

United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Carpenters Local Union No 316 (Bay Counties General Contractors Association) and Cleve Wallace Graves Case 32-CB-2756

October 31 1988

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND CRACRAFT**

On March 29 1988 Administrative Law Judge Gerald A Wacknov issued the attached decision. 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 decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings findings¹ and conclusions and to adopt the recommended Order as modified and set forth in full below.

ORDER

The National Labor Relations Board orders that the Respondent United Brotherhood of Carpenters and Joiners of America AFL-CIO Carpenters Local Union No 316 San Jose California its officers agents and representatives shall

1 Cease and desist from

(a) Coercing and restraining employees by requiring them to attend prounion demonstrations or engage in any other union activity under the threat of losing their numerical ranking on the out of work list.

(b) Placing employees in a lower numerical ranking on the out of work list because they failed and refused to attend a prounion demonstration.

(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.

¹ Based on our review of the stipulated record in this case we also find that the Respondent departed from its established hiring hall procedures by issuing the July 30 1987 letter to its registrants. The letter states that attendance at the August 7 1987 rollcall is mandatory and that no excuses will be accepted. Certain hiring hall tickets introduced into evidence by the General Counsel indicate that registrants are permitted two absences from or late arrivals to rollcalls provided they contact the Respondent ahead of time. This apparent departure from previously established hiring hall procedures further supports our finding that the Respondent violated Sec 8(b)(1)(A) and (2) of the Act by threatening to assign and thereafter assigning lower numbers on the out-of work list to certain hiring hall registrants because they failed to attend a union rally. See *Operating Engineers Local 406 (Ford Construction)* 262 NLRB 50 51 (1982).

(a) Make Cleve Wallace Elmer Carl Honea Jr and other similarly situated individuals whole for any loss of earnings suffered by them by reason of the discrimination against them in the manner set forth in the remedy section of the administrative law judge's decision.

(b) Restore Cleve Wallace Elmer Carl Honea Jr and any other employees to their proper place on the hiring hall list and remove from its records any reference to the lower placements.

(c) Post at its office and meeting halls copies of the attached notice marked Appendix². Copies of the notice on forms provided by the Regional Director for Region 32 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) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² 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".

APPENDIX

NOTICE TO EMPLOYEES

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 coerce or restrain hiring hall registrants by requiring that they appear for rollcall at locations other than our normal hiring hall in order to cause them to attend prounion demonstrations.

WE WILL NOT assign employees a low number on the out of work list because they refused to attend the August 7 1987 prounion demonstration at Minton & Company and we will pay backpay and interest to registrants who have been adversely affected by our conduct.

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 restore Cleve Wallace Elmer Carl Honea Jr and any other employees to their proper places on the hiring hall list and remove from our records any reference to the lower placements

It is unlawful to condition placement on the out of work list on a registrant's union activity

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
AFL-CIO CARPENTERS LOCAL
UNION No 316

Raoul Thorbourne Esq for the General Counsel
Michael B Roger Esq (Van Bourg Weinberg Roger and Rosenfeld) of San Francisco California for the Respondent

DECISION

STATEMENT OF THE CASE

GERALD A WACKNOV Administrative Law Judge Pursuant to notice a hearing regarding this matter was held before me in Oakland California on January 7 1988 The initial charge was filed on August 10 1987 by Cleve W Graves an individual An amended charge was filed on September 22 1987

Thereafter on September 22 1987 the Regional Director for Region 32 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging a violation by United Brotherhood of Carpenters and Joiners of America AFL-CIO Carpenters Local Union No 316 (Respondent) of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act)

The parties were afforded a full opportunity to be heard to call to examine and cross examine witnesses and to introduce relevant evidence Since the close of the hearing briefs have been received from the General Counsel and counsel for Respondent

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

FINDINGS OF FACT

I JURISDICTION

At all times material the Bay Counties General Contractors Association (the Association) has been a voluntary association of employers engaged in the construction industry in California and has been organized for the purpose inter alia of representing its constituent member employers in negotiating and administering labor agreements with the collective bargaining representatives of certain employees of its constituent member employers including Respondent

