

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**UNITED ASSOCIATION OF JOURNEYMEN AND  
APPRENTICES OF THE PLUMBING AND  
PIPEFITTING INDUSTRY OF THE UNITED  
STATES AND CANADA, PLUMBERS AND  
STEAMFITTERS, LOCAL 128  
(GENERAL ELECTRIC COMPANY)**

and

**Case No. 3-CB-86424**

**JOSEPH A. THOMAS, An Individual**

*Greg Lehmann, Esq.*, Counsel for the General Counsel.

*William Pozefsky, Esq., Pozefsky, Bramley & Murphy*, Counsel for Respondent.

**DECISION**

**Statement of the Case**

**Joel P. Biblowitz, Administrative Law Judge:** This case was heard by me in Albany, New York on December 18, 2012<sup>1</sup>. The Complaint herein, which issued on October 19, and was based upon an unfair labor practice charge and an amended charge that were filed by Joseph Thomas on August 1 and October 9, alleges that United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Plumbers and Steamfitters, Local 128, herein called the Union and/or the Respondent, brought internal union charges against Thomas and imposed a fine on him because he had filed an unfair labor practice charge against the Union, in violation of Section 8(b)(1)(A) of the Act. Respondent defends that internal union charges were filed against Thomas resulting in a fine because he refused to obtain a travel card or transfer to the Respondent after he obtained employment at General Electric Co., herein called GE, with whom the Respondent has a contract, at a time when he was a member of a sister local of the Respondent.

**I. Jurisdiction and Labor Organization Status**

Respondent admits, and I find that GE is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. The Facts**

Thomas has been a member of Local 7 of the Plumbers' Union, a sister local of the Respondent, since about 2004. In November 2010, he learned of a job opportunity at GE, applied online, and obtained the job; Bob Carter, another Local 7 member, also obtained employment with GE at the same time, but left GE in about August or September 2011. The Respondent represents that unit at GE and has a contract with GE containing a union security

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<sup>1</sup> Unless indicated otherwise, all dates referred to herein relate to the year 2012.

clause. The most recent contract between Respondent and GE covering these employees is effective from 2011 to 2015. Shortly after beginning his employment at GE he began paying dues to the Respondent and is presently current on his dues obligation to the Respondent. In addition, during his first week of employment at GE, Lou Malizia, Respondent's financial secretary, told him that he would have to pay a \$350 initiation fee to the Union, which he could pay in one or two installments, and, when he "gets a chance, drop off a travel card." He paid the initiation fee, but he never gave the Union a travel card from Local 7. Respondent's witnesses testified that members of sister locals who are working for employers with contracts with the Respondent have two choices: they can obtain a travel card from their local and turn it into the Respondent, or they can simply transfer their membership to the Respondent. Thomas did neither. In about May 2011, Malizia told Thomas and Carter that as their six month probationary period at GE had concluded, he wanted them to join the Respondent. On about June 13, 2011 Thomas and Carter met with Robert D'Amario, Respondent's Business Manager; Malizia and James Hart, a member of Respondent's Executive Board, were also present. D'Amario told them that if they didn't want to join the Respondent, they would have to pay a three percent travel assessment. Thomas replied that it was illegal and he wouldn't pay it. On about July 12, 2011 Thomas met Malizia at GE and Malizia told him that he had to pay the "travel assessment," and they were going back from June 13, 2011 to the present; Thomas replied that it was illegal and that he wouldn't pay it. He testified that he also said that there were matters that he had to take care of with Local 7, but that he would join in August and that D'Amario replied that they might not let him join, that they wanted him to pay the three percent and the fine. At the same time, D'Amario gave him a letter stating:

On June 13, in a meeting with Local 128 Business Manager R. D'Amario, Financial Secretary Treasurer L. Malizia, Board Member J. Hart, and R. Carter, you were informed that since Mr. Carter and yourself decided not to transfer from U.A. Local 7 to Local 128, that you would be assessed as a traveler in our local and be charged three percent of your weekly pay minus nine dollars and fifty cents payable to Local 128 Financial Secretary Treasurer weekly.

