United Steelworkers of America, AFL-CIO, CLC, Local 1981 *and* Major Safe Company, Inc. Case 21-CB-7449 and 21-CB-7610

November 27, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On July 29, 1981, Administrative Law Judge Earldean V. S. Robbins 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 her 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 Respondent, United Steelworkers of America, AFL-CIO, CLC, Local 1981, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

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

After a hearing at which all sides had a chance to give evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice and we intend to carry out the Order of the Board and abide by the following:

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT restrain or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act by trying, fining, suspending, or otherwise disciplining them because of their giving testimony adverse to the Union's position in arbitration proceedings before an arbitrator under a collective-bargaining agreement.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed them in Section 7 of the Act or impair the integrity of the arbitration procedures of the collective-bargaining agreement.

WE WILL rescind the fine assessed against, and the suspension of, Gabriel Torres and expunge from our records all reference to such fine and suspension.

WE WILL reimburse Gabriel Torres for any amount he may have paid on such fine with interest from the date of such payment.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, CLC, LOCAL 1981

DECISION

STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge: This matter was heard by me in Los Angeles, California, on May 19, 1981. The charge in Case 21-CB-7449 was filed by Major Safe Company, Inc., herein called Major Safe or the Company, on August 15, 1980, and served on United Steelworkers of America, AFL-CIO, CLC, Local 1981, herein called Respondent, on August 18, 1980. The charge in Case 21-CB-7610 was filed by Major Safe on January 12, 1981, and served on Respondent on January 13, 1981. The complaint, which issued on February 25, 1981, alleges that Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended, herein called the Act.

The principal issue herein is whether Respondent violated the Act by threatening employee Ruben Campos with intraunion discipline if he testified on behalf of the Company in a grievance proceeding and by holding an intraunion trial of employee Gabriel Torres and subsequently suspending and fining him because he testified on behalf of the Company in an arbitration proceeding.

Upon the entire record including my observation of the demeanor of the witnesses, and after due consideration of the post-hearing briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Major Safe, a California corporation with an office and place of business in Los Angeles, California, has been engaged in the manufacturing of safes. Major Safe, in the course and conduct of its business operations, annually sells and ships goods and products valued in excess of $50,000 directly to customers located outside the State of California.

The complaint alleges, Respondent admits, and I find that Major Safe is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and I find that Respondent is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Respondent and Major Safe Company are parties to a collective-bargaining agreement which provides for a multistep grievance and arbitration procedure. On June 13, 1980,[1] Cesar Melgar, an employee of Major Safe, received a written warning and a 1 day suspension for violating a company rule by reading a newspaper in the bathroom during working hours. Melgar filed a grievance on June 16 protesting the warning and suspension.

The step 1 grievance meeting was skipped. Following step 2 and 3 meetings, a step 4 grievance meeting was held on July 23. Between the third and fourth step meetings, Jerrold Bellenger, director of industrial relations for the Company, asked employee Ruben Campos to testify on behalf of the Company.[2] Shortly thereafter, according to Campos, Jose Diaz, Respondent's unit chairman at Major Safe, asked Campos if he were going to be a witness against a brother and if he knew what the outcome would be. Diaz said if Campos did not tell the truth he could be punished or fined. However, in Campos' prehearing affidavit, he stated that Diaz said that Campos should state in the grievance meeting that he had seen nothing and knew nothing, that if Campos were a witness against Melgar the Union could punish or fine him.

Present for the Company at the July 23 step 4 meeting were Bellenger, Donald Wagner, vice president of manufacturing, and Donald Aldridge, plant manager. Present for Respondent were Tony Torres, International representative, Wesley Guajardo, business representative, Miguel Garcia, treasurer, and Jose Diaz, Salvador Serna, and Jose Campos, unit committeemen. The Company called Campos as a witness. When Tony Torres began questioning Campos in English, with Garcia translating into Spanish, Torres stated words to the effect that Campos could be disciplined on fined for giving false testimony against a brother.[3] Torres then proceeded to read from Respondent's International constitution a subsection which makes a member subject to discipline for "slandering or willfully wronging a member of the International Union." Bellenger said he thought Torres was intimidating the witness and asked him to cease the statement regarding discipline. Torres refused and Bellenger called a temporary halt to the meeting.

