

**Greif Bros. Corporation and United Steelworkers of America, AFL-CIO-CLC, Case 6-CA-9572**

September 20, 1978

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS PENELLO  
AND TRUESDALE

On July 14, 1978, Administrative Law Judge Peter E. Donnelly issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, 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, and conclusions of the Administrative Law Judge and to adopt his recommended Order.<sup>1</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Greif Bros. Corporation, Delaware, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

<sup>1</sup> In adopting the Administrative Law Judge's decision not to defer, we do not rely on his citation of *Diversified Industries, a Division of Independent State Company*, 208 NLRB 233 (1974).

**DECISION**

**STATEMENT OF THE CASE**

PETER E. DONNELLY, Administrative Law Judge: The charge herein was filed by United Steelworkers of America, AFL-CIO-CLC, herein called Charging Party or Union, on September 14, 1976, and a complaint thereon was issued on August 23, 1977, alleging that Greif Bros. Corporation, herein called Respondent or Employer, violated Section 8(a)(1) and (3) of the Act by denying a union member employee permission to be absent from work without pay to attend a union conference; by threatening to discharge employees if they attended the conference; and by discharging employee Ronald Franklin for attending the conference.<sup>1</sup>

<sup>1</sup> At the hearing par. 5 of the complaint was amended to read:

At all times material herein, the following named persons occupied the positions set opposite their respective names and have been agents of

An answer was timely filed by Respondent and pursuant to notice a hearing was held before the Administrative Law Judge at Pittsburgh, Pennsylvania, on November 16 and December 19, 1977. Briefs were timely filed by General Counsel, Charging Party, and Respondent which have been duly considered.

**FINDINGS OF FACT**

**I. EMPLOYER'S BUSINESS**

Employer is a Delaware corporation engaged in the manufacture and nonretail sale of shipping containers at facilities in various States of the United States. During the 12-month period immediately preceding issuance of the complaint herein, Respondent in the course and conduct of its business operations shipped goods and materials valued in excess of \$50,000 from facilities located in one State of the United States directly to points outside said State. The complaint alleges, the answer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

**II. THE LABOR ORGANIZATION**

The complaint alleges, the Respondent in its answer admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**III. ALLEGED UNFAIR LABOR PRACTICES<sup>2</sup>**

**A. Facts**

As noted above, Respondent is a manufacturer of shipping containers with facilities throughout the United States and Canada. About 120 of these locations operate under separate contracts with varying expiration dates with different locals of the Union. These locals represent about 1,200-1,300 employees.

On August 9, 1976, George Sirolli, then director of joint studies department of the Union, wrote to the presidents of the local unions representing the Respondent's employees advising them, in pertinent part:

President I. W. Abel has appointed District Director Edward Sadlowski Chairman of the Steelworkers Greif

Respondent, acting on its behalf, and are supervisors and/or agents within the meaning of Section 2(11) and/or 2(13) of the Act: E. M. Bobula, vice president; Claude Livingston, plant manager, Fordtown, Tennessee; Henry Peterson, assistant superintendent, Chicago, Illinois.

Par. 6(a) was amended to read "Claude Livingston." It was further stipulated at the hearing that the name "Peterson" in the complaint be corrected to "Peters." In addition, par. 6 was amended to add a new par. 6(f) to read, "On or about September 14, 1976, Respondent discriminatorily denied permission for Randy Ryan, an employee at Respondent's Taylor, Michigan, facility and a member of Local Union 15454, to be absent from work for the purpose of attending a union conference on September 16 and 17, 1976, in Pittsburgh, Pennsylvania."

<sup>2</sup> Respondent's motion to dismiss par. 6(e) of the complaint was granted, without objection, inasmuch as no evidence was adduced to establish any violation with respect to that allegation. Respondent's motion to dismiss par. 11(b) of the complaint was denied at the hearing and Respondent renews its contention in its brief, that the motion should have been granted. However, I adhere to my ruling and any appeal therefrom should be directed to the Board.

Bros. Corporation's Coordinated Bargaining Committee. This Committee shall endeavor to establish a common bargaining program which will be followed during future negotiations.

Therefore, a two-day conference of our Greif Bros. bargaining units will be convened in Pittsburgh, Pennsylvania, at our International Headquarter's Educational Center, Room 904, 10:00 a.m., Thursday and Friday, September 16 and 17, 1976. The conference participants will discuss the feasibility of developing a coordinated bargaining program among the units of this Company.

