

United States Postal Service and National Association of Letter Carriers, Branch 1416, AFL-CIO, Case 11-CA-11029-P

31 May 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

Upon a charge filed 1 September 1983 by National Association of Letter Carriers, Branch 1416, AFL-CIO, the Union, and duly served upon the United States Postal Service, the Respondent, the General Counsel issued a complaint 4 November 1983 against the Respondent, alleging that it had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

The complaint alleges in essence that about 25 May 1983 the Respondent, by one of its agents and supervisors at its Florence, South Carolina Post Office, threatened one of its employees with discharge because of his activities on behalf of the Union. The complaint alleges that by engaging in the foregoing conduct, the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and committed unfair labor practices within the meaning of Section 8(a)(1) of the Act. On 8 November 1983 the Respondent filed an answer to the complaint admitting in part and denying in part the allegations in the complaint.

On 22 November 1983 the Respondent filed a Motion for Summary Judgment and a supporting memorandum. On 29 November 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Respondent's motion should not be granted. On 9 December 1983 the General Counsel filed a response to the Notice to Show Cause.

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

On the entire record, the Board makes the following

Ruling on the Motion for Summary Judgment

In its Motion for Summary Judgment and its supporting memorandum, the Respondent contends, inter alia, that the unfair labor practice allegations should be deferred to the parties' grievance-arbitration procedure in essence because the

policy expressed in the Board's majority opinion in *General American Transportation Corp.*, 228 NLRB 808 (1977), should be overruled and the policy expressed in the Board's majority opinion in *National Radio Co.*, 198 NLRB 527 (1972), should be reinstated.¹ In the response to the Notice to Show Cause, the General Counsel contends, inter alia, that the unfair labor practice allegations should not be deferred to the parties' grievance-arbitration procedure in essence because the policy expressed in the Board's majority opinion in *General American Transportation Corp.* should still be applied. The General Counsel does not dispute the Respondent's assertion that the unfair labor practice allegations come within the scope of the binding grievance-arbitration procedure established by the parties' collective-bargaining contract.² We agree with the Respondent that the unfair labor practice allegations should be deferred to the parties' grievance-arbitration procedure.

In our recent decision in *United Technologies Corp.*, 268 NLRB 557 (1984), we held that the policy expressed in the majority opinion in *General American Transportation Corp.* "ignore[d] the important policy considerations in favor of deferral" and that the policy expressed in the majority opinion in *National Radio Co.* "deserve[d] to be resurrected and infused with renewed life" (at 558, 559). Accordingly, we overruled the policy expressed in *General American Transportation Corp.* of declining to defer unfair labor practice allegations alleging violations of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2) of the Act. In doing so, we stated (at 559):

It is fundamental to the concept of collective bargaining that the parties to a collective-bargaining agreement are bound by the terms of their contract. Where an employer and a union have voluntarily elected to create dispute resolution machinery culminating in final and binding arbitration, it is contrary to the basic principles of the Act for the Board to jump into the fray prior to an honest attempt

¹ Since we find the Respondent's deferral contention sufficient to warrant granting the Motion for Summary Judgment, we deem it unnecessary to pass on the other contentions raised in the Motion for Summary Judgment.

² According to documents submitted by the Respondent and not disputed by the General Counsel, the parties' collective-bargaining contract creates a grievance-arbitration procedure which culminates in "final and binding" arbitration and which defines a grievance as "a dispute, difference, disagreement or complaint between the parties related to wages, hours and conditions of employment [including, but not limited to] the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of [the contract]." The contract provides that the Respondent shall exercise the right to direct and discipline employees "consistent with applicable laws and regulations."

by the parties to resolve their disputes through that machinery. Dispute resolution under the grievance-arbitration process is as much a part of collective bargaining as the act of negotiating the contract [footnote omitted]. In our view, the statutory purpose of encouraging the practice and procedure of collective bargaining is ill-served by permitting the parties to ignore their agreement and to petition this Board in the first instance for remedial relief.

We noted that the facts of that case, which involved an allegation that a single foreman committed a violation of Section 8(a)(1) by making a statement to a single employee and a shop steward threatening that adverse consequences might flow from a decision by the employee to pursue protected grievance activities, made the case "eminently well suited for deferral" (at 560).

We believe that the present case is also eminently well suited for deferral. As in *United Technologies Corp.*, the case involves an allegation that a single supervisor committed a violation of Section 8(a)(1) by making a statement to a single employee threatening the employee with adverse consequences because of his pursuit of allegedly protected concerted activities. And as in *United Technologies Corp.*, there is no dispute in the case that the unfair labor practice allegations come within the scope of the binding grievance-arbitration procedure established by the parties' collective-bargaining contract. Accordingly, consistent with *United Technologies Corp.*, we shall order that the Respondent's Motion for Summary Judgment be granted, that the unfair labor practice allegations be deferred to the parties' grievance-arbitration procedure, and that the complaint be dismissed.³ As in *United Technologies Corp.*, however, we shall retain jurisdiction for the purpose of entertaining a

³ On 1 March 1984 the Respondent filed a motion to withdraw its Motion for Summary Judgment and a supporting memorandum stating that it wished to withdraw the Motion for Summary Judgment because the Regional Director had indicated that he would defer the unfair labor practice allegations to the parties' grievance-arbitration procedure himself if the Board returned the case to his jurisdiction and if the Respondent agreed to waive the collective-bargaining contract's time limits for invoking the grievance-arbitration procedure. In view of the disposition we have made of the Motion for Summary Judgment here, we find it unnecessary to rule upon the Respondent's motion to withdraw its Motion for Summary Judgment.

motion for further consideration upon a showing that either (1) the dispute has not been resolved in the grievance procedure or submitted to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.

On the basis of the entire record, the Board makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

United States Postal Service provides postal services for the United States of America and operates various facilities throughout the United States, including its facility in Florence, South Carolina, in the performance of that function. The Board has jurisdiction over the Respondent pursuant to Section 1209 of the Postal Reorganization Act, as amended.

II. THE LABOR ORGANIZATION INVOLVED

National Association of Letter Carriers, Branch 1416, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

CONCLUSIONS OF LAW

The unfair labor practice violations in the complaint should be deferred to the grievance-arbitration procedure established by the parties' collective-bargaining contract.

ORDER

The Motion for Summary Judgment is granted, and the complaint is dismissed, provided that:

Jurisdiction of this proceeding is retained for the limited purpose of entertaining an appropriate and timely motion for further consideration upon a proper showing that either (a) the dispute has not, with reasonable promptness after the issuance of this Decision and Order, been either resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.