As of the date of this letter, we have not received any moneys for this Assessment. Please be advised that you are delinquent in payment and in violation of an agreement between the U.A., Local 7 and Local 128 governing this action.

Thomas also received a letter dated July 13, 2011 from Joyce Vachon, of GE Human Resources stating that she was notified that he was delinquent in paying a traveling fee, ending, "Please rectify this situation immediately."

On July 19, 2011, he attended a meeting with Vachon and Hart in Vachon's office. Thomas told Hart that he should ask D'Amario about dropping the situation and that he would join the Union; Vachon said that they should meet again in a couple of days and, at that meeting, he asked Hart, "Can we settle this?" and Hart said, "No, he wants his money." He testified that Hart also said that they weren't going to represent him anymore. Thomas asked Vachon if it would affect his employment at GE, and she said that she wasn't sure.

On September 7, 2011, Thomas filed unfair labor practices against the Respondent and GE. The Section 8(b)(1)(A)&(2) charge against the Union alleges that it threatened Thomas, "...by improperly attempting to collect an assessment over and above uniform and periodic dues and initiation fees...and has attempted to cause General Electric Company to discriminate against him in violation of Section 8(a)(3) of the Act." By letter dated October 28, 2011, D'Amario wrote to Thomas:

This letter will confirm the following on behalf of Plumbers & Pipefitters Local 128:

1. If and when you obtain an appropriate transfer card and related documents from Local 7, where you are a member, and deposit them with Local 128, you will be offered membership in Local 128. Please be assured that whether or not you become a member of Local 128, we will represent you as a member of Local 128's bargaining unit, consistent with our obligation under Federal law.

2. As far as Local 128 is concerned, you are current as of this month with your dues and initiation fees owed to Local 128 by reason of your employment at GE; and

3. Local 128 will make no claims against you for past, present or future travel assessments related to your employment with GE while you are a member of Local 7.

On the same date, D'Amario wrote to Vachon, stating:

It appears that there may have been a misunderstanding with respect to travel assessments imposed on Joseph A. Thomas under the United Association of Plumbers Constitution. The payment of travel assessments is not a condition of continued employment at GE under Local 128's collective bargaining agreement and whether or not Mr. Thomas pays them shall have no impact whatsoever on his employment at GE.

By letter dated November 17, 2011, the Board's Regional Office dismissed Thomas' unfair labor practice charges, stating, *inter alia*:

Based on the investigation...it was less than clear that either the Union or Employer ever made payment of the traveler's assessment a condition of your employment. Even assuming, without concluding, that the Union or Employer ever conveyed that your employment was conditioned upon payment of the assessment, the investigation revealed that both the Union and the Employer have provided written assurances to you that payment of the assessment will not be a condition of your employment with the Employer and the Employer has independently assured you that your willingness to pay the disputed assessment will not impact your job. Finally, the Union has also advised you that you are no longer obligated to pay the disputed assessment. Under the circumstances set above, even if the Employer and Union's initial conduct in this matter violated the statute, their subsequent conduct indicates that further proceedings in this matter will not effectuate the purposes and policies of the Act. Therefore, I am dismissing your charges.

On February 20, D'Amario filed charges against Thomas with the Respondent. The charge was that since November 2010, when Thomas began working for GE, he violated Section 218(b)<sup>2</sup> of the Union's Constitution by failing to obtain a travel card from Local 7 and depositing it with the Respondent. Thomas received a Trial Notice dated April 13, setting the trial for May 10 at the Union's office. This Trial Notice states that the charges were referred to Local 7, where they were accepted by a vote of the local membership. Thomas testified that he attended the Local 7 meetings since February and there was no such vote on the charges against him. By letter dated May 5, he wrote to D'Amario that, to his knowledge there was no

<sup>2</sup> Article II, Section 5 states: "any UA member employed by GE or KAPL, Inc. working under 128 Jurisdiction must deposit a travel card and after completing their 6 month probationary period will transfer to Local 128."

such vote by the Local 7 membership, and, “Someone is not being truthful in this matter.”

