

Newspaper and Mail Deliverers Union and Amnews Corporation d/b/a New York Amsterdam News, Case 2-CC-1791

8 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

On 7 July 1983 Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief.

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,¹ and conclusions² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Newspaper and Mail Deliverers Union, New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ In sec. III, par. 3 of his decision, the judge inadvertently misstated the parties' stipulation. The parties' stipulation is that:

Arthur Wittenberg [the Respondent's business representative] said in the presence of Carl Levy, president of Metropolitan News, to Robert Schneider, the Metropolitan stop [sic] steward, and an employee of Metropolitan News, that if anybody other than the regular Amsterdam News drivers, members of [the Respondent's] relay chauffeurs, bring in the Amsterdam News, the men at Metropolitan would not handle it.

² We agree with the judge that the Respondent violated Sec. 8(b)(4)(i)(B) of the Act by directing the wholesalers' employees not to handle the newspaper if drivers whom the Respondent did not represent delivered it. However, in sec. III, par. 10 of his decision, the judge found that "as it appears the Respondent effectively induced the wholesalers' employees to cease handling the Amsterdam News, this conduct necessarily had the effect of restraining and coercing the wholesalers within the meaning of clause (ii) of Section 8(b)(4) of the Act." Inasmuch as no newspapers were ever delivered to the wholesalers, the wholesalers' employees had no opportunity to cease handling the product. Therefore, we do not find that the Respondent violated Sec. 8(b)(4)(ii)(B) on this basis.

However, the parties stipulated that (1) the Respondent told Schneider, its steward and an employee of wholesaler Metropolitan News, that the employees would not handle the newspaper if drivers other than the regular drivers delivered it, and (2) the Respondent gave this direction in the presence of Levy, the president of Metropolitan News. Unlawful inducement of secondary employees made in the presence of a secondary employer constitutes coercion of that secondary employer within the meaning of the statute. *Television Artists AFTRA, Washington-Baltimore Local (First Media Corp.)*, 240 NLRB 378, 384 (1979). Accordingly, we agree with the judge's conclusion that the Respondent also violated Sec. 8(b)(4)(ii)(B) of the Act based solely on the *First Media* holding.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was tried before me on May 25, 1983,¹ in New York, New York. The complaint, which issued on March 18, and was based on an unfair labor practice charge filed on March 2, by Amnews Corporation, d/b/a New York Amsterdam News, herein called the Amsterdam News, and, at times, Amnews, alleges that, since on or about February 1, Newspaper Guild of New York, Local 3, the Newspaper Guild, AFL-CIO, herein called the Guild, has been engaged in a strike and labor dispute with Amnews; that at all times Newspaper and Mail Deliverers Union, herein called the Respondent has supported the Guild in this dispute, and, more particularly, on or about February 1, in furtherance and support of the Guild in this dispute, the Respondent induced and encouraged employees employed by Metropolitan News Co., Inc., herein called Metropolitan, Long Island News Co., herein called Long Island News, Weinberg News Co., Inc., herein called Weinberg, and Crescent News Co., herein called Crescent, and, at times, all are collectively called the wholesalers (all of whom are distributors of the Amsterdam News to retail outlets) to refrain from performing services for their employer by inducing and encouraging said employees to refrain from loading, unloading, and otherwise handling copies of the Amsterdam News. The complaint also alleges that at no time material herein has the Respondent had a labor dispute with Metropolitan, Weinberg, Crescent, or Long Island News, and the conclusory allegation that the acts referred to above are in violation of Section 8(b)(4)(i) and (ii)(B) of the Act. Pursuant to a petition, the Regional Director for Region 2 sought an injunction against this alleged unlawful activity by the Respondent; a hearing took place on March 31 before Honorable Lee Gagliardi, district judge of the United States District Court for the Southern District of New York. On April 11, Judge Gagliardi issued a memorandum decision in which he enjoined the Respondent, pending the final Board determination of this matter, from (1) inducing or encouraging any employee of the wholesalers from performing any of his normal work activities with regard to the Amsterdam News, and (2) threatening, coercing, or restraining the wholesalers with the object of forcing the wholesalers to cease doing business with Amnews.

