

United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada; and United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local 444 and T. S. Hanson Plumbing, Case 32-CB-665

23 December 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND BABSON

Upon a charge filed 29 November 1979 by T.S. Hanson Plumbing (Hanson), the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing 17 January 1980 against the Respondents. Hanson filed an amended charge 27 March 1980, and the Regional Director for Region 32 issued an amendment to the complaint and notice of hearing 31 March 1980. The complaint alleged that the Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the National Labor Relations Act by fining members Charles Cox and Walter Huth because they crossed and worked behind a picket line established by United Brotherhood of Carpenters and Joiners of America, Local 1622, at a construction jobsite on which Cox and Huth were employed by Hanson.

Copies of the charges and complaint were duly served on the Respondents and Hanson. On 25 and 30 January 1980 the Respondents filed their answers to the complaint denying the commission of any unfair labor practices.

On 9 February 1981 Hanson, the Respondents, and the General Counsel filed with the Board a Stipulation of Facts, with certain attachments, and moved to transfer this proceeding to the Board. The parties agreed that the stipulation and attachments constitute the entire record in this case and that no oral testimony or other exhibits are necessary or desired to be introduced by any of the parties. The parties waived a hearing before an administrative law judge and the issuance of a decision and recommended order by an administrative law judge, and they stated a desire to submit this case directly to the Board for findings of fact, conclusions of law, and a Decision and Order.

On 15 April 1981 the Board issued an order granting the motion, approving the stipulation, and transferring the proceeding to the Board. Thereafter, the Respondents and the General Counsel filed briefs.

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

Upon the basis of the stipulation and the briefs, the Board makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE CHARGING PARTY

Charging Party Hanson, a sole proprietorship, has an office in Danville, California, where it is engaged as a plumbing contractor in the building and construction industry. In the operation of its business, Hanson annually purchases and receives goods and supplies valued in excess of \$50,000 from suppliers who purchased and received the goods in substantially the same form from suppliers located outside the State of California. It is admitted, and we find, that at all times material here, Hanson is, and has been, an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act. Accordingly, we find that it will effectuate the policies of the Act for the Board to assert jurisdiction here.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulate, and we find, that United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (the International), United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 444 (Local 444), and United Brotherhood of Carpenters and Joiners of America, Local 1622 (the Carpenters), are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Stipulated Facts*

At all times material here, Hanson was engaged as a plumbing subcontractor at a construction site at Western Avenue in Union City, California. Athejen Building Construction (Athejen) was engaged as the general contractor at the Western Avenue jobsite. About 22 March 1979 the Carpenters commenced picketing at the site in furtherance of its primary labor dispute with Athejen. There is no contention here that the Carpenters' picketing was unlawful. Hanson did not employ any employees represented by the Carpenters, and at no time has the Carpenters had a labor dispute with Hanson.

Respondent International and Respondent Local 444 have not at any material time been engaged in a labor dispute with Athejen, and neither Respondent has picketed at the Western Avenue jobsite. Hanson's employees at Western Avenue were represented by Local 444. These included Local 444 members Charles Cox and Walter Huth, who, on 22 and 23 March 1979, crossed the Carpenters' picket line and performed their regular plumbing duties for Hanson. There is no evidence that a reserved gate system was established at the site.

On 26 April 1979 Local 444 fined Cox and Huth \$1000 each because they had violated the Local's bylaws and working rules and the International's constitution by crossing and working behind the Carpenters' picket line. Subsequently, the International ratified the fines pursuant to the internal union discipline procedure provided in the International's constitution.

B. Contentions of the Parties

The General Counsel contends that the Respondents violated Section 8(b)(1)(A) by fining Cox and Huth because such discipline induced the employees to refuse to perform services for a neutral employer, Hanson, with an object—proscribed by Section 8(b)(4)(B)—to cause Hanson to cease doing business with the primary employer, Athejen.

The Respondents assert that the fines assessed against Cox and Huth were a purely internal union matter privileged under the proviso to Section 8(b)(1)(A). In this regard, the Respondents argue that fining its members for crossing lawful primary picket lines of sister unions serves the Respondents' legitimate interest in obtaining cooperation from those sister unions if the Respondents require aid in any future strike or boycott activity. They contend that inasmuch as the Act permits employees of neutral employers voluntarily to honor a lawful primary picket line, it cannot be unlawful for the Respondents to enforce its legitimate sympathy strike policy by requiring its members who are employees of neutrals to avail themselves of the Act's protection.