5 Thomas did not attend the May 10 hearing on the charges against him because, on the same night, Local 7 had nominations for officers and he was nominated for president, although he lost the election. By letter dated June 8, D’Amario notified Thomas that he was found guilty of violating Section 218 of the UA Constitution and was fined \$500. In about May or early June Thomas obtained a travel card from Local 7 and he called D’Amario and said, “What do you want from me? I’ll give you the travel card and join Local 128.” D’Amario told him that he had the first pay the \$500 fine and Thomas said that he wasn’t going to pay the fine because it was 10 illegal. A few weeks later he called D’Amario again and asked what he had to do, and D’Amario said that he had to pay the fine, and that he shouldn’t have been given the transfer card because he was suspended from the Union. After that conversation, Thomas went to pay his Local 7 dues, but they were not accepted.

15 Edward Nadeau, the Business Manager for Local 7, testified that since about 2007, between seventeen and twenty three Local 7 members have obtained employment at GE and other than Carter, to his knowledge, none of them obtained travel cards from Local 7 because they joined the Respondent within six months of their employment at GE. Hart testified that at his meeting with Thomas and Vachon, he told Thomas that he should turn in a travel card; he 20 did not tell Thomas that the Union would not represent him. Malizia testified that in a conversation with Thomas in about June or July 2011, he told Thomas that he should deposit his travel card with the Respondent and pay the assessment. He did not say anything about a fine; there were no charges against him at the time, so there could be no fine. D’Amario testified that travel cards are useful for both the unions and the employees. It is useful for the union 25 because if an employee hands a union a travel card, the union can assume that he/she is a member in good standing and paid up in his/her dues. It is beneficial to the employee because he can work in another union’s jurisdiction without transferring to that union and, if he/she is not happy in the new jurisdiction, he can withdraw the travel card and return to his original union. He testified that Thomas and Carter began working at GE at about the same time, in November 30 2010; Carter gave him a travel card in April 2011, but left his employment at GE a few months later. In about April, he met with Thomas and Carter and told them that they were coming to the end of their six month employment period at GE and that they had to make a decision on whether to transfer into the Respondent, or pay the assessment and give him a travel card from Local 7. Both told him that they did not plan to stay, because they didn’t know what the new 35 contract at GE would be like. They both said that they were concerned about what the medical insurance and the deductible would be in the new contract. D’Amario reminded them that that the six month provision in the constitution and bylaws was almost up and they had to make a decision soon.

40 D’Amario testified that after Thomas’ unfair labor practice charges were dismissed the Union’s executive board decided to give Thomas a few months to make a decision: travel card or transfer, but he didn’t do either, so the executive board directed him to bring him up on charges. In order to support its position herein, D’Amario testified about a grievance that Kyle James, the Union’s shop steward, filed on Thomas’ behalf on June 1, stating that the Union 45 disagreed with a written reprimand that was given to Thomas; apparently, the original complaint against Thomas was filed by Malizia. GE denied the grievance at the first step and it never went any further because Thomas refused to sign it.

### 50 III. Analysis

The sole issue herein is whether the Union brought the charges against Thomas in retaliation for the unfair labor practice charges that he filed against it, and GE, on September 7,

2011, as Counsel for the General Counsel alleges, or were the charges instituted because he refused to obtain a travel card, or transfer from Local 7 to the Respondent, in a timely manner.