No record testimony was adduced at the hearing herein; rather, the parties stipulated that the transcript of the hearing before Judge Gagliardi would constitute the record herein. In its answer, the Respondent denies the allegation that at no time material herein has it had a labor dispute with Metropolitan, Crescent, Weinberg, or Long Island News; at the hearing the parties stipulated that remarks made by Arthur Wittenberg, the Respondent's business representative, and, admittedly, an agent of the Respondent (referred to in the complaint and at the hearing before Judge Gagliardi), "were related to the labor dispute between Amnews and the Guild."

¹ Unless otherwise indicated, all dates herein refer to the year 1983.

FINDINGS OF FACT

I. JURISDICTION

Amnews, a New York corporation with its principal office in the city and State of New York, is engaged in the publication of the Amsterdam News, a weekly publication. Amnews annually derives revenue valued in excess of \$200,000, and advertises various nationally sold products, including Kraft Foods. The Respondent concedes, and I find, that Amnews is an employer and a person engaged in commerce within the meaning of Section 2(1), (2), (6), and (7) and Section 8(b)(4) of the Act. The Respondent also admits, and I find, that Metropolitan, Weinberg, Crescent, and Long Island News are each engaged in the wholesale distribution of newspapers (including the Amsterdam News) at New Hyde Park, New York (except Metropolitan, whose principal office is located in Long Island City, New York), and are each persons engaged in commerce in industries affecting commerce within the meaning of Section 2(1), (6), and (7) and Section 8(b)(4) of the Act.

II. LABOR ORGANIZATION STATUS

The Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. FACTS AND DISCUSSION

The facts herein are, basically, not in dispute. The Amsterdam News is published weekly; its employees are represented by a number of unions, including the Respondent and the Guild. Amnews' employees, who are represented by the Respondent, pick up the newly printed copies of the newspaper in Westchester County and transport these papers to Metropolitan, Weinberg, Crescent, and Long Island News,² as well as other wholesalers, although these four wholesalers distribute most of Amnews' papers. The employees of these four wholesalers are represented by the Respondent. The prestrike procedure was that the Amnews' trucks delivered the papers to the wholesaler's premises; the wholesalers' employees then separate the papers according to the retailer or home delivery outlet for whom they are destined (together with the other newspapers, and publications that they handle), tie them, and load them onto the wholesalers' trucks, which delivers them to the retailer, who then sells them to the public. Virtually all of Amnews' papers are sold through wholesalers.

On February 1, the Guild commenced picketing Amnews as part of a labor dispute with it. The Respondent's members employed by Amnews refused to cross the Guild's picket lines to pick up the newspapers which they normally would deliver to the wholesalers. Faced with this, Amnews employed non-Respondent drivers to pick up the newspapers and deliver them to the wholesalers. On the evening of February 2, members of the Guild picketed Metropolitan's facilities; no deliveries of the Amsterdam News were made to Metropolitan, Cres-

cent, Weinberg, or Long Island News after the Guild's strike began on February 1.

The parties stipulated that, on or about February 1, Arthur Wittenberg, the Respondent's business representative, and an admitted agent of the Respondent, said to Robert Schneider, the Respondent's shop steward and an employee at Metropolitan, in the presence of Carl Levy, president of Metropolitan, that if anyone other than regular Amsterdam News drivers, who were members of the Respondent, bring in the Amsterdam News, the men at Metropolitan were not to handle it. Wittenberg's testimony was not so limited; he testified that, about February 1, he instructed employees of the "four distributors" (through the Respondent's chairman/shop steward) not to handle the Amsterdam News if it was brought in by non-Respondent drivers. The parties also stipulated that these remarks by Wittenberg were related to the labor dispute between Amnews and the Guild. Prior to this, Levy had informed Selvin Michaels, a representative of Amnews that he felt that his employees would not handle the paper if the Respondent's members did not deliver it. Subsequently, Levy informed Michaels of Wittenberg's remarks.