C. Discussion and Conclusions

This case requires us to decide whether a union may enforce a sympathy strike by fining its members who fail to honor a lawful primary picket line where those members work for a neutral employer on a common situs which does not have a valid reserved gate system. We find such conduct to be unlawful.

Section 8(b)(1)(A) of the Act proscribes labor organizations from restraining or coercing employees in the exercise of their right to engage in or refrain

from engaging in concerted activities. The proviso to Section 8(b)(1)(A), however, provides that the restrictions on union conduct set forth in that section do not impair "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership." In *Scofield v. NLRB*, 394 U.S. 423, 430 (1969), the Supreme Court instructed that the proviso means that a union is "free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." We have no difficulty with the proposition that unions have a legitimate interest in having members honor picket lines, whether in direct furtherance of a primary labor dispute or in sympathetic support of the primary union. We also recognize that there are situations in which a union may lawfully enforce this legitimate interest by fining members who have crossed picket lines.¹ The critical inquiry here required by the *Scofield* test, however, is a determination as to whether the Respondents' fining of members Cox and Huth impairs a policy Congress has imbedded in the labor laws, specifically the policy against the application of secondary pressure on neutral employers embodied in Section 8(b)(4) of the Act. If this policy is impaired, the proviso to Section 8(b)(1)(A) affords no protection to the Respondents.

The direction of the Respondents' fines exclusively at employees of an undisputedly neutral employer clearly discloses an objective proscribed by Section 8(b)(4)(B). A union which induces neutral employees to stop working "must take responsibility for the 'foreseeable consequences of its conduct.'"² Here, the Respondents knew that Cox and Huth worked for an employer, Hanson, that was a neutral in the Carpenters' primary dispute with Athejen. A natural and apparent object of the Respondents' fining of Cox and Huth was to force them to stop working for the neutral Hanson and in turn to cause Hanson to cease doing business with Athejen.

In this regard, the conduct at issue is factually indistinguishable from the conduct considered by the Board in *Sheet Metal Workers Local 252 (S. L. Miller)*, 166 NLRB 262 (1967). There, the Board found that a union not involved in any primary dispute violated Section 8(b)(4)(i)(B) by fining members employed by a neutral subcontractor for crossing and working behind another union's lawful pri-

¹ See, e.g., *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967); *Machinists Lodge 284 (Morton Salt)*, 190 NLRB 208 (1971)

² *Longshoremen ILA v. Allied International*, 456 U.S. 212, 224 (1982)

mary picket line directed at the general contractor on a common construction situs. The Board explicitly rejected the union's contention that because the fines were assessed pursuant to its lawful rules and regulations the discipline was a matter of only internal union concern, and therefore protected by the proviso to Section 8(b)(1)(A). The only difference between *S. L. Miller* and this case is that here the complaint alleges a violation of Section 8(b)(1)(A) rather than Section 8(b)(4). Proof of a violation in each case nevertheless turns on the same conduct disclosing an unlawful secondary objective.

Neither here nor in *S. L. Miller* did the parties' stipulation of facts refer to the existence of a reserved gate for neutrals at the common situs. Moreover, contrary to the Respondent's contention, the absence of a reserved gate system does not significantly distinguish this case from the precedent cases cited by the General Counsel, where reserved gates had been established for employees of the neutral employers.³ Section 8(b)(4) places a burden on *labor organizations* to conduct themselves in primary disputes in such ways as will not needlessly entangle neutral employers. The absence of a reserved gate may have the consequence of extending the permissible physical limits of the primary labor dispute on a common situs, but neutral subcontractors on the situs remain neutrals protected by Section 8(b)(4) against conduct which has a clear and direct proscribed secondary objective even when there is no reserved gate.⁴

Our finding today is also supported by *Carpenters Ventura County Council (Commercial Constructors)*, 259 NLRB 541 (1981), in which the Board found that a union engaged in a primary dispute with a construction employer violated Section 8(b)(4)(i) and (ii)(B) and Section 8(b)(1)(A) when it fined members for working behind the union's lawful primary picket line for a neutral subcontractor at a common situs. To permit the Respondents' fines here would lead to the anomalous result that a secondary union may attempt to influence employees of a neutral employer by means denied to the primary union itself. Clearly, if a primary union

may not put such secondary pressure on neutral employers at a common situs, then it follows that a neutral union may not do so either.⁵