5 The law is clear that a union violates Section 8(b)(1)(A) of the Act by disciplining an individual for filing an unfair labor practice charge with the Board. In *Denver Newspaper and Graphic Communications Local No. 22 (The Denver Publishing Company)*, 338 NLRB 130 (2002), the Board stated: “Fundamental to the effectuation of the policies of the Act is promoting unrestricted access to the Board and the Board’s processes. In keeping with this objective, the Board and courts have consistently held that a union violates Section 8(b)(1)(A) of the Act when it takes coercive actions designed either to prevent a member from filing a charge with the Board or to retaliate against a member for filing a charge.” See also *SEIU Healthcare Workers West (Kaiser Foundation)*, 349 NLRB 753 (2007). In addition, in *International Association of Bridge, Structural and Ornamental Iron Workers (Walker Construction)*, 277 NLRB 1071 (1985), the Board stated: “...since the right to file charges is indispensable to the administration of the Act, protection of that right must be strictly safeguarded...[There must be] unimpeded access, for once a charge has been filed, ‘it is not merely the private right of the parties which are involved in the dispute, but the enforcement of public law and the assertion of the public interest thereof.’” In another case involving the same parties, this time at 285 NLRB 770, 772 (1987), the Board stated: “In a case in which a respondent union asserts a motive other than, or in addition to, the filing of Board charges for disciplining a member, it is appropriate to apply the Board’s analysis in *Wright Line*, 251 NLRB 1083 (1980). In *Teamsters “General” Union No. 200*, 357 NLRB No. 192 (2011), the administrative law judge, as affirmed by the Board, stated that where the alleged violation turns on motive, the Board requires that it be analyzed under the framework of *Wright Line*, stating, “The *Wright Line* analysis is applicable to alleged violations of Section 8(a)(3) and (b)(1)(A).”

Applying these principles to the instant matter, I find that Counsel for the General Counsel has not sustained his initial burden of establishing that the filing of the Board charge by Thomas was a “motivating factor” in the Union’s decision to file internal Union charges against him and to fine him \$500. The evidence establishes that the Respondent had been consistently insistent that Thomas transfer his membership or obtain a travel card from Local 7 before and after he filed his unfair labor practice charge with the Board. During his first week of employment at GE, Malizia told him to “drop off a travel card” when he had a chance. In about May, 2011, after he had been employed for about six months, Malizia told Thomas and Carter that he wanted them to join the Union, and shortly thereafter, D’Amario told them that if they didn’t join the Union, they would have to pay a travel assessment. In June or July Malizia told Thomas that he should deposit his travel card with the Union and pay the assessment. Further, at a meeting with Hart and Vachon on July 19, 2011, Thomas told Hart that if they dropped the assessment, he would join the Union. Thomas filed the unfair labor practice charges on September 7, 2011 and, by letter dated October 28, 2011, the Union stated that if he obtained a transfer card from Local 7 and gave it to the Union, he would be offered membership in the Union. Not only didn’t he obtain a transfer card from Local 7, but on May 10, eighteen months after he began working at GE, he ran for the office of president of Local 7. This indicates that Thomas was never serious about obtaining a travel card and/or transferring into the Union in November 2010, or on May 10, 2012. The record also establishes that the Union had never previously had a problem with employee-members of sister locals working in its jurisdiction, refusing to obtain a travel card or transferring to the Union within six months of obtaining employment in its jurisdiction. Finally, I found reasonable and credible D’Amario’s testimony that after the unfair labor practice charges were dismissed, the Union’s executive board decided to give Thomas a few months to decide whether he would give them a travel card or transfer to the Union. When he did neither, they instituted the charges against him. I therefore recommend that the Complaint be dismissed.

**Conclusions of Law**

1. General Electric Co. has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

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3. The Respondent did not violate Section 8(b)(1)(A) of the Act as alleged in the Complaint.

**ORDER**

It is recommended that the Complaint be dismissed in its entirety.

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**Dated, Washington, D.C. February 20, 2013**

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**Joel P. Biblowitz**  
**Administrative Law Judge**

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