

**International Brotherhood of Electrical Workers,
Local No. 2127 (I-T-E Electrical Products, A
Division of Siemen-Allis, Inc.) and John Rucks.
Case 10-CB-4117**

7 August 1984

DECISION AND ORDER

**BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS**

On 8 November 1983 Administrative Law Judge Hutton S. Brandon issued the attached decision. The General Counsel 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 brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, International Brotherhood of Electrical Workers, Local No. 2127, Decatur, Georgia, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(a) and re-letter the subsequent paragraphs.

"(a) Make available to employees of I-T-E Electrical Products, A Division of Siemen-Allis, Inc., at all reasonable times, the grievance forms which, by the terms of the Respondent's collective-bargaining agreement with that Employer, are requisite in the prosecution of employee grievances."

2. Substitute the attached notice for that of the administrative law judge.

¹ Consistent with the facts and the violation found, Members Zimmerman and Hunter will amplify the remedy, proposed by the judge, by requiring that the Respondent make available to employees at all reasonable times the grievance forms which, by the terms of the collective-bargaining agreement, are requisite in the prosecution of grievances.

Member Dennis does not join her colleagues in ordering the Respondent to make available grievance forms to employees at all reasonable times. The Respondent violated Sec. 8(b)(1)(A) of the Act by *threatening* to withhold grievance forms. In Member Dennis' view, it is improper for the Board to require any affirmative action other than notice posting to remedy such a threat.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees of I-T-E Electrical Products, A Division of Siemen-Allis, Inc., that we will not make grievance forms available to them and will refuse to accept or completely process their grievance because they are not members of our Union.

WE WILL NOT in any like or related manner restrain or coerce employees of I-T-E Electrical Products, A Division of Siemen-Allis, Inc., in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL make available to employees of I-T-E Electrical Products, A Division of Siemen-Allis, Inc., at all reasonable times, the grievance forms which, by the terms of our collective-bargaining agreement with that Employer, are requisite in the prosecution of employee grievances.

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL NO.
2127**

DECISION

STATEMENT OF THE CASE

HUTTON S. BRANDON, Administrative Law Judge. This case was heard at Atlanta, Georgia, on October 3, 1981.¹ The charge was filed by John Rucks, an individual (Rucks), on June 24, and the complaint issued on August 5, alleging that International Brotherhood of Electrical Workers, Local No. 2127 (Respondent or the Union), violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act), by threatening employees of I-T-E Electrical Products, A Division of Siemen-Allis, Inc. (the Company), that the Union would not process grievances of employees in a bargaining unit represented by the Union unless they were members of the Union, and by refusing to process a grievance of Rucks on and after June 23.

The issues are essentially factual and require determination of whether the Union threatened not to process grievances of employees because of their lack of union membership and refused to process the grievance of Rucks because he was not a union member.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of

¹ All dates are in 1983 unless otherwise stated.

the briefs filed by the General Counsel and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company is a Delaware corporation with offices and places of business in Tucker, Georgia, where it is engaged in the manufacture of electrical distribution equipment. During the past calendar year the Company sold and shipped finished products valued in excess of \$50,000 directly to customers located outside the State of Georgia. The complaint alleges, the Union admits, and I find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The complaint also alleges, the Union admits, and I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Collective-Bargaining Agreement*

It is undisputed that the Union is the recognized collective-bargaining representative of the Company's employees at certain of its locations in the Atlanta area including its operation in Tucker, Georgia, involved herein. The Company and the Union have been parties to a collective-bargaining agreement for several years, including all times material herein. Pertinent provisions of the latest collective-bargaining agreement which has application to the case sub judice are found under articles X and XII involving, respectively, the grievance procedure and vacations.

More specifically the provision on grievance procedure defines a grievance as a "dispute between the Company and an employee or employees, or the Union, which is reduced to writing on a form supplied by the Union and filed for processing through the grievance procedure." The procedure is initiated prior to reducing the grievance to writing by presentation of a verbal complaint by an employee with his steward to the employee's immediate supervisor. If the matter is not settled within 3 workdays it is reduced to writing and signed by the aggrieved employee. The steward and the involved supervisor proceed to the second step of the procedure. At that point the grievance is presented to a company staff manager by the grievance committee consisting of the involved steward and the aggrieved employee or other designated union officer. "The grievance at this step must be taken up within 2 working days and the ruling on it by the Staff Manager must be made within 3 days." Absent resolution at this stage the grievance proceeds to step 3 within 5 days and involves a hearing with another company official and the grievance committee which may include at this level international representation of the Union. Failing resolution at this level the matter may then be "considered" for final and binding arbitration.

