers, agents, and representatives, shall

1. Cease and desist from threatening, coercing, or restraining M & S Pipe and Supply Company, Incorporated, where an object thereof is to force or require said person to cease doing business with Marv's Plumbing.

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

(a) Post at Respondent's business office, meeting halls, and all other places where notices to members are customarily posted copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 31, 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.

(b) Sign and mail sufficient copies of the notice for posting by M & S Pipe and Supply Company, Incorporated, Marv's Plumbing and Rarig Construction Company, if they are willing, at all places where notices to their employees are customarily posted.

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

⁴ If 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.

⁵ If 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."