On October 16, a hearing was held before an arbitrator on the Melgar grievance. Gabriel Torres testified as a witness for the Company. During the course of the arbitration hearing, Respondent and the Company reached a settlement which provided that the written warning and all references thereto be removed from Melgar's personnel file and that a half day's pay be restored to Melgar.[4]

On October 22, Melgar filed an intraunion charge against Gabriel Torres alleging that Torres had violated certain specific sections of the International union constitution by falsely testifying at the arbitration hearing. Thereafter, Gabriel Torres was notified by letter that the charge had been filed and the trial scheduled for December 4. The trial was held as scheduled on December 4. Gabriel Torres did not attend. Melgar did attend and testify. On December 4, the intraunion trial committee found Torres guilty as charged and recommended that he be fined $600 and his membership in Respondent be suspended for 6 months for giving false testimony. On December 11, the general membership of Respondent adopted the trial committee's recommendation. Thereafter, Gabriel Torres was notified of the finding and of his right to appeal. However, he did not file an appeal.

B. *Conclusion*

The General Counsel contends that Respondent violated the Act by Diaz threatening Campos with discipline if he testified on behalf of the Company. In its answer, Respondent denies that Diaz is an agent of Respondent but did not pursue this position in its post-hearing brief. The record establishes that, as unit chairman, Diaz is responsible for enforcing the collective-bargaining agreement and is required to report to Respondent any infraction or violations of the agreement of which he is aware. He handles grievances on behalf of Respondent and, in accordance with the provisions of the collective-bargaining agreement, he is excused from work to do so without loss of pay. In these circumstances, I find that Diaz is an agent of Respondent. *Local Lodge Number 5, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (Regor Construction Company, Inc.)*, 249 NLRB 840, 848 (1980).

[1] All dates herein are in 1980 unless otherwise indicated.

[2] Campos, Gabriel Torres, and at least one or two other employees were present in the bathroom at the time of the alleged reading incident.

[3] Bellenger testified that Torres said Campos could be punished or fined if he said anything "bad" about a brother. However, Torres, Campos, and two other witnesses testified that Torres spoke in terms of "false" testimony or lying. I credit these latter witnesses that Torres spoke of false testimony.

[4] According to Bellenger, a basis for the settlement was that the Company revise its rules regarding reading on company time so that it was not overly broad as the arbitrator deemed the present rule to be. Torres denied that the arbitraton commented that the rule was overly broad or that changing the rule was part of the basis of the settlement. According to him, the arbitrator suggested a settlement because of conflicting testimony.

However, in view of the conflict between Campos' testimony and his prehearing affidavit, I further find that Campos is not a reliable witness in this regard. I therefore find that the evidence is insufficient to establish that Diaz threatened Campos in violation of the Act.[5]

The complaint alleges that Respondent violated the Act by subjecting Gabriel Torres to an internal disciplinary trial and by imposing court collectible fines on Torres and suspending him from membership in Respondent for a period of 6 months. Respondent contends that its trial of Gabriel Torres and the fine and suspension resulting therefrom were proper since Torres was afforded all the procedural and substantive safeguards required under the Labor-Management Reporting and Disclosure Act.

The General Counsel argues that it is unlawful for Respondent to make a determination as to whether an employee gave false testimony in a grievance arbitration proceeding and that the mere entertaining of the charge, the trial, and resulting discipline are violative of Section 8(b)(1)(A) of the Act.