The constituent member employers of the Association annually in the course and conduct of their respective business operations collectively purchase and receive goods or services valued in excess of \$50 000 directly from suppliers located outside the State of California and collectively purchase and receive goods or services valued in excess of \$50 000 from sellers or suppliers lo-

cated within the State of California which sellers or suppliers received such goods in substantially the same form directly from outside the State

It is admitted and I find that the Association and each of its constituent member employers are now and have been at all times material employers engaged in commerce within the meaning of Section 2(2) (6) and (7) of the Act

II THE LABOR ORGANIZATION INVOLVED

It is admitted that the Respondent is and has been at all times material 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 coerced and restrained employees in violation of Section 8(b)(1)(A) and (2) of the Act by assigning them lower numbers on the hiring hall list because they failed and refused to attend a union rally or demonstration

B The Facts

The Respondent and other union members of the Carpenters 46 Northern California Counties Conference Board and the Association (together with other employer members of a multiemployer bargaining group) have maintained in effect and enforced a collective bargaining agreement that sets forth the wages rates of pay hours of employment and terms and conditions of employment of an appropriate unit of employees of the member employers of the Association and that contains a provision calling for the operation of exclusive hiring halls by the constituent member labor organizations of the conference board including Respondent

Pursuant to this agreement the Respondent has normally operated and maintained a hiring hall at 2102 Almaden Road San Jose California adjacent to Respondent's business offices at the same address The operation of the hiring hall has included the use of an out of work list under which registrants for work are entitled to job referrals based on their relative positions on the list

At a union meeting conducted on February 10 1987 Respondent's membership passed a motion to endorse the concept of a mobile hiring and dispatch hall Thereafter between February 10 and July 30 1987 three hiring hall roll calls were held at locations away from the normal hiring hall

On July 30 1987 Respondent's business representative Fred Wright sent the following letter to all hiring hall registrants including Elmer Carl Honea Jr and Cleve Wallace Graves the Charging Party as follows

Roll Call Location for August 17 1987 (8 00 a m)
 100 View Street Between Evelyn and Villa in
 Mountain View
 Minton & Company

Dear Brothers and Sisters

The Mill Cabinet Local Union #262 of the Santa Clara Valley District Council is in need of our help For the past twelve (12) weeks our brothers at Local #262 have been involved in a bitter strike a fight for their very existence

In a show of solidarity and support for our striking brothers Local Union #316 in conjunction with Local #668 and Local 1280 will again be holding roll call in the field

The target is MINTON & COMPANY in Mountain View MINTON & COMPANY supplies mill work pre hung doors and hardware They are an old family owned firm who up until now have been union

To reach MINTON & COMPANY from San Jose proceed North on Highway 280 to Highway 85 Proceed North on Highway 85 to Evelyn Ave exit off of Highway 85 Turn left on Evelyn Avenue to MINTON & COMPANY

Park in the lot across the street from MINTON & COMPANY on Evelyn Avenue next to the rail road tracks

Local #316 will hold our roll call in front of MINTON'S main office at 100 View Street between Evelyn and Villa St

This is a mandatory roll call **THERE WILL BE NO EXCUSES THOSE WHO CHOSE NOT TO SHOW UP WILL BE PUT AT THE END OF THE OUT OF WORK LIST!!!**

The Hiring Hall at 2102 Almaden Road will be open for dispatch requests and sign ups **ONLY!!!**

On August 7 1987 Graves and Honea and perhaps other hiring hall registrants appeared at Respondent's normal hiring hall but were not permitted to place their names on the out of work list At this time Business Agent Dennis Pearsall told Graves that if he did not proceed to the Minton jobsite to place his name on the out of work list at that location his name would be dropped to the bottom of the list Further on August 10 Respondent's Business Representative Fred Wright told Graves that because he did not show up at the Minton jobsite the previous Friday (August 7) his name had been dropped to the bottom of the list

As a result of their failure to attend the August 7 1987 roll call at the Minton jobsite Respondent did drop Graves and Honea and perhaps others to the bottom of the out of work list

Analysis and conclusions

The Respondent maintains that the July 30 1987 memo merely provides notification of a change of location for the biweekly roll call Thus the registrants are required only to be present answer their name when it is called and receive their number on the out of work list thereupon they are free to leave This procedure argues