In further explaining the purpose of the meeting, Sirolli testified that the conference did not necessarily contemplate contract demands for a multiplant master contract covering all Respondent's employees. In this respect Sirolli testified, in response to inquiry:

Not necessarily. A common bargaining approach would mean that we would review, for example, the pension agreements and the variables that exist between the bargaining units, the inadequacies of the benefits, and we would say now, in this area, which Local Union or bargaining unit must be emphasis in upgrading the pensions, or if there would be no cost of living clause, we would say that a cost of living clause for this particular company is something that is absolutely necessary, and each bargaining unit should emphasize this and submit this as a demand.

So when you are talking about a common approach it means endeavoring to raise the benefits and wages to a common standard so that the Company cannot play one bargaining unit against another.<sup>3</sup>

Upon receipt of the letters, several of the union officials requested and were granted leave without pay to attend the conference. These included John (Randy) Ryan, president of Local 15454 at Taylor, Michigan; Lloyd Sutton, president of Local 14480 at Chicago; George Perrett, president of Local 5117 at Youngstown, Ohio; and James Perry, financial secretary of Local 5117. Certain other union officials were denied permission for leave to attend.<sup>4</sup>

Edward M. Bobula, vice president and director of industrial relations for Respondent, testified that he first became aware of the Pittsburgh conference shortly after Labor Day 1976, from Wayne Barry, plant manager at the Respondent's facility at Sparrows Point, Maryland, when the president of the local union requested time off in order to attend. Bobula, being opposed to the concept of coordinated bargaining which the conference was designed to promote, immediately contacted the Respondent's organized plants with instructions that they were not to grant leave to employees to attend the conference. Bobula, in a position letter submitted pursuant to the investigation, stated:

The Company's position is that we are opposed to coordinated bargaining and certainly are not going to

<sup>3</sup> Sirolli testified that the Union has multiplant contracts with several producers in the steel industry, including American Can, National Can, and Continental Can.

<sup>4</sup> These included Ronald Franklin, president of Local 15236 at the Kingsport, Tennessee, facility and Vincent Melchiorre, recording secretary of Local 5237 at the Twin Oaks, Pennsylvania, facility.

support such a program by permitting our employees to be absent from their jobs for this purpose.

As the purpose of this meeting was not in the best interest of Greif Bros. Corporation we advised all local union officers that we were not granting time off from work for them to attend. They were further instructed that if they took matters into their own hands and left without permission they would be subjecting themselves to disciplinary action including discharge.

Bobula also testified that manpower and production considerations played a part in his decision to deny employees leave to attend the conference. In those cases where leave had already been granted to attend, it was rescinded, although several attended anyway, using vacation time to do so.

Several local union representatives testified that time off had been given to the employees routinely in the past for attending to union related matters. This leave had been without pay. These matters included leave to attend Union conventions at the international level; conferences of local unions concerning pension matters; political conferences; auditing the books of local unions; as well as grievances, arbitrations and contract negotiations. Clearly it was Respondent's longstanding practice to grant time off without pay for these purposes, as well as for various personal reasons. It was also stipulated that the conference was the first call solely to discuss coordinated bargaining for Respondent's employees.

At the Chicago facility, Local 14480 represented Respondent's employees and Lloyd Sutton was its president. About 3 days after having received Sirolli's letter of invitation to the conference, Sutton requested and received permission from Plant Superintendent Frank Stenis to attend the conference. However on about September 14, Assistant Plant Superintendent Henry Peters advised him that he (Peters) had received a call from Mr. Kelly, Respondent's regional director, to the effect that he should not attend the conference. At Sutton's request and in his presence, Peters called Kelly. Peters then told Sutton that he had been told by Kelly that if Sutton went to the conference he would be jeopardizing his job. However, since Stenis agreed that Sutton had the right to attend the conference, he did so, taking leave without pay.

At the Kingsport, Tennessee, facility, the president of Local 15236 was Ronald Franklin. On about September 2, Franklin approached Plant Manager Claude Livingston with a request for leave to attend the conference. Livingston told him that he had heard what type of meeting it was and that Franklin could not go. Further, that if he did go he would be fired. Livingston stated that the decision was made "higher up." Several days later Livingston brought Franklin a letter dated September 13, signed by Livingston. The body of the letter read:

This is to advise that the Company does *not* grant you leave of absence to attend a union conference which is not in the best interest of Greif Bros. Corporation.

If you take it upon yourself to attend this conference without permission you are subject to disciplinary action as well as dismissal.

Franklin attended the conference and was fired by Livingston upon his return. The matter was grieved and subsequently went to arbitration under the contract. While the Union argued that Franklin's discharge was discriminatory before the arbitrator, the arbitrator's decision turned exclusively on the interpretation of a contract provision dealing with leaves of absence for attending conventions.<sup>5</sup> The arbitrator concluded that both parties were at fault for not defining more precisely the contract language, but finds that Franklin was "guilty of refusing to obey a direct order of the Company." Also, that while no "complete injustice has been done," the discharge penalty was too severe. The arbitrator ordered Franklin back to work, without loss of seniority, but without reimbursement for lost wages.