The General Counsel's argument is supported by Board law. It is well established that, although under the proviso to Section 8(b)(1)(A), a labor organization may in certain circumstances fine an employee-member for violating union rules relating to the acquisition or retention of membership, the proviso does not permit such intraunion disciplinary action for every infraction of intraunion rules particularly where such intraunion action infringes upon employees' Section 7 rights. The Board has found that subjecting an employee-member to an internal union trial proceeding and imposing disciplinary sanctions for testifying adverse to the Union's position infringes upon employees' Section 7 rights. *Freight Drivers and Helpers Local Union No. 557, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Liberty Transfer Company, Inc.)*, 218 NLRB 1117 (1975); *Cannery Warehousemen, Food Processors, Drivers and Helpers Local Union No. 788, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Independent (Marston Ball, an Individual)*, 190 NLRB 24 (1971). The Board has further found that such intraunion disciplinary action is no less an infringement upon employees' protected rights because it purports to be based on the giving of false testimony. As stated by the administrative law judge in *Liberty Transfer, supra* at 1121, "[A] determination of that sort [as to the falsity of the testimony] seems scarcely one to be entrusted to the biased judgment of the Union against whose interests the testimony was given."

Therefore, I find that Respondent violated Section 8(b)(1)(A) of the Act by trying, fining, and suspending Gabriel Torres because he testified adverse to Respondent's position[6] in an arbitration hearing. I further conclude that such conduct has impaired the integrity of the contractual arbitration procedure and, accordingly, I find that Respondent thereby violated Section 8(b)(3) of the Act. *Liberty Transfer, supra; Marston Ball, supra.*

CONCLUSIONS OF LAW

1. Major Safe Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. By bringing to trial, suspending, and fining employee Gabriel Torres because he cooperated with the Employer in connection with the grievance arbitration procedure, Respondent has restrained and coerced employees in the exercise of rights guaranteed by Section 7 of the Act in violation of the provisions of Section 8(b)(1)(A) of the Act; and impaired the integrity of the arbitration clause in the collective-bargaining agreement, thereby violating Sections 8(d) and 8(b)(3) of the Act.

4. By engaging in the aforesaid conduct, Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in 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. To remedy the coercive and restraining effect upon all employee-members by the trial procedure and the resulting fine against, and suspension of, Gabriel Torres, it is recommended that Respondent be required to rescind the fine against, and suspension of, Gabriel Torres, to expunge from its records all references to the fine and suspension, and to notify all members of the rescission of such fine and suspension and of their right to testify in arbitration proceedings under the collective-bargaining agreement without fear of being charged, tried, fined, or suspended for doing so, such notices to be posted at Respondent's office and hall and at Major Safe Company's place of business providing the latter is willing.

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

ORDER[7]

The Respondent, United Steelworkers of Amenica, AFL-CIO, CLC, Local 1981, its officers, agents, and representatives, shall:

1. Cease and desist from:

[5] In reaching this conclusion, I have fully considered the statements made by Campos in his pre-hearing affidavit and the General Counsel's argument that I should find the statements therein to be true.

[6] I reject Respondent's position that the trial committee was totally disinterested, apparently based on a contention that this grievance was only for Gabriel Torres' benefit and that Respondent has no stake in the outcome. The issue was clearly one of union regularity, a position that Tony Torres certainly made evident by his conduct toward Campos during the fourth step grievance meeting.

[7] 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.

(a) Restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act by trying, fining, or otherwise disciplining its members because they gave testimony adverse to the Union's position in arbitration proceedings under a collective-bargaining agreement, and by such conduct thereby impairing the integrity of arbitration procedures under a collective-bargaining agreement.

(b) In any like or related manner restraining and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, or refusing to bargain with an employer in violation of Sections 8(d) and 8(b)(3) of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Rescind the fine against and suspension of Gabriel Torres and expunge from Respondent's records all reference to the fine and suspension, and, if such fine has been paid, make reimbursement to Gabriel Torres the amount of the payment with interest as provided in *Florida Steel Corporation*, 231 NLRB 651 (1977).

(b) Post in Respondent's business offices and meeting halls, copies of the attached notice, in both English and Spanish, marked "Appendix."[8] Copies of said notice, in both English and Spanish, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter. Copies shall be posted in conspicuous places, within clear view of all persons entering Respondent's hall. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material. Upon request of the Regional Director, Respondent shall supply him with a sufficient number of signed copies for posting by Major Safe Company if desired by them.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges any violation of the Act not specifically found herein.

[8] 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."