FORM NLRB-5020 (1-87)

COPIES PLEASE

UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

A.D. 02302 03302

RELEASE

DATE: September 10, 1987

TO : Louis J. D'Amico, Regional Director
Region 5

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

542-3367-6700
542-3367-6708
542-6750-0133
542-7533

SUBJECT: Baltimore Newspaper Graphic Communications Union, Local No. 31, etc.
(Alco Gravure, Inc.)
Case 5-CB-5651

This case was submitted for advice as to whether, under NLRB v. IBEW, Local 340, ____ U.S. ____, 125 LRRM 2305 (May 18, 1987), the Union violated Section 8(b)(1)(B) by disciplining two of the Employer's supervisors. 1/

FACTS

The Employer, Alco Gravure, and the Union, Local 31 of the Baltimore Newspaper Graphics Communications Union, were parties to a collective-bargaining agreement that expired on March 31, 1987. 2/ The Employer operates a rotogravure printing facility.

On February 28 the Employer's pressroom superintendent, James Southworth, left word for the second shift proof press crew to change the rubber rollers on the press at the end of their shift, which was also the end of the work week. On March 1, a Sunday, Joseph Gallagher, the pressroom foreman, discovered that the proof press crew had taken the rollers off, but had not replaced them with new ones. Gallagher attests that he initially planned to do the work himself or with the help of another foreman, but decided to call Southworth at home to tell him of the problem. Southworth told Gallagher that a special proof run would be delayed the next morning if the rollers were not in place when the proof crew arrived. Southworth then said that he would come to the plant that morning and help Gallagher put in the rollers. He did so, and the job took approximately two hours to complete.

1/ Exemption 5

2/ All dates herein are in 1987 unless otherwise indicated.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

★U.S GPO:1987-0-181-574/55013

Later that day, the Union Shop Chairman filed a grievance alleging that Southworth and Gallagher had done unit work in violation of the collective-bargaining agreement when they installed the rollers. The grievance cited Article 7, Sections 1 and 2 of the contract, which require that all pressroom supervisors be members of the Union and further set forth the duties of foreman and the superintendent. 3/ There is no express prohibition in that provision against superintendents performing unit work. On March 4 the Shop Chairman gave Southworth and Gallagher notices to appear at a Union Executive Board meeting to face charges of conduct unbecoming a union member. In answer to questions at that hearing, Southworth stated that, under his interpretation of the contract, he thought he had a right to perform the work at issue. Gallagher asserts that he, too, stated at the Executive Board hearing that he interpreted the contract to give him the right to do the work. When questioned as to whether he had been asked to do the work, however, Gallagher responded that Southworth had asked him to install the rollers. The Union imposed fines of two days' pay on both Southworth and Gallagher, but rescinded the fines in April.

The Union says that the internal Union discipline and the grievance were based on the same conduct, viz., the performance of unit work by supervisors in alleged violation of Article 7 of the contract.

The Region issued a Section 8(b)(1)(B) complaint on this charge on April 29, but postponed the hearing indefinitely after issuance of the decision in NLRB v. IBEW, Local 340, supra.

ACTION

The Region should continue to litigate this case as alleged in the outstanding complaint.

The Board has long held that a union violates Section 8(b)(1)(B) when disciplinary action against a supervisor is rooted in a dispute between an employer and the union over the

---

3/ Article 7, Section 1 states in part that "[m]embers may protest against the foreman's actions, but if the foreman after careful consideration, decides that his actions are warranted by the Agreement, he need not change conditions unless directed to do so by the Employer or by decision of the Joint Standing Committee. . . ."

interpretation of their collective-bargaining agreement. 4/ Although the Supreme Court has given a narrow interpretation to Section 8(b)(1)(B), it has been willing to assume that the Board's Oakland Mailers doctrine fell within that Section. 5/ And, since IBEW Local 340, the Board has continued to adhere to the doctrine. 6/ However, it would appear that, under IBEW Local 340, the violation depends upon a General Counsel showing that the disciplined representatives were actually engaged in an act of contract interpretation. 7/

In the instant case, we concluded that the discipline of both Southworth and Gallagher violated Section 8(b)(1)(B). Initially, we note that the Board has consistently applied the Oakland-Mailers doctrine to cases where the contractual dispute involves the question of whether supervisors can perform unit work. 8/ Further, by its own admission, the Union fined both Employer-representatives based on its interpretation of Article 7 of the collective-bargaining agreement, an interpretation that both supervisors contest. Finally, both Southworth and Gallagher testified before the Union Executive Board that they performed the work in dispute because they believed the collective-bargaining agreement permitted them to do so. The Union discipline followed on the heels of that hearing. Thus, it would be argued that the two were disciplined for carrying out their interpretation of the contract.

4/ Local Union No. 80, Sheet-Metal Workers' International Association (Limbach Mechanical Contractors), 285 NLRB No. 66, Slip op. at 5 (August 25, 1987); San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications, Inc.), 172 NLRB 2173 (1968) (Oakland Mailers).

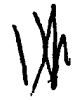
5/ NLRB v. IBEW, Local 340, supra at 2309.

6/ See Local No. 80, Sheet Metal Workers, supra.

7/ NLRB v. IBEW Local 340, supra at 2309-2310.

8/ See Sheet Metal Workers Local 141 (Glenway Investments), 270 NLRB 1350, 1353-55 (1984); Sheet Metal Workers, Local Union 49 (General Metal Products, Inc.), 178 NLRB 139 (1969), enfd. 430 F.2d 1348 (10th Cir. 1970).

Accordingly, the Union violated Section 8(b)(1)(B). 9/



H. J. D.

9/ If Gallagher had testified at the hearing that he was solely obeying Southworth's orders, i.e that he was not also interpreting the contract for himself, there is a substantial question whether the discipline of him would be unlawful, for he would not be engaging in a Section 8(b)(1)(B) activity. In this regard, we note that Elevator Constructors, Local 1 (Otis Elevator), which finds a violation, was decided prior to IBEW Local 340. In the instant case, Gallagher's testimony before the Executive Board is subject to the consistent interpretation that he was following orders and that he agreed that those orders were correct under the contract.