United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: May 26, 2004

TO : Gary T. Kendellen, Regional Director
Region 22

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: IBEW Local 827 (Verizon)
Case 22-CB-9750

This case was submitted for advice as to whether there is sufficient objective evidence to discredit the Charging Party's allegation that three shop stewards assaulted him, where a neutral arbitrator in the shop stewards' discharge grievance proceeding found that the Charging Party was not a credible witness. We conclude that there is sufficient objective evidence to discredit the Charging Party and that the Section 8(b)(1)(A) charge should be dismissed absent withdrawal.

The Employer provides telephone communications services to residential and business customers. The Charging Party, John Heyer is a facilities technician at the Employer's Emerson, NJ garage, where technicians reported for work before going out into the field to service and repair communications lines and equipment. He is also a member of IBEW Local 827. During the spring and summer of 2003,[1] the Union and the Employer were in negotiations for a successor collective bargaining agreement for their statewide bargaining unit. During negotiations, the Union engaged in informational picketing on a regular basis, one morning per week prior to the start of employees' workdays at 7:00 a.m. at job locations throughout the State. According to Heyer on July 31 a steward mentioned in his charge told him that it would be a good idea to show up on time the next day for picketing duty, because he did not want to see anything happen. When asked what the steward meant, the steward said, just show up on time.

The next morning, August 1, the Charging Party arrived at his work location at about 6:45 a.m.; picketing usually started at about 6:30 a.m. Three union stewards and other employees were in a semi-circle in front of the entrance to the facility. Heyer asserts that as he was turning his vehicle into the driveway, one of the stewards stepped in front of his vehicle, blocking him from entering. Then, according to Charging Party, the steward made a backward

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[1] All dates are 2003 unless otherwise noted.

motion, pretending that he had been hit by CP's vehicle. The steward then screamed, came around to the driver's side of the vehicle, opened the driver's door and started punching Heyer. Then, according to the Charging Party, the steward came over to the vehicle and began hitting him as well.

Heyer reported the alleged assault to his supervisors, who told him to call the local police. Two police officers arrived a few minutes later and spoke to all four individuals. The police officers told Heyer that the stewards denied assaulting him and that since it was his word against the stewards', he should not press charges. No complaint or criminal charges were filed against the three stewards. Later Heyer went to the Employer's medical facility to be examined. Heyer told the physician that he had pain in the back and neck and that he had bruising.

Later on August 1, the Employer's security officer interviewed Heyer. The security found no signs of injury or bruising on Heyer.

Although [*FOIA Exemptions 6, 7(c) and (d)*], the Charging Party denied that he hit the first steward with his vehicle, in his statement to the local police Heyer admitted striking the steward with his vehicle, but insisted that he did so accidentally when the vehicle lurched forward while the steward stood in front of it.

The Employer discharged the three stewards for engaging in the alleged assault. The Union grieved and at arbitration obtained reinstatement of the three stewards. The arbitrator heard testimony from the Heyer, the three Union stewards and the Employer's security officer, examined neutral witness statements and relevant documentary evidence and, based on this evidence, rejected the Charging Party's version of events. The arbitrator specifically credited the stewards, who testified that none of them assaulted Heyer. The stewards testified that after the car hit the steward, the steward shouted, "What are you, crazy?" and then ran around to the driver's side of the vehicle. He also credited their testimony that the second steward got between the steward who had been hit and CP to prevent any physical altercation. The arbitrator credited the third steward who said that he then reached in and turned off CP's ignition so Heyer would not hit anyone else with his vehicle. The security officer had interviewed other witnesses at the scene of the incident, none of whom observed any assault on the Charging Party. The arbitrator reviewed the security officer's testimony and his report, as well as witness statements from a

sampling of the neutral witnesses. The arbitrator also noted that neither the security officer nor any supervisors noticed any bruises or injuries on Heyer.

ULP Manual Section 10064 provides that credibility issues may be resolved administratively on the basis of compelling documentary evidence and/or an objective analysis of inherent probabilities, in light of the totality of the relevant evidence. Applying that standard, there is sufficient objective evidence here to discredit the Charging Party's version of events. The stewards deny that they assaulted Heyer, and their version of the events is corroborated by neutral witnesses. Furthermore, despite the Heyer's contention that he was beaten, he bore no physical signs of such an assault. In addition, the Heyer's Board statement is inconsistent with the statement he gave to the police immediately after the incident in question, in which he admitted accidentally striking the steward. Finally, a neutral arbitrator, considering all of the evidence, discredited Heyer's version of events and found that he was not assaulted.

Therefore, the credibility issues should be administratively resolved in the Union's favor, and the charge should be dismissed absent withdrawal.

B.J.K.