Respondent is no different than the procedure required to be followed at the normal union hiring hall location and requires no union activity on the part of the registrants I do not agree

The July 30 1987 letter is quite specific It solicits aid in furtherance of a bitter strike in the form of a show of solidarity and support for members of another local who are engaged in a fight for their very existence and requires that the registrants congregate for the roll call in front of Minton's main office where apparently picketing was being conducted Clearly regardless of whether the registrants elected to carry a picket sign their very presence at the site mandated by Respondent was orchestrated to be and was in fact union activity See *Mine Workers Local 1329 (Alpine Construction)* 276 NLRB 415 431 (1985)

Although a union may discipline members who refuse to support legitimate union ends such discipline may not adversely affect an employee's employment status *Food & Commercial Workers Local 597 (S & M Grocers)* 237 NLRB 1159 (1978) Thus as the Board stated in *Longshoremen ILWU Local 17 (Associated Metals)* 173 NLRB 594 (1968)

We agree with the Trial Examiner's ultimate conclusion since the Respondent's business agent conceded that one of the reasons Kraus was refused clearance was that the Respondent believed that he had failed to perform his picket duty during the strike at Associated As found by the Trial Examiner a union violates Section 8(b)(2) of the Act by imposing such a discriminatory condition upon referral of an employee under a hiring arrangement which makes referral a condition of employment

Accordingly we find that the Respondent caused or attempted to cause Associated to discriminate against Kraus in violation of Section 8(a)(3) of the Act and thereby violated Section 8(b)(2) and (1)(A) of the Act

See also *Radio Officers v NLRB* 347 U.S. 17 (1954) *Operating Engineers Local 450 (Tellepsen Construction)* 122 NLRB 564 583 (1958) enfd 281 F.2d 313 (5th Cir 1960)

In *Painters Local 277 v NLRB* 717 F.2d 805 812 (3d Cir 1983) the court states

Section 8(a)(3) 29 U.S.C. § 158(a)(3) prohibits employers from discriminating among employees in a way that would encourage or discourage union membership Section 8(b)(2) prohibits unions from causing or attempting to cause employers to discriminate in violation of section 8(a)(3) The membership to which section 8(a)(3) refers is thus incorporated in section 8(b)(2) and is broad enough to embrace participation in union activities and maintenance of good standing *Local 100 United Association of Journeymen v Borden* 373 U.S. 690 83 S.Ct. 1423 10 L.Ed.2d 638 (1963) The oft quoted passage on this subject bears repeating here The policy of the Act is to insulate employees jobs from their organizational rights Thus sections

8(a)(3) and 8(b)(2) were designed to allow employees to freely exercise their right to be good or bad or indifferent members or abstain from joining any union without imperiling their livelihood. *Radio Officers Union v NLRB* 347 U.S. 17, 40, 74 S.Ct. 323, 335, 98 L.Ed. 455 (1954). Specifically, the Union may not use its power to provide or withhold job referrals in order to reward or punish a worker for his union-related activities.

The Respondent's discipline of Graves, Honea, and other hiring hall registrants who refused to attend the August 7, 1987 roll call, which was in effect a pronouncement demonstration, took the form not of internal union sanctions but rather of the loss of their numerical hiring hall ranking and thus directly affected their employment opportunities. By such conduct, the Respondent violated Section 8(b)(2) of the Act. Further, by the June 30, 1987 letter and August 7 and 10, 1987 statements of Business Agents Pearsall and Wright respectively, the Respondent has violated Section 8(b)(1)(A) of the Act as alleged.

CONCLUSIONS OF LAW

1 Bay Counties General Contractors Association and each of its constituent members are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2 The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3 The Respondent has violated Section 8(b)(1)(A) and (2) of the Act as alleged.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act, including the posting of an appropriate notice and the payment of backpay for any loss of earnings suffered by Cleve Wallace Graves, Elmer Carl Honea, Jr., and other similarly situated individuals who may have received a lower numerical hiring hall ranking because they failed to attend the August 7, 1987 demonstration. Loss of earnings shall be computed in accordance with the Board's decision in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest on such backpay to be computed in accordance with the Board's decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

[Recommended Order omitted from publication]

¹ Under *New Horizons for the Retarded*, 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.