

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, Local 745 (National Electric Coil, a Division of McGraw-Edison) and Wayne A. Martin. Case 9-CB-4778

25 November 1983

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 25 August 1982 the Board issued a Decision and Order adopting the findings and conclusions of the Administrative Law Judge Martin J. Linsky.¹ The judge found no merit to the complaint's allegations that Respondent violated Section 8(b)(1)(A) of the Act by threatening the Charging Party with a \$1000 fine if he testified on behalf of the Employer at an arbitration hearing.

Thereafter, on 1 November 1982, counsel for the General Counsel filed a motion for reconsideration and to reopen the record for further hearing or hearing de novo. On 16 December 1982 the Board remanded the case to the judge for the limited purpose of holding a hearing to receive evidence offered by counsel for the General Counsel in support of its motion for reconsideration and such rebuttal evidence as appropriate and to issue a supplemental decision following the hearing on remand.

On 15 June 1983 the judge issued the attached supplemental decision. Thereafter, the Respondent filed exceptions and a supporting brief, and counsel for the General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order.

¹ 263 NLRB 700 (Former Chairman Van de Water dissenting).

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ Since they did not participate in the earlier proceedings in this case, Chairman Dotson and Member Hunter find it unnecessary to pass on those proceedings.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, Local 745, its officers, agents, and representatives, shall take the action set forth in the Order.

SUPPLEMENTAL DECISION

MARTIN J. LINSKY, Administrative Law Judge: This case was initially tried before me on October 15, 1981, in Columbus, Ohio. On January 18, 1982, I issued a decision recommending that the complaint be dismissed in its entirety. Thereafter, the General Counsel filed exceptions and a supporting brief as did the Respondent. The Board issued its decision on August 25, 1982, adopting my recommended Order and dismissing the complaint in its entirety.¹

Thereafter, on October 28, 1982, the General Counsel filed a motion for reconsideration requesting either that the record be reopened for further hearing or that a hearing de novo be ordered. The basis for the Motion was an affidavit from Earl F. Rudder, a witness for Respondent at the initial hearing on October 15, 1981, in which affidavit Rudder states that he prejured himself at the October 15, 1981, hearing and that he did tell Wayne A. Martin, the Charging Party, that he would be fined \$1000 if he testified on behalf of the Employer at an upcoming arbitration hearing. A statement which Rudder had previously denied making. The Respondent opposed the General Counsel's motion. On December 16, 1982, the Board remanded the case to me "for the limited purpose of holding a hearing to receive the General Counsel's evidence and such rebuttal evidence as appropriate on the issue of Earl Rudder's alleged threat to fine the Charging Party \$1000 if he testified on behalf of his employer at an arbitration proceeding." In addition, I was directed by the Board to issue a supplemental decision following the hearing on remand.

On February 10, 1983, the hearing on remand was held in Columbus, Ohio. Following this hearing counsel for the General Counsel and the Respondent submitted briefs.

Based on the entire record and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

The complaint alleges that International Union of Electrical, Radio and Machine Workers, Local 745, AFL-CIO-CLC (the Respondent) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) on two occasions when union shop stewards threatened Wayne Martin, the Charging Party and a member of Respondent Local, with a \$1000 fine if he testified on behalf of the employer at a scheduled arbitration hearing. At the original hearing on October 15, 1981, Martin testified that shop steward Earl Rudder threatened him with

¹ Then Chairman Van De Water dissenting. 263 NLRB 700 (1982).

a \$1000 fine if he testified for the Employer at an upcoming arbitration hearing. Martin claimed that he was threatened on August 9, 1980. Earl Rudder denied that he ever threatened Martin or said anything to him about being fined by the Respondent if Martin testified at an arbitration hearing on behalf of the Employer.

At the hearing on remand Earl Rudder testified that he lied at the October 15, 1981, hearing. He admitted that while serving as a shop steward² he did tell Wayne Martin that Martin would be fined \$1000 if he testified at an upcoming arbitration hearing on behalf of the Employer. Rudder claimed that he was only joking when he said this to Martin. Rudder testified that he did not know if Martin knew he was joking or not. Rudder did not know the date when he made this remark to Martin. Rudder testified that he lied at the October 15, 1981, hearing because he was confused about what to do since it appeared to him to be making a big deal out of nothing to go to court over his remarks to Martin. He testified that he recanted his previous testimony because what he did was wrong and he wanted now to tell the truth.

I credit Rudder's recantation and conclude that he did threaten Martin with a remark that the Union would fine him \$1000 if he testified at an arbitration hearing against a fellow employee. This threat could not have been made on August 9, 1980, since the plant was closed that day but was made around that date. I do not credit Rudder's statement that he was joking when he threatened Martin. But even if Rudder were joking when he threatened Martin I find that Martin did not understand Rudder to be anything other than deadly serious. When Rudder threatened Martin according to Rudder, Martin said that he (Martin) was not going to work with someone who would endanger his health. This comment by Martin to Rudder clearly reflects that Martin took Rudder's remarks about a fine quite seriously since the arbitration hearing involved an employee named Dave Woods who was charged with drinking on duty in an area of heavy machinery where Martin also worked.

As shop steward Rudder was acting as an agent of Respondent where he uttered this threat to Martin. *Sunset Line & Twine Co.*, 79 NLRB 1487 (1948); *Operating Engineers Local 825*, 138 NLRB 540 (1962). This agency is especially clear in light of other evidence at the original hearing, i.e., newsletters of Respondent which threatened members with the possibility of fines if they testified against fellow members and a newsletter circulated after Martin testified at the arbitration hearing accusing him of being a Judas. The threat by a union to fine a member for testifying on behalf of the employer at an arbitration hearing violates Section 8(b)(1)(A) of the Act. *Steelworkers Local 1981 (Major Safe Co.)*, 259 NLRB 404 (1981); *Amalgamated Transit Union, Division 825 (Transport of New Jersey)*, 240 NLRB 1267 (1979).

² Rudder ceased being a shop steward prior to his testimony at the original hearing on October 15, 1981. Rudder held no union office when he testified at the original hearing and at the hearing on remand.

CONCLUSIONS OF LAW

1. National Electric Coil, A Division of McGraw-Edison, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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

3. By threatening a member with the possibility of being fined if the member testified on behalf of the employer at an arbitration proceeding Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

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

ORDER³

The Respondent, International Union of Electrical, Radio and Machine Workers, Local 745, AFL-CIO-CLC, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening members with fines if they testify on behalf of the employer at an arbitration hearing.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Post copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days thereafter in conspicuous places including all places where notices to members and employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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.

⁴ If 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."

APPENDIX

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

WE WILL NOT threaten members with fines for testifying on behalf of the employer at arbitration hearings.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed them in the National Labor Relations Act.

INTERNATIONAL UNION OF ELECTRICAL,
RADIO AND MACHINE WORKERS, LOCAL
745, AFL-CIO-CLC