IV. THE REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order that they cease and desist therefrom and that they take certain affirmative action to effectuate the policies of the Act. We shall, among other things, order that the Respondents rescind the disciplinary action taken against Charles Cox and Walter Huth and that they refund to them any moneys held on account of fines assessed, with interest, in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).⁶ Based on the foregoing, we hold that the Respondents' fining of Cox and Huth was for a proscribed secondary objective and violated Section 8(b)(1)(A).

CONCLUSIONS OF LAW

1. T.S. Hanson Plumbing is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondents United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and its Local 444 are labor organizations within the meaning of Section 2(5) of the Act.
3. By imposing internal union discipline on Charles Cox and Walter Huth, as described herein, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) 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.

ORDER

The National Labor Relations Board orders that the Respondents, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and its Local 444, Washington, D.C., and San Leandro, California, their officers, agents, and representatives, shall

1. Cease and desist from

³ *Electrical Workers IBEW Local 153 (Belleville Electric)*, 221 NLRB 345 (1975); *Carpenters Orange County Council Local 2361 (Stewart Construction)*, 242 NLRB 585 (1979), enfd 639 F 2d 789 (9th Cir. 1980); *Glaiziers Local 1621 (Alameda Glass)*, 242 NLRB 1011 (1979), enfd 632 F 2d 89 (9th Cir 1980)

⁴ See *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950), *New Orleans Building Trades Council (Markwell & Hartz)*, 155 NLRB 319 (1965); see also *Los Angeles Building Trades Council (Sierra Development)*, 215 NLRB 288 (1974), where the Board found that a union involved in a primary dispute at a common construction situs with no reserved gate violated Sec 8(b)(4)(i)(B) by statements that had a "signal effect" of asking neutral employees to honor its picket line, even though the Board also found that these statements did not establish that the otherwise lawful picketing itself had an unlawful secondary objective

⁵ We emphasize that our finding here is restricted to the circumstances presented, and we do not pass on the legality of sympathetic appeals by secondary unions in situations involving employees of a primary employer, employees making deliveries to a primary employer, and employees engaged in work "related to" the operations of a primary employer. See *NLRB v International Rice Milling Co.*, 341 U.S. 665 (1951), *Steelworkers (Carrier Corp) v. NLRB*, 376 U.S. 492 (1964)

⁶ See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962)

(a) Charging, trying, fining, or otherwise disciplining Charles Cox, Walter Huth, or any of its members in order to induce or encourage them to withhold their services from a neutral employer with an object of forcing or requiring the neutral employer to cease doing business with a primary employer.

(b) 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.

(a) Rescind the disciplinary action taken against Charles Cox and Walter Huth in order to induce or encourage them to withhold their services from a neutral employer with an object of forcing or requiring the neutral employer to cease doing business with a primary employer, and expunge from their records any reference to that discipline.

(b) Refund to Charles Cox and Walter Huth any moneys held on account of fines assessed them in connection with the aforesaid disciplinary action, with interest, as set forth in the section of this decision entitled "The Remedy."

(c) Post at their offices and meeting halls copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents 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 Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the attached notice marked "Appendix" for posting by T.S. Hanson Plumbing, if willing, in conspicuous places including all places where notices to employees are customarily posted.

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

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 charge, try, fine, or otherwise discipline Charles Cox, Walter Huth, or any of our members in order to induce or encourage them to withhold their services from a neutral employer with an object of forcing or requiring the neutral employer to cease doing business with a primary employer.

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

WE WILL rescind the disciplinary action taken by us against Charles Cox and Walter Huth in order to induce or encourage them to withhold their services from a neutral employer with an object of forcing or requiring the neutral employer to cease doing business with a primary employer, and we will expunge from our records any reference to that discipline.

WE WILL refund to Charles Cox and Walter Huth any moneys held on account of fines assessed against them in connection with the aforesaid disciplinary action, with interest.

UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA

UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA AND LOCAL 444

⁷ 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"