

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 1776, AFL-CIO

and

Case 4-CA-25215

ELIZABETH ANN MURPHY. An Individual

and

UNITED INDUSTRIAL, SERVICE,
TRANSPORTATION, PROFESSIONAL AND
GOVERNMENT WORKERS OF NORTH
AMERICA, OF THE SEAFARERS
INTERNATIONAL UNION OF NORTH AMERICA,
ATLANTIC, GULF, LAKES AND INLAND WATERS
DISTRICT, AFL-CIO

and

Case 4-CB-7752

ELIZABETH ANN MURPHY, An Individual

Bruce G. Conley, Esq.,
for the General Counsel.
Laurence M. Goodman, Esq.
and *Deborah R. Willig, Esq.*
(Willig, Williams & Davidson)
for Respondent Employer
Stanford Dubin, Esq., for
Respondent Union.
Frank Finch III, Esq.,
for the Charging Party.

BENCH DECISION

Statement of the Case

Michael O. Miller, Administrative Law Judge: This case was tried in Philadelphia, Pennsylvania on January 14 and 15, 1998, based upon a charge filed by Elizabeth Ann Murphy, an individual, on August 23, 1996 as thereafter amended, and a complaint which issued on March 31, 1997, as amended at hearing. The amended complaint alleges that United Food and Commercial Workers, Local 1776, AFL-CIO (Respondent Employer) violated Sections 8(a)(1)(3) and (4), and United Industrial, Service, Transportation, Professional and Government Workers of North America, of the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO (Respondent Union) violated Section 8(b)(1)(A) by conditioning pay raises for Murphy upon her retirement, threatening to revoke pay raises unless she retired and revoking those raises upon her failure to do so because of her union and other

protected activities and because she had filed charges and given testimony under the Act. The answers timely filed by both Respondents denied the commission of any unfair labor practices. All parties were afforded the opportunity, after all evidence had been received, to present oral arguments as to the factual and legal arguments raised by the complaint.

5 Based upon my review of the evidence, observations of the witnesses and their demeanor and consideration of the parties' oral arguments, I issued a bench decision at the close of the hearing. In that decision, which I certify to have been accurately reproduced at pages 293 through 301 of the transcript, attached hereto as "Appendix A,"¹ I found that
10 Respondent Employer had not violated Sections 8(a)(1)(3) or (4)², and that Respondent Union had not violated Section 8(b)(1)(A) by agreeing to provisions which granted Murphy wage increases which were different from those granted to other employees and were conditioned on her retirement approximately two years from the date the agreement. I also found that
15 Respondent Employer had not violated the Act by advising Murphy that, if she did not retire, her wage increases would be revoked or by revoking those increases when she did not retire.

Conclusions of Law

20 Based on the entire record, I find that Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that Respondent Union is a labor organization within the meaning of Section 2(5) of the Act. I further find that the Respondents have not violated the Act in any manner alleged in the complaint as amended.

25 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

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40 ¹ At Tr. 297, line 14, "right line" is corrected to read "*Wright Line*." The citation to that case is 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 393 (1983). At Tr. 298, lines 16-17, "denial of" is corrected to read "denial in." The citation to *Jordan Marsh Stores Corp.*, to which I alluded at Tr. 298, line 1, is 317 NLRB 460, 476 (1995).

45 ² At the outset of the hearing, I rejected Respondent Employer's motion to defer this dispute to arbitration. The complaint herein alleges a violation of Section 8(a)(4), which is intertwined with the other allegations in that pleading. The Board will not defer alleged violations of Section 8(a)(4) to arbitration in order that it may protect the integrity of the statutory rights granted employees under the Act. *Wabeek Country Club*, 301 NLRB 694, n. 1, 699 (1991).

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed.

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Dated, Washington, D.C. February 3, 1998

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Michael O. Miller
Administrative Law Judge

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