The provision on vacations which gives rise to the complaint of Rucks herein is set forth at article XII, section 4, as follows:

Vacations: The annual vacation period shall consist of two consecutive weeks commencing the last full week in July. All employees are assured they will be permitted to schedule vacation during this period. Employees will be encouraged to select alternate dates by mutual consent. If sufficient employees select dates other than the vacation period, operations will continue during the vacation period. The selection of alternate dates will be made during the second week of May each year. A decision will be made by the end of May as to whether sufficient people have selected alternate dates to allow continued operations during the vacation period. Changes to scheduled dates will be permitted by mutual consent except no changes will be allowed to the vacation period. In instances where more employees select the same period than can be permitted to allow for efficient operations, seniority shall prevail.

B. *Rucks' Grievance and His Efforts to File It with the Union*

Pursuant to the collective-bargaining agreement provision on vacations the Company in early May solicited from employees their individual preferred vacation dates. Rucks, who had been employed by the Company in 1979 and who was entitled to 8 days of vacation, requested various dates outside the annual vacation period specified in the bargaining agreement. On May 16, the Company posted a notice announcing that "As in the past, there will be no vacation shutdown at the Atlanta Area Service Center," indicating that employees would be allowed to take their requested alternative vacation dates.

On June 21, however, Emile Castanette, operations manager for the Company, held a meeting with employees and announced that because of business conditions the Company would shut down the last week of July and the first week of August. Employees were allowed to ask questions, but the effect of the Company's action was to revoke alternate vacation dates requested by employees and require employees to take their vacations during the 2-week shutdown.

Castanette testified herein for the Union that the shutdown was the first he had experienced since becoming operations manager 2 years earlier. However, he testified that it was his understanding that there had been previous shutdowns during the annual vacation period by the Company in past years. Castanette explained in his testimony that the Union was advised prior to the general announcement of the shutdown, given the reasons for it, and raised no objections to it. His testimony in this regard was corroborated by Robbie Sparks, the union president. In addition, Castanette explained that the same business conditions which dictated the shutdown had also caused the Company to lay off about 10 employees about June 22. The Union was aware of these adverse conditions and the layoffs and understood the shutdown to be a device which would assist in avoiding the necessity of additional layoffs. According to Castanette, the business conditions which necessitated the shutdown were not clear in May when the Company announced there would be no vacation period closings.

Since Rucks was entitled to only 8 days of vacation and because the shutdown would span 10 working days, net result for him was the loss of 2 days of pay. He considered himself aggrieved because of the shutdown decision and decided to complain, contending that since he believed enough employees had, consistent with the vacation provision in the bargaining agreement, selected alternate vacation periods other than during the annual vacation period the Company could not discontinue operations during that period.

Rucks, who had joined the Union in 1981 but resigned in November 1982, approached Earnest Thompkins, the union steward in his area, on June 22 concerning his complaint and asked Thompkins to go in with him to see Ryan Garner, the Company's manufacturing manager, about his grievance. Thompkins, Rucks testified, refused saying that the Company was entitled to shutdown.

Later the same day, Rucks again approached Thompkins and asked for a grievance form. Thompkins stated he did not have a form and told him to get one from Union President Sparks, also an employee of the Company. Rucks responded that he did not think it was his responsibility to go to Sparks.

Rucks discussed the matter with Garner who told him to file a grievance on plain paper. That evening Rucks prepared his grievance at home and brought it to work with him the next morning. After making copies Rucks took a copy to Thompkins and asked him to accept it as his grievance. Thompkins responded that Rucks had nothing to grieve about. Rucks asked if he was refusing to accept it. Thompkins replied that he was not and told him to lay it on Thompkins' worktable. Rucks did so and then left. Rucks testimony was that Thompkins did not read the grievance, and Rucks specifically testified Thompkins did not know or understand the details of the grievance. He conceded, however, that Thompkins told him he had nothing to grieve about and that the Company was following policy in the vacation shutdown.