#### B. Discussion and Analysis

It is the position of the General Counsel and the Charging Party that the Union was engaged in protected concerted activity in conducting the conference and, further, that the Respondent violated the Act when it denied requests for leave without pay for its employees to attend.

Respondent on the other hand contends that it has absolute discretion to deny leave to its employees, and that in any event the denial of leave in the instant case was not motivated by antiunion considerations but rather by compelling business justification. In my opinion the General Counsel and the Charging Party represent the more tenable position.

First, it is necessary in examining the legal issue here to determine whether or not the activity was protected. I agree with the General Counsel and Charging Party that it was. Respondent reasons that since the Union would violate Section 8(b)(3) of the Act by insisting to the point of impasse that bargaining be conducted on a multiplant basis, Respondent did not violate the Act by denying leave to its employees to attend a conference to discuss coordinated bargaining. However the Board precedent cited by Respondent is not applicable where, as here, the Union has taken no positive bargaining stance on the matter of multiplant bargaining, but is simply calling the local unions together to explore the matter. Further, the evidence herein, particularly the testimony of Sirolli and his letter to the presidents of the local unions, indicates that a discussion of coordinated bargaining included such matters as common bargaining goals, and not necessarily a single multiplant contract. In my opinion the Union and its local components were privileged to conduct such a conference and in so doing were engaged in protected concerted activity. Thus, I conclude that the nature and purpose of the meeting was an insufficient basis for Respondent's denial of leave to attend.

Respondent also contends that the manpower and production considerations were a factor in its decision to deny the leave herein. However, the entire record herein persuades me that the loss of manpower and production at the various plants, which would have been occasioned by

granting the requested leave, was not a factor in Respondent's decision to deny the leave request. The record makes it abundantly clear that the motivating consideration in denying the leave herein was Respondent's opposition to the principle of coordinated bargaining. In this regard I note that Bobula's immediate reaction upon hearing of Sirolli's letter was to advise all the facilities affected that leave was not to be granted for that purpose. No effort was made to determine what effect, if any, the absences would have had on productivity. Even stronger evidence of motivation is apparent in Bobula's position paper of September 24, 1976, and Bobula's own testimony to the effect that he was motivated, in denying the leave, by his opposition to coordinated bargaining. Accordingly I conclude the motivation for refusing the employees' requests for leave to attend the conference was Respondent's opposition to the concept of coordinated bargaining.

Having determined that Respondent's actions were so motivated, there remains for consideration whether or not its actions were nevertheless privileged. Respondent contends, as noted earlier, that its right to deny leave to employees is absolute. I do not agree. Further, I conclude that Respondent's denial of leave in the circumstances of this case violates the Act. In reviewing the evidence, it is clear that leave has been granted in the past for various union-related purposes. Several employee witnesses so testified, as detailed above. Leave without pay had also been granted for personal reasons. It is clear that it was Respondent's policy and practice to grant leave without pay for union-related and personal business. In these circumstances, to deny permission to employees to attend this conference due to the Respondent's opposition to the subject matter of the conference was unlawful in violation of Section 8(a)(1) of the Act.

In agreement with the General Counsel and the Charging Party, I further conclude that the remarks made to Sutton and Franklin were essentially threats of termination for attending the conference. Having concluded that Respondent acted unlawfully in denying employees leave without pay to attend the conference, I also conclude that threats of discharge by the Respondent made to employees to dissuade them from attending are also unlawful.

Likewise with respect to the matter of Franklin's discharge: It is clear that Franklin was discharged because he attended the conference in defiance of Respondent's instructions. Since attendance at the conference was a protected concerted activity, discharging him for attending violates Section 8(a)(3) of the Act.

With respect to the issue of deferral, Respondent contends that the Board is obliged to defer to the decision of the arbitrator with respect to Franklin's discharge, in conformity with the *Spielberg* principle.<sup>6</sup> In *Spielberg* the Board enunciated a policy of deferring to the decisions of arbitrators where the arbitration proceedings appear to have been fair and regular, the parties agreed to be bound by the results of the arbitration, and the arbitrator's decision was not clearly repugnant to the purposes and policies of the Act.

The issue is whether or not the arbitration award herein meets the criteria established in *Spielberg* and subsequent related precedent.

<sup>5</sup> The applicable language, which appears in art. 6, sec. 6.01, reads:

Upon the application to the superintendent of the plant the Company shall allow a reasonable leave of absence, up to twenty days, without pay to a Union member while acting as a delegate to an authorized Union convention without loss of seniority rights.