Finally, Donald Frieder, circulation operations manager for Long Island News, testified that on the evening of February 1, after he had discussed an unrelated matter with him, Wittenberg "said to me that the Amsterdam News he considered a struck product and the men would not handle it."³

In enacting Section 8(b)(4), Congress meant to protect employers, who were not engaged in any labor dispute, from becoming enmeshed in a labor dispute involving a union and a company with whom it was doing business, or attempting to do business. The situation herein is a classic example of this: the wholesalers' employees are represented by the Respondent, but they presently have no labor dispute with the Respondent. However, the Respondent and the Guild are engaged in an ongoing dispute with Amnews; the wholesalers are the principal distributors of the Amsterdam News, and, because of their desire to continue distributing the Amsterdam News during this labor dispute, they became embroiled in the controversy.

The case cited by counsel for the Charging Party in his brief—*Typographical Union 6 (New York Herald Tribune)*, 136 NLRB 196 (1962)—is right on point. In the *Mailers* case, the union struck Neo-Gravure Printing Company and instructed its members who were employed at the New York Herald Tribune (and other newspapers) not to handle the weekly supplements printed by Neo-Gravure, and informed the newspapers' circulation managers that their mailroom employees would not handle the supplements printed by Neo-Gravure. (The only distinction between this case and the instant matter is that in the instant matter the underlying dispute is with the Guild, rather than with Respondent.) The Board found a violation regardless of the union's contention that it had not sought to force the publishers to

² Weinberg, Crescent, and Long Island News have the same ownership.

³ As this statement is not alleged in the complaint as a violation, and as it would add nothing to the remedy and Order herein, no finding will be made in this regard.

cease doing business with Neo-Gravure; rather that it was only seeking observance of its traditional right not to handle struck work. The Board stated:

Respondent regards intent as synonymous with the *scienter* or *mens rea* of criminal violations. This is not, however, the type of intent which the Act requires to be proved. Rather, "in the absence of admissions by the Union of an illegal intent, the nature of the acts performed shows the intent."

The Board found that although the union may have been concerned with other objects as well, "its actions effectively establish that, at least, an object was to force the publishers to disrupt or seriously curtail the existing business relationship between them and Neo-Gravure if the Union was unable to obtain its goal of recognition in any other fashion."

Counsel for the Respondent, in his brief, argues that:

The picket lines established at each wholesaler are primary picket lines and accordingly constitute protected activity. The mutual aid and support afforded by NMDU employees at those wholesalers in refusing to handle the Amsterdam News and only the Amsterdam News is protected primary activity and not legal secondary activity as alleged.

This is not, however, the activity that the General Counsel alleges as unlawful; the only activities by the Respondent that are alleged as unlawful by the complaint are the statements by Wittenberg to the wholesalers' employees which were intended to have them stop handling the Amsterdam News.

The Respondent in its brief also alleges that "any charge against the NMDU is misplaced. Whatever NMDU action occurred was the result of employee response to primary pickets representing the Guild." This argument also misses the point; the complaint does not seek to enjoin the wholesalers' employees for taking any action or refusing to take any action, in response to the Guild's pickets. It simply seeks to enjoin the Respondents' agents from inducing or encouraging any of the wholesalers' employees from refusing to handle the Amsterdam News (which, the evidence establishes, Wittenberg did), and from engaging in the derivative action of threatening, coercing, and restraining the wholesalers. In that regard, as it appears that the Respondent effectively induced the wholesalers' employees to cease handling the Amsterdam News, this conduct necessarily had the effect of restraining and coercing the wholesalers within the meaning of clause (ii) of Section 8(b)(4) of the Act. *Operating Engineers Local 701 (Cascade Employers Assn.)*, 172 NLRB 1269 (1968).

Counsel for the Respondent argued, at the hearing before Judge Gagliardi, that the Supreme Court, in *Steelworkers v. NLRB*, 376 U.S. 492, "indicated that a company involved in the ordinary day-to-day transportation of the products of the struck primary is so intricately involved in those day-to-day operations that they are an appropriate target for purposes of primary picketing." The Respondent's reliance on *Carrier*, supra, and its brief, is misplaced. Although the Respondent could have

picketed Amnews' premises, and could have picketed the wholesalers premises while Amnews' employees were on the premises delivering their newspapers,⁴ that is not the gravamen of the situation herein where the Respondent's agent instructed its members not to handle the Amsterdam News if it was delivered by individuals who were not members of the Respondent. This is activity clearly proscribed by Section 8(b)(4)(i) and (ii)(B) of the Act. *Teamsters Local 315 (Insured Transporters)*, 195 NLRB 56 (1972).

In addition, the wholesalers were not performing struck work for Amnews which, but for the strike, Amnews would have performed;⁵ rather, this was work that the wholesalers had always performed and they could continue to do so without losing the protection of Section 8(b)(4). *Teamsters Local 554 (Prairie Ford Truck Sales)*, 253 NLRB 1 (1980). And, finally, there is no allegation (or evidence) that the wholesalers are owned or controlled by Amnews, so that Respondent could picket the wholesalers, as well as Amnews. *Newspaper Guild Local 69 (Hearst Corp.)*, 185 NLRB 303 (1970). Accordingly, I find that the Respondent's actions herein, by Wittenberg, the Respondent's agent, violated Section 8(b)(4)(i) and (ii)(B) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices, found above, occurring in connection with the business of Amnews, Metropolitan, Crescent, Weinberg, and Long Island News, discussed above in sections I and III above, are unfair labor practices which tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

1. Amnews is an employer and a person engaged in commerce within the meaning of Section 2(1), (2), (6), and (7) and Section 8(b)(4) of the Act.
2. Metropolitan, Weinberg, Crescent, and Long Island News are persons engaged in commerce in industries affecting commerce within the meaning of Sections 2(1), (6), and (7) and Section 8(b)(4) of the Act.
3. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
4. Respondent, by Arthur Wittenberg, its agent, on or about February 1, 1983, violated Section 8(b)(4)(i) and (ii)(B) of the Act by instructing its members who were employed by Metropolitan, Crescent, Weinberg, and Long Island News, together with Carl Levy, president of Metropolitan, that they were not to handle copies of the Amsterdam News if they were brought in by anyone other than Amnews' regular drivers, who were members of the Respondent.

⁴ *Oil Workers (Anchortank)*, 238 NLRB 290 (1978).

⁵ *NLRB v. Business Machine & Office Appliance Mechanics Conference Board Local 459*, 228 F.2d 553 (2d Cir., 1955); *Blackhawk Engraving Co. v. NLRB*, 540 F.2d 1296 (7th Cir. 1976).

THE REMEDY

Having found that the Respondent has engaged in the above-stated unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The Respondent, Newspaper and Mail Deliverers Union, New York, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing or encouraging employees employed by Metropolitan, Long Island News, Weinberg, and/or Crescent to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, where an object thereof is to force or require Metropolitan, Long Island News, Weinberg, and/or Crescent to cease doing business with Amnews.

(b) Threatening, coercing, or restraining Metropolitan, Long Island News, Weinberg, and/or Crescent where an object thereof is to force or require these companies to cease doing business with Amnews.

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

(a) The Respondent is to post at its business office, union hall, and any other places where it customarily posts notices to members, copies of the attached notice marked "Appendix."⁷ Copies of the notice shall also be posted at the wholesalers' places of business if the wholesalers are willing. Notices on forms provided by the Regional Director for Region 2, after being signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt in

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order, as provided by Sec. 102.48 of the Rules, shall be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁷ 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."

the manner provided above. Notices are to be posted for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent and by the Employer to ensure that the 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.

APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, it has been found that we have violated the National Labor Relations Act and we have been ordered to post this Notice.

WE WILL NOT induce or encourage any individual employed by Metropolitan News Co., Inc., Weinberg News Co., Inc., Crescent News Co., or Long Island News Co., to engage in a strike or refusal in the course of his employment to perform any services, where an object thereof is to force or require Metropolitan, Weinberg, Crescent, or Long Island News to cease doing business with Amnews Corporation, d/b/a The Amsterdam News.

WE WILL NOT threaten, coerce, or restrain Metropolitan, Weinberg, Crescent, or Long Island News, where an object thereof is to force or require Metropolitan, Weinberg, Crescent, or Long Island News to cease doing business with Amnews.

NEWSPAPER AND MAIL DELIVERERS
UNION