Rucks took another copy of the grievance to Sparks in her work area. Sparks according to Rucks, would not accept the grievance because it was not on the appropriate grievance form. Rucks explained that Thompkins had not had the appropriate form when Rucks had asked him. According to Rucks, Sparks replied that she did not feel Rucks had a right to the forms because Rucks was not a union member and did not pay union dues. Sparks suggested that Rucks go to Garner like he "always did."

Rucks did submit his grievance to Garner and Garner subsequently ruled on it, denying it, and writing the following on the back of the grievance:

It is our understanding and opinion that the intent of the contract language relative to vacation periods is that employees are only guaranteed vacation during the (2) week period commencing the last full week of July. All other periods are by mutual consent.

Business conditions appear to favor closing this year during this period, thus, it may be necessary to deny vacation requests for alternative periods.

Rucks did not provide the Union with a copy of Garner's ruling, nor did he make an effort to take it any further through the grievance procedure.

Somewhat limited corroboration of Rucks' testimony is found in the testimony of employee Michael Stewart. Stewart stated that he observed Rucks give the written grievance to Thompkins on the morning of June 23. Although Stewart admittedly was not close enough to hear what was said between Rucks and Thompkins, he testified that he saw Thompkins shake his head. He also saw Rucks lay a copy of the grievance on Thompkins work table. Stewart testified that Thompkins then pushed the grievance off the table.

Thompkins testified that when initially asked by Rucks to go in to talk with supervision regarding Rucks' complaint, Thompkins agreed to go with Rucks but told Rucks to set up the meeting. However, according to Thompkins, Rucks did not "get back with" him. Thompkins admitted that Rucks asked him about a grievance form and that Thompkins did not have one with him at the time. Thompkins claimed he told Rucks that he would bring one in the next day. The next day, however, Rucks presented Thompkins with the grievance which was written out on a plain piece of paper. Thompkins said he told Rucks to leave it on his work table and admitted that he did not immediately read it. Thompkins implicitly contradicted Stewart's testimony that he pushed Rucks' grievance off the table by testifying that he took the grievance to Sparks who asked if Rucks had followed procedure. Sparks told Thompkins that she would follow up on the matter and Thompkins then took Rucks' grievance back to his work area where he put it in a folder. The grievance remained in the folder until after the charge was filed herein.

Sparks testified for the Union that Rucks had come to her with his written complaint on June 23, explaining that he wanted to file a grievance about the shutdown. She admitted that both she and Rucks became "hostile" and said she suggested that Rucks take the grievance back to Thompkins and follow correct procedure. Rucks replied that he had talked to Garner and that Garner had said it was alright to file the grievance on the plain paper. Sparks did not specifically deny the statement attributed to her by Rucks about the availability of grievance forms to nonmembers of the Union. Sparks related she ultimately was shown a copy of Garner's response to the grievance but that the Union was never asked to take the matter to arbitration.

Sparks contended that the Union does process grievances of nonunion member employees. In this regard the Union presented evidence of five grievances processed by the Union over the past 3 years which involved employees who were not members of the Union. One of those grievances involved Rucks as a member of a group of employees who were aggrieved by certain employer action. At the time of that particular grievance Ruck was not a member of the Union.

Weighing the testimony of Rucks on the one hand and that of Sparks and Thompkins on the other, I credit Rucks. He displayed clear recall and testified with conviction and apparent honesty. Further, his testimony ap-

pears corroborated by the record considered as a whole. Thompkins appeared somewhat uncertain in his testimony and both he and Sparks failed to specifically deny critical aspects of Rucks' testimony. Consequently, I credit Rucks where his testimony contradicts that of Thompkins and Sparks.

C. The Alleged Independent 8(b)(1)(A) Violation of the Act

The General Counsel relied on the testimony of Stewart to establish the additional complaint allegation that about July 11 the Union threatened employees by stating that it would refuse to investigate, process, or seek adjustment of grievances filed by employees unless they were members of the Union.

Stewart testified that on July 11 he heard employee Danny Jackson, an employee who was not a union member, ask steward Thompkins to go with him to the office to discuss with supervision a reprimand Jackson had received for allegedly staying too long in the rest room. Thompkins, according to Stewart, stated that he would go with Jackson to the office but added that "if the matter had to be carried to the Union hall Jackson's grievance would not be accepted because he was not a member of the Union." Jackson thereupon told Thompkins to "forget it."

Jackson, who the General Counsel stated on the record was subpoenaed to attend the hearing but refused to cooperate, did not testify. Thompkins testified and admitted that he had offered to go in with Jackson to talk to supervision about Jackson's complaint. However, he failed to specifically deny the remark attributed to him by Stewart in regard to what would happen if Jackson's grievance went to the union hall.² Accordingly, I credit Stewart who impressed me as a credible and disinterested witness.

D. Arguments and Conclusions

Briefly stated, the General Counsel argues that Respondent failed and refused to process Rucks' grievance because he was not a member of the Union and thereby violated Section 8(b)(1)(A) of the Act. In support of the claim, the General Counsel relied on Sparks' assertion to Rucks that he had no right to the grievance forms since Rucks was not a member and did not pay union dues. In addition, the General Counsel argues that Thompkins' statement to Jackson as related by Stewart not only independently violated Section 8(b)(1)(A) of the Act, but also confirms the Union's disposition not to fully process the grievances of nonunion employees of the Company. In taking this position the General Counsel asserts that the relative merit of Rucks' grievance is irrelevant and immaterial. Thus the General Counsel makes no arguments on the merits of the grievance.

Respondent argues that Rucks' grievance had no merit since under the collective-bargaining agreement the Company had traditionally retained the right to shutdown for the vacation period. Moreover, Respondent

² It appears that approval of the union membership was required for processing a grievance to arbitration, but the record is unclear on the point.

argues that in this specific instance, the Union had itself agreed to the shutdown.³ Therefore, the Union by not processing Rucks' grievance was simply exercising its discretion not to pursue a grievance which had no arguable merit.

It has been held that "[a] union must represent fairly the interest of all the bargaining unit members during the negotiation, administration, and enforcement of collective-bargaining agreements." *Electrical Workers IBEW v. Foust*, 442 U.S. 42 (1979). Further, "a union may not arbitrarily ignore a meritorious grievance or process in a perfunctory fashion." *Vaca v. Sipes*, 386 U.S. 171, 191 (1967). However

. . . so long as it exercises its discretion in good faith and with honesty of purpose, a collective-bargaining representative is endowed with a wide range of reasonableness in the performance of its duties for the unit it represents. Mere negligence, poor judgment, or ineptitude in grievance handling are insufficient to establish a breach of the duty of fair representation.⁴

A union's inaction which is so unreasonable as to be arbitrary constitutes a breach of its fiduciary obligations and a violation of Section 8(b)(1)(A) of the Act. *King Soopers, Inc.*, 222 NLRB 1011 (1976).

In the case sub judice the credited testimony establishes that Thompkins refused to meet with Rucks and Garner because, as Rucks testified, Thompkins said there was nothing to file a grievance on and the Company was going by the contract. Thompkins was aware of the substance of Rucks' complaint if not each detail of Rucks' theory for Rucks conceded that he had told Thompkins that the Company was not going by the contract in the vacation shutdown and that Rucks "just didn't see no way that it was possible that the two week period was covered in the contract the way they [the company] stated." When Rucks attempted to file the written grievance, Thompkins again indicated his knowledge of the substance of the grievance by again telling Rucks that Rucks did not have anything to grieve about, that the Company was going by policy. Similarly, Sparks' testimony, uncontradicted by Rucks in this regard and credited, was that she told Rucks in essence that what he was contending was that the Company could not have a 2-week shutdown but that the Union had already agreed that the Company could shutdown. Under these circumstances, I disagree with the General Counsel's assertion at hearing that the relative merit of Rucks' grievance was immaterial to the determination of the violation alleged. The relative merit of the grievance bears directly on the arbitrariness of the Union's action or inaction. A union may not be compelled to process a grievance that has no arguable claim of merit. Since the Union had actually agreed with the Company's decision to shutdown

³ As a matter of fact, the Company did not engaged in a complete shutdown for vacation. It appears that a few departments remained open during the period.

⁴ *Service Employees Local 579 (Beverly Manor Convalescent Center)*, 229 NLRB 692, 695 (1977).

for the vacation period, an agreement which was binding on all unit employees, both union and nonunion, Rucks' grievance, notwithstanding his individual interpretation of the contract, could have no arguable claim of merit. I conclude therefore that the Union's refusal to process the grievance was not arbitrary or unreasonable and was not violative of the Act for that reason.

If, of course, the Union's failure or refusal to process Rucks' grievance was based on his lack of membership in the Union a clear violation of the Act would be established. *Teamsters Local 528 (Associated Grocers Co-op)*, 265 NLRB 415 (1982). Credited evidence presented clearly establishes union animosity toward nonmembers. Thompkins statement to Jackson as related by Stewart reveals the Union's disposition not to fully process grievances of nonmembers. And Sparks' statement to Rucks about the unavailability of grievance forms to nonmembers confirms the Union's disinclination to fulfill its statutory obligations toward nonmembers. However, it is to be recalled that at the time of Sparks' statement to Rucks, Thompkins had already told Rucks that he had no basis for a grievance and that the vacation shutdown was in accordance with policy. Further, the Union had already agreed with the Company regarding the appropriateness of the shutdown prior to any attempt by Rucks to file a grievance on the shutdown. The Union's agreement with the Company made in good faith was binding upon all employees in the unit. Thus, it cannot be said that the Union would have accepted and processed Rucks' grievance but for Rucks' lack of union membership. Put another way, I am satisfied that the evidence establishes, notwithstanding the Union's hostility toward nonmembers, that the Union would still have refused to accept and process Rucks' grievance without regard to his lack of membership. See generally *Wright Line*, 251 NLRB 1083 (1980), enfd. as modified 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). I therefore find that the Union did not violate Section 8(b)(1)(A) of the Act as alleged in the complaint in this regard.

The above conclusion is not dispositive of the existence of 8(b)(1)(A) violations by the Union based on the statements of Thompkins to Jackson and Sparks to Rucks. In each instance those statements clearly communicated to unit employees who were not members of the Union the futility of their resort to the Union to resolve their job related grievances. Thompkins' statement reflected a union disposition not to exhaust the full grievance process on behalf of the nonmembers, while Sparks' statement revealed a union disposition to not even allow access to the grievance procedure by withholding grievance forms which were, according to the implication of Sparks' statement to Rucks, a necessary prerequisite for initiation of the grievance process. Such statements, even if not an accurate recitation of the Union's policies, obviously restrains and coerces employees in the exercise of their rights guaranteed under Section 7 of the Act. See *Boilermakers Local 132 (Kelso Marine)*, 220 NLRB 119,

121 (1975). Thus, I find that by such statements the Union violated Section 8(b)(1)(A) of the Act.⁵

CONCLUSIONS OF LAW

1. The Company, I-T-E Electrical Products, A Division of Sieman-Allis, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent International Brotherhood of Electrical Workers, Local No. 2127, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not violate 8(b)(1)(A) of the Act by refusing to accept and process a grievance of John Rucks.

4. By threatening bargaining unit employees that it would not make grievance forms available to them and would not accept or completely process their grievances because they were not members of the Union, Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

5. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unlawful threats constituting unfair labor practices, I shall recommend that it cease and desist therefrom and 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

Respondent International Brotherhood of Electrical Workers, Local No. 2127, Decatur, Georgia, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees of I-T-E Electrical Products, A Division of Sieman-Allis, Inc. that it will not make grievance forms available to them or will not accept or process their grievances because they are not members of the Union.

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

2. Take the following affirmative actions which the Board finds will effectuate the policies of the Act.

⁵ The statement of Sparks to Rucks was not alleged in the complaint as an independent 8(b)(1)(A) violation. The occurrence of the statement, however, was a significant element of the General Counsel's case and was fully litigated. Under such circumstances, a violation of the Act may be predicated on the statement even in the absence of a specific complaint allegation. *Crown Zellerbach Corp.*, 225 NLRB 911, 912 (1976).

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 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.

(a) Post at its office and meeting places frequented by its members and employees it represents at the above company's Tucker, Georgia facilities copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent imme-

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."

diately upon receipt and maintained 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 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.

IT IS FURTHER ORDERED that the complaint is dismissed to the extent it alleges unfair labor practices not specifically found herein.