

**IBEW Local 1316 and Superior Contractors Associates, Inc. Case 10-CB-3979**

20 July 1984

**DECISION AND ORDER**

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND DENNIS

On 10 June 1983 Administrative Law Judge Hutton S. Brandon 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 brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified.<sup>2</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, IBEW Local 1316, Macon, 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) Remove from its files any reference to the unlawful trial, fine, and suspension of Harold Griffin and notify him in writing that it has done so and that the discipline will not be used against him in any way."

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

<sup>1</sup> In par. 1 of sec. II.C, of his decision the judge stated, "Moreover, it is quite clear that the firing and suspension of Griffin . . ." It appears that the judge intended to state, "Moreover, it is quite clear that the fining . . ." In par. 3 of sec. II.C, of his decision the judge stated, "Respondent claimed this showed Respondent had initiated the instant case . . ." Apparently, the judge intended to state, "Respondent claimed this showed the Charging Party had initiated the instant case . . ." We therefore correct these inadvertent errors.

<sup>2</sup> We have modified the judge's recommended Order to add a provision requiring the Respondent to expunge from its records any reference to the unlawful discipline and to notify Harold Griffin in writing that it has done so and will not use the discipline against him in any way. See *Sterling Sugars*, 261 NLRB 472 (1982). We have also modified the judge's notice to conform to our Order.

**APPENDIX**

**NOTICE TO 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 restrain or coerce Superior Contractors Associates, Inc., or any other employer, in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances by trying, fining, suspending from attendance at membership meetings, or otherwise disciplining supervisory employees for the performance of their duties in connection with collective bargaining or the adjustment of grievances.

WE WILL NOT try, fine, suspend from attendance at membership meetings, or otherwise discipline Supervisor Harold E. Griffin of Superior Contractors Associates, Inc., who is a member of this labor organization, because of the performance of the duties of his employment in connection with collective bargaining and the adjustment of grievances, and WE HAVE rescinded the fine and disciplinary action previously imposed on him.

WE WILL NOT in any like or related manner restrain or coerce Superior Contractors Associates, Inc., in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances.

WE WILL remove from our files any reference to the unlawful trial, fine, and suspension of Harold Griffin and notify him in writing that this has been done and that the discipline will not be used against him in any way.

**IBEW LOCAL 1316**

**DECISION**

**STATEMENT OF THE CASE**

HUTTON S. BRANDON, Administrative Law Judge. This case was tried at Macon, Georgia, on April 19, 1983. The charge was filed by Superior Contractors Associates, Inc. (the Employer or the Company), on November 29, and amended December 22, 1982.<sup>1</sup> The complaint was issued on December 28, and alleged, as amended at the hearing herein, that IBEW, Local 1316, (Respondent or the Union), violated Section 8(b)(1)(B) of the National Labor Relations Act.<sup>2</sup> The factual issue pre-

<sup>1</sup> All dates are in 1982 unless otherwise stated.

<sup>2</sup> Section 8(b)(1)(B) of the Act provides that it shall be an unfair labor practice for a labor organization or its agents "to restrain or coerce . . .

*Continued*

sented is whether Respondent brought intraunion charges against, and fined, and suspended from its meetings the Employer's general foreman, Harold E. Griffin, a member of Respondent, for causing the disciplining of another member of the Union by his employer. Respondent presented additional legal issues with respect to affirmative defenses involving mootness, the Charging Party's motivation, and deferral to arbitration.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Union, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

The Employer is, and has been at all material times, a Georgia corporation with an office and place of business located at Acworth, Georgia, where it is engaged in construction contracting. During the calendar year preceding issuance of complaint, the Employer purchased and received at its Acworth, Georgia facility goods valued in excess of \$50,000 directly from suppliers located outside the State of Georgia. The complaint alleges, and Respondent at the hearing admitted, that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. I so find. The complaint alleges, and Respondent in its answer admitted, that it is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

### II. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Material Facts*

The facts in this case are not in dispute. The Employer is a contractor or subcontractor of Georgia Power Company in the ongoing construction of an electrical generating facility for Georgia Power Company in Juliette, Georgia, known as the Plant Scherer facility. The Employer appears to be signatory to a labor agreement between the National Electrical Contractors Association, Inc., and Respondent covering employees engaged in Respondent's craft. It also appears that an additional contractual agreement negotiated by the Georgia Power Company on behalf of itself, its contractors, and its subcontractors, with North Georgia & Construction Trades Council covering construction of certain Georgia Power Company steam generating plants in Monroe County has some application to the Employer herein.

Harold Griffin, who at the times material herein occupied the position of general foreman for the Employer, credibly testified regarding the facts on which the complaint allegation is based. Griffin testified that he has been a member of Respondent for approximately 20 or more years. According to Griffin, some 45 employees were employed by the Employer and worked under Griffin in the electrician craft during August and September, about 75 percent of whom were "travelers," members of other local unions who were working within

the jurisdiction of Respondent. The Employer also utilized three or four "permit men," employees who were not members of the Union. Griffin testified that in the August/September period it was reported to him by a crew foreman who worked under him that two of the men in his crew were being harassed by another electrician. Griffin testified he investigated the matter and ascertained that one John Thomas, a member of Respondent and an employee of another contractor on the site, Combustion Engineers, was harassing the men employed by the Employer, stopping them from working, and trying to get them off the job because of their lack of membership in Respondent, and in an effort to get work for Respondent's out-of-work people. Griffin proceeded to request the general foreman of Combustion Engineers to have Thomas cease harassing the people. Nevertheless, Griffin testified he continued to receive reports about harassment of the Employer's employees by Thomas, so Griffin complained to his superior, H. W. Liddle, the Employer's superintendent for the electrical department at Plant Scherer. Griffin was unfamiliar with any details of any subsequent action by Liddle on the matter. However, Griffin as a union member attended a union meeting on September 12. At that meeting, John Thomas complained that a named individual on the job had reported Thomas to his superior for allegedly harassing people and asking them to leave. To set the record straight, Griffin corrected Thomas regarding the person named and admitted that it had been Griffin who had complained about Thomas to his supervisor.

Thomas filed intraunion charges against Griffin, and Griffin was notified by letter dated October 28 from Respondent of a hearing to be held on November 8 concerning the charges filed by Thomas. The hearing was held as scheduled with a trial board composed of Respondent's president, vice president, recording secretary, and three elected executive board members. The trial board found Griffin guilty of violations of article XXII, section 1, subsections 5, 7, and 10 of Respondent's constitution. More specifically, Griffin was found guilty of engaging in acts contrary to a member's responsibility toward Respondent, wronging a member of Respondent by causing him physical or economic harm, and making known the business of the local union to an employer. The penalty imposed on Griffin for the violations was a fine of \$200 and a