

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

HOWARD INDUSTRIES

And

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL
UNION NO. 1317**

Case 15-CA-131447

Exceptions to the Administrative Law Judge's Decision

The Administrative Law Judge was wrong in deferring to the arbitrator's award. His findings begin on page 149 of the transcript.

Submitted on October 21, 2015.

/s/ Clarence Larkin

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Memorandum in Support of the Administrative Law Judge's Decision

A. The Unfair Labor Practice Allegation

The unfair labor practice allegations at issue in the Exception is Paragraphs 8 through 10 of the complaint, alleging that Respondent unlawfully terminated Gregory Jones, Chief Steward of the Union, because of his union and protected concerted activity. However, the Judge did not consider whether Respondent unlawfully terminated Gregory Jones, instead, finding that the Regional Director of Region 15 should have deferred to the Arbitrator's award.

B. Facts

On Friday, June 6, 2014,¹ Charles Smith, a supervisor, during the morning meeting, informed employees they would be "working over" that day. By "working over," he meant they would be working overtime (longer than their base 8-hour shift). This was a daily occurrence. However, he then added they might be working more than 12 hours. This was not only not a daily occurrence but the first time Supervisor Smith ever required it. Chief Steward Jones, a

¹ Unless otherwise noted, all dates are in 2014.

member of Supervisor Smith's crew, spoke up and said that Smith could not do this. Under the contract, employees cannot be made to work more than 12 hours in a day unless it is the designated double shift day and Supervisor Smith did not say they would be working a double shift.

Later that day, Chief Steward Jones' coworkers complained to him about Supervisor Smith's intent to require them to work more than 12 hours. Some of them even indicated they would leave after 12 hours regardless of how long Supervisor Smith wanted them to work. Chief Steward Jones advised them to stay and that the Union would file a grievance. The employees worked between 13 and 15 hours that day.

On Tuesday, June 10, Chief Steward Jones filed the grievance. The grievance protested Supervisor Smith's requirement that they work more than 12 hours. In addition, the previous day (June 9), Chief Steward Jones informed Supervisor Smith about the grievance. In response to Supervisor Smith's assertion that the employees volunteered to stay, Chief Steward Jones pointed out this was clearly not true because the employees asked that the grievance be filed.

Earlier on the day that Chief Steward Jones filed the grievance (June 10), at the morning meeting, Supervisor Smith again informed employees they would be working over. He did not say it would be a double and he did not say it would be more than 12 hours. At the end of the day, after working more than 12 hours, Jones left. Before leaving, however, and as he was required to do, Chief Steward Jones informed Supervisor Smith. Chief Steward Jones told Supervisor Smith he worked more than 12 hours and he was leaving.

Two days later, on June 12, when Bailey James, a Human Resources Generalist, asked Chief Steward Jones about why he left, he noted that he was leaving in observance with an arbitrator's decision.

The following day, June 13, HR Generalist James called Chief Steward Jones. When HR Generalist James asked Chief Steward Jones if Supervisor Smith had asked him whether he said “we aren’t finished,” Chief Steward Jones agreed that he did but then asserted that the CBA does not speak of working until finished but, rather, not being required to work more than 12 hours.

C. The Judge’s Decision

Instead of deciding whether the Employer fired Union Steward Jones unlawfully, the Judge decided that the Regional Director of Region 15 should have deferred to a previous arbitrator’s award. That award, however, did not consider whether the Employer violated fired Union Steward Jones because he engaged in protected concerted activity.

D. Argument

The Judge was wrong to defer to the arbitrator’s award instead of deciding whether the Act was violated. The Judge found that the arbitrator “considered the unfair labor practice.” Transcript page 154. However, all the arbitrator really did was consider whether the Employer violated the contract. While the Judge decided this was the same as deciding whether the Employer terminated Union Steward Jones because of his protected activity, it was not. Even if Union Steward Jones violated one of the plant rules (this is not an admission that he did), this does not mean that he was not engaged in protected concerted activity. How can it be determined if the Employer fired Union Steward Jones because of his protected concerted activity if the arbitrator did not consider whether Union Steward Jones engaged in protected concerted activity? This is something the Judge should have decided.

E. Conclusion

The Judge should have decided whether Union Steward Jones engaged in protected concerted activity and whether the Employer fired him because of that. The arbitrator did not do this and so the Judge's decision to defer to the arbitrator's decision was wrong.

Submitted on October 21, 2015.

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Certificate of Service

I have provided a copy of these Exceptions and Memorandum in Support of Exceptions to the following, by email, on October 21, 2015.

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