<sup>6</sup> *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955).

In the instant case it is clear that although the issue of statutory discrimination was raised and argued by the Union at the arbitration, it was ignored by the arbitrator in deciding the case. The decision was based exclusively on contract considerations. Thus it is apparent that the arbitrator's decision did not comport with the *Spielberg* criteria inasmuch as the decision was repugnant to the purposes and policies of the Act. The following language was recently used by the Board in applying the *Spielberg* criteria:

In *Spielberg*, the Board held that the objective of encouraging the voluntary settlement of labor disputes will be best served by the recognition of arbitration awards where the arbitration proceedings appear to have been fair and regular, all parties have agreed to be bound, and the arbitrator's decision is not clearly repugnant to the purposes and policies of the Act. Where the arbitrator does not address himself to the unfair labor practice issue and his decision is contrary to unfair labor practice decisions under the Act, binding effect will not be given to the arbitration award. [Citations omitted.]

Apart from these considerations, and even assuming that the Board is obliged to defer to the arbitration with respect to Franklin's discharge, it is apparent that the arbitrator's decision treated only Franklin's discharge and none of the other allegations of the complaint which are closely related thereto. In these circumstances the orderly processes of litigation seem to suggest that the Board retained jurisdiction over the disposition of all of the issues raised by the complaint. In my opinion deferral to the arbitrator's decision herein is also inappropriate for this reason. *Diversified Industries, etc.* 208 NLRB 233 (1974).<sup>7</sup>

Nor is deferral warranted simply because the arbitration provided partial relief to Franklin by ordering his reinstatement. In circumstances where the discharge is discriminatory in violation of Section 8(a)(3) and that issue was bypassed by the arbitrator who concluded that Franklin was "guilty" but that the penalty was too severe -- the fact that partial relief by way of reinstatement was awarded without backpay does not in my opinion constitute a compromise award within the meaning of applicable Board precedent to which the Board should defer. *Cessna Aircraft Co.*, 220 NLRB 873 (1975).

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent as set forth in section III, above, occurring in connection with Respondent's operation described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

<sup>7</sup> *Alfred M. Lewis, Inc.*, 229 NLRB 757 (1977).

<sup>8</sup> Nor do I regard as in point *Electronic Reproduction Service Corporation*, 213 NLRB 758 (1974), which Respondent urges is controlling on the grounds that deferral is appropriate where the unfair labor practice issue could have been considered, particularly where, as here, the unfair labor practice issue was argued by the Union and ignored by the arbitrator. In that case the union deliberately withheld evidence on the unfair labor practice issue so as to be able to relitigate the matter before the Board.

#### V. THE REMEDY

Having found that Respondent has engaged in and is engaging in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I have found that the Respondent discharged Ronald Franklin for reasons which offended the provisions of Section 8(a)(3) of the Act. I shall therefore recommend that the Respondent make him whole for any loss of pay which he may have suffered as a result of the discrimination practiced against him, the backpay to be provided with interest computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>9</sup>

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Steel Workers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By unlawfully discharging Ronald Franklin on or about September 20, 1976, Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(3) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act as amended, I hereby issue the following recommended:

#### ORDER<sup>10</sup>

The Respondent, Greif Bros. Corporation, Delaware, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
  - (a) Discriminatorily denying employees leave to engage in protected concerted activities.
  - (b) Threatening employees with discharge for engaging in protected concerted activity.
  - (c) Discharging or otherwise discriminating against any employee for engaging in protected concerted activity.
  - (d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which I find necessary to effectuate the policies of the Act:

- (a) Offer to Ronald Franklin immediate and full reinstatement to his former job or, if it no longer exists, to a

<sup>9</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

<sup>10</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

substantially equivalent job, and make him whole for any loss of pay which he may have suffered as a result of the discrimination practiced against him in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records and reports, and all other records necessary to analyze the amounts of backpay due herein.

(c) Post at their facilities in the United States organized by the Union copies of the attached notice marked "Appendix."<sup>11</sup> Copies of said notice, on forms to be provided by the Director for Region 6, after being duly signed by Respondent's authorized representatives, shall be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 6, in writ-

<sup>11</sup> In the event that 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."

ing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT discriminatorily deny leave to our employees to engage in protected concerted activities.

WE WILL NOT threaten employees with discharge for engaging in protected concerted activities.

WE WILL NOT discharge or discriminate against any employee for engaging in protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act as amended.

WE WILL make Ronald Franklin whole for any loss of pay he may have suffered as a result of our discrimination practiced against him and WE WILL reinstate him.

GRIFF BROS. CORPORATION