

Great Lakes Steel Division, National Steel Corporation and Julie Smith. Case 7-CA-14221

September 20, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND MURPHY

On June 15, 1978, Administrative Law Judge John C. Miller issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting 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 brief and has decided to affirm the rulings, findings, and conclusions¹ of the Administrative Law Judge and to adopt his recommended Order.

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 complaint be, and it hereby is, dismissed in its entirety.

¹ While we do not rely upon the Administrative Law Judge's conclusion that Supervisor Shinavier "was irked by" and "resented" the assignment of two women, Smith and Constant, as bricklayers helpers, we agree with his ultimate conclusion that the discipline of Smith was not discriminatorily motivated by Smith's intraunion or other protected concerted activities.

DECISION

STATEMENT OF THE CASE

JOHN C. MILLER, Administrative Law Judge: This case was heard in Detroit, Michigan, on January 16-18, 1978, based upon a complaint issued on September 7, 1977, alleging that the Respondent discriminated against Julie Smith, an individual, because she exercised Section 7 rights by supporting certain individuals in intraunion elections and engaging in other protected activities, in violation of Section 8(a)(1) of the Act.

Upon the entire record in this case, including my observation of the witnesses and their demeanor, I make the following findings:

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Great Lakes Steel Division, National Steel Corporation, is a corporation with its principal office

and place of business in the City of Ecorse, Michigan. It also maintains an installation known as Zug Island which is located in River Rouge, Michigan. The Respondent, at all times material herein, has been engaged in the manufacture, sale, and distribution of steel and finished steel products, and during the year ending December 31, 1976, a representative period, Respondent purchased and caused to be delivered to its Zug Island, Michigan, installation, ore, coke, coal and other goods and materials valued in excess of \$1 million of which over \$50,000 of such materials were from points located outside the State of Michigan. Similarly, products valued in excess of \$50,000 were shipped to points outside the State of Michigan. The complaint alleges, Respondent concedes, and on the basis of the above facts, I find that the Respondent is and at all times material was an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

United Steelworkers of America, AFL-CIO, is and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Employer here is alleged to have engaged in activities that interfered with, restrained, or coerced employees in their Section 7 rights in violation of Section 8(a)(1). Such allegations primarily involve employee Julie Smith who was active in handbilling employees on company property during a period from October 1976 to August 19, 1977, involving union elections at the International and local union levels. She campaigned actively for Sadlowski for International president and for Stitt as vice president of the local union and distributed literature thereon. She also authored an article about employment conditions for women which was published in the local union paper, and served as a union steward for a period of her employment.

Respondent is a steelmaking plant and one of the facilities here involved is the one at Zug Island, River Rouge, Michigan. Respondent's main plant at Jefferson Avenue, Ecorse, Michigan, is also involved. Respondent's Zug Island facility includes blast furnaces, ore docks, and related steelmaking facilities. The general labor department, which furnishes labor to other departments of the plant, has approximately 170 employees and a turnover rate of approximately 400-500 people every year. The turnover in many cases is the result of employees transferring into other divisions of the plant. As part of its function, the general labor department assigns employees daily and sometimes hourly and oftentimes by request to areas where they are needed to assist in some work project. As a consequence, employees from general labor are assigned to various locations throughout the Zug Island facility, sometimes working under a labor department foreman or foreman from another department for indefinite periods ranging from several hours to several days, depending on the particular job assignment. In essence the employees of the general labor department are a mobile, floating workforce who may be assigned anywhere throughout Respondent's Zug Island facilities.

B. *Specific Allegations Involving Employee Julie Smith*

The allegations involving Smith concern the period after she transferred into the general labor department on or about February 7, 1977.

Paragraph 11 of the complaint specifically alleges that Respondent discriminated against employee Julie Smith because of her exercise of her Section 7 rights in the following respects:

- (1) On or about March 19, 1977, Respondent, by Foreman Shinavier, wrote up an activity report on Julie Smith.
- (2) On or about March 31, 1977, Respondent, by Foreman Burggrave, wrote up an activity report on Julie Smith.
- (3) On or about April 4, 1977, Respondent, by Foreman Burggrave, disciplined Julie Smith by sending her home prior to the end of her shift.
- (4) On or about July 10, 1977, Respondent, by Foreman Shinavier, gave Julie Smith a 2-day suspension. Each of the above allegations will be dealt with in chronological order herein.

With respect to (1) above, Labor Foreman Shinavier wrote up an activity report (G.C. Exh. 3) after discussing with Julie Smith the fact that she had been in an unauthorized area on March 19, 1977. The conversation between Smith and Shinavier occurred in the foreman's office on March 20, 1977. It is undisputed that the "activity report" was an item submitted to her file marked "No action-file only," and that she received no discipline other than the oral warning and the activity report. Smith admitted she was in the Sinter plant, an unauthorized area, talking to some employees for about 15 minutes while they were performing their duties. The record also discloses that Smith had attended a safety meeting prior to the event, in which Foreman Burggrave discussed and warned about wandering through the plant and leaving an assigned work area. Union Steward Fred Jafolla testified that staying out of unauthorized areas is emphasized by management for safety reasons. Since Smith was concededly in an unauthorized area, I find no basis for concluding that the minor discipline effected was discriminatorily motivated.

Item (2) above involves another activity report (G.C. Exh. 7) dated March 31, 1977, written on Julie Smith by Foreman Burggrave. Foreman Burggrave discussed with her the fact that supervisory personnel in departments other than labor reported that she was wandering around the plant in unauthorized areas. Specifically, Frank Kent, general foreman of the furnace department, inquired of Burggrave whether he had "enough work to keep your people busy" after asking Smith to leave the B-2 furnace stove room. The B-2 furnace room is described as the control room where instruments for controlling the furnaces are located. Such area is unauthorized for employees of the labor department. While Smith testified she was in the B-2 stove shanty, I credit Kent's testimony that Smith was in the instrument control room and not in the B-2 stove shanty, which is a restroom for employees. Moreover, Smith did not deny or otherwise contradict Kent's testimony. Smith at the time was assigned to work on the A-1 furnace and claimed that she went to the B-2 furnace by traveling through the C-2 furnace area which was closed down because of construction work being done by outside

contractors. Labor department employees have been instructed to stay away from all construction areas unless of course their particular assignment required it. Where outside contractors were involved, labor department employees were not normally assigned to such construction areas.

Just prior to the incident, Smith had been working with bricklayer Rayford as a bricklayers helper and their job was interrupted by a cast of molten steel. As a result both Rayford and Smith had to wait and Smith, along with Rayford, departed to get coffee. While Rayford was apparently in the B-2 furnace area he was not in B-2 stove (control) room nor was he seen by Foreman Kent and asked to leave. Smith stated credibly that Rayford knew and had no objection to her getting coffee. While Rayford was not a supervisor, Smith was his helper and subject to his direction and control. While Rayford knew and authorized her leaving her assigned work area to get coffee, there is no evidence that he specifically knew or authorized Smith to go to the B-2 control room for the coffee. While Rayford was not "written up" or reprimanded as was Smith, some obvious distinctions exist.¹ Rayford was not seen in the B-2 furnace control room nor was he asked to leave by Foreman Kent as Smith admittedly was. Second, the fact that Smith was in an unauthorized area is undisputed and the complaint made as to Smith originated not from a foreman in general labor but a foreman from another department. Lastly, although Smith was "written up" or reported, she received no other discipline.

In view of the fact that Smith, although on a legitimate break from work, was in an unauthorized area, was reported by a foreman of another department and received relatively minor discipline for a second infraction, I find insufficient evidence to establish that she was purposely being harassed because of her concerted or union activities. Accordingly, this allegation will be dismissed.

Item (3) above alleges that Foreman Burggrave was discriminatorily motivated when he suspended and sent Smith home prior to the end of her shift on or about April 4, 1977.

Smith testified that after finishing lunch in the labor shanty on April 4, 1977, she had time before reporting back to her worksite on the road opposite C-3 and B-2 furnaces, and went to the A-1 furnace area to talk to friends. In the interim, Foreman Burggrave was trying to find her to give her a new assignment as elevator relief. Credible testimony by labor employee Karen Arthur and bricklayers helper Don Shotts established that employees are to be in the labor shanty at the end of lunch in the event job reassignments are necessary. Burggrave credibly testified that when he located Smith at her worksite, he wanted an explanation for her absence from the labor shanty and that Smith heatedly responded, stating, "[L]ook, you don't tell me where to eat, when to eat, where to go and where I cannot go."

At that point Burggrave sent her home for insubordination.

Smith denied any insubordination but conceded she had a "long involved conversation" with Burggrave over the matter. However, employee Karen Arthur who was 15 feet away from the incident in question described the interchange as "loud voices" yelling at each other. Accordingly,

¹ Resp. Exh. 8 does establish that Rayford subsequently received a 5-day suspension for being out of his assigned work area on or about July 20, 1977.

I cannot credit Smith's version of the incident. Burggrave's testimony is credited.

In this context the question arises whether Smith's actions warranted the discipline or whether Burggrave's action in sending her home was prompted by other than her insubordination and absence from the labor shanty. In view of the credited testimony, I find that Smith's reaction did amount to insubordination and that Burggrave's action in sending her home was not discriminatorily motivated. Accordingly, this allegation will also be dismissed.

The fourth allegation concerns Smith's 2-day suspension on July 10, 1977, by Foreman Shinavier. The actual suspension was decided by General Foreman J. Snipes in the labor relations department. The incident precipitating the suspension involved the repair of a furnacerunner—between pourings of molten steel. According to Foreman Shinavier, he specifically asked Julie Smith to move a bottom block and to slide it down to the bricklayer for insertion in the bottom of the runway as part of the repair work. Smith refused, stating the blocks were too heavy and she could not do this work. Smith denies refusing to do the work. It is conceded that the bottom block in question was moved by Williams, a male bricklayer who was also assisting on the job. In this particular repair job, there were three bricklayers and three helpers— with Shotts, Smith, and another female, Constant, who performed as helpers. Constant was also written up because of her refusal or physical inability to move a bottom block or to carry a large bucket of mortar or "mud" as it was commonly called.

General Counsel's Exhibit 4 and Respondent's Exhibit 7 were activity reports or "writeups" on Smith and Constant, respectively, for their refusal and/or inability to do the job. With respect to Smith, General Counsel's Exhibit 4 included the following comment by Shinavier: "In my opinion, Julie Smith is physically unable to perform the duties of a bricklayer helper." Constant's writeup contained a similar comment.

Shinavier credibly testified that repair work on a furnace must be done rapidly and efficiently and must often be done between pourings of steel. Respondent thus contends that the "writeup" was laying the groundwork for disqualifying both Smith and Constant for physical inability to perform as a bricklayers helper in furnace repair work. Shinavier testified that the bottom block he asked Smith and Constant to move weighed approximately 145 to 150 pounds.

The mere fact that Shinavier ordered Smith and Constant to perform heavy lifting jobs, which he was undoubtedly aware neither was physically capable of performing without assistance, leads me to conclude that Shinavier was irked by the assignment of two women as bricklayers helpers and was attempting to test their ability to handle the job. It is probably true that Shotts, a male bricklayers helper, and Shinavier were resentful of Smith and Constant's assignments involving furnace repair because to the extent they were not physically capable of performing the work by themselves, someone else would be required to do the work or to assist them.

It may well be that both women were physically incapable of performing all the prescribed job functions of a bricklayers helper or furnace repair jobs and that some of the men, particularly Shotts and Shinavier, resented that fact. I

find that inasmuch as both Smith and Constant were the subjects of "writeups," Shinavier's actions were not discriminatorily motivated by Smith's inactivity or other concerted activities but that Shinavier in fact was attempting to get these two women disqualified from future assignments as bricklayers helpers on furnace repair jobs because of physical inability to perform all their job functions. Accordingly, this allegation shall also be dismissed.

C. Allegations of Interference With Employees' Distributions of Materials

Paragraphs 9 and 10 of the complaint allege that on or about August 16, 1977, Respondent through Joe Scott, its agent, interfered with employees' rights by taking down the automobile license plate numbers of employees engaged in distribution of literature.

Smith testified that on August 16, 1977, she and several other employees drove into a company parking lot and engaged in distribution of pamphlet material urging support for Mr. Stitt as vice president of Local 1299 in a local election scheduled for August 19, 1977. She stated that as they were leaving the area she noted the security guard apparently writing down the license plate numbers of the employees who had distributed the literature. She conceded that she did not know exactly what the guard was writing as they left the parking lot. It is undisputed, however, that no discipline or report was made as to her or other individuals and that neither the company nor the Union took any type of action against her and her fellow distributors.

Even assuming that I were to conclude that the security guard, out of an abundance of caution, took down license numbers of employees temporarily in the parking area for distribution of literature, that act alone, without more, is insufficient to establish interference with employees' distribution rights. It is clear that distribution of literature after notice to and prior approval by the Respondent's labor department continued on a number of occasions without interference by the Respondent. Moreover, Joe Scott, a security guard, allegedly involved in the license taking, credibly denied taking license numbers. In the circumstances related I find no interference with employees' distribution and/or Section 7 rights and I shall dismiss this allegation of the complaint.

D. Concluding Findings

While I have treated each allegation in turn, I have also considered the cumulative effect of such incidents and whether objective evidence exists that Julie Smith was singled out for "special" treatment because of her protected activities. While I do not doubt that Julie Smith is of the belief that she was so harassed because of her activities, the objective evidence does not so establish. It is clear that Smith was in fact in unauthorized areas on a number of occasions; that other individuals were in fact disciplined for similar conduct;² that Respondent's facility by the nature of

² Resp. Exh. 8 establishes that some 26 individuals in the General Labor Department received some type of discipline in 1977 for being off their assigned jobs and that such discipline included suspensions or written warnings.

its steelmaking operations, has inherently dangerous area such as blast furnaces and ore dock areas; that although an "activist" in the best sense of the word, Smith was not entitled to special privileges to visit and talk to friends in unauthorized areas. Moreover, I am satisfied that rules against being in unauthorized areas were well publicized and were in effect not only to control a mobile labor force but as safety precautions to protect both individuals and the Company from any form of industrial accident or injury.

The incident closest to being discriminatory in nature was Foreman Shinavier's writeups or reprimands of Smith and Constant for their refusal or inability to do the work of bricklayers helpers. If in fact both Smith and Constant were physically incapable of performing certain tasks as bricklayers helpers, the Respondent's actions here in suspending them (thereby causing a loss of pay) because of physical inability appears questionable at best. Certainly, there is a basis for their reclassification to jobs that they can perform but whether suspension is a necessary part of that reclassification is doubtful. Because both Smith and Constant were so penalized, I am satisfied that such incident was not mo-

tivated by Smith's engaging in protected concerted activities.

CONCLUSIONS OF LAW

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

2. The Respondent did not engage in any unfair labor practices violative of Section 8(a)(1) of the Act.

On the basis of the above findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended:

ORDER³

The complaint herein shall be dismissed in its entirety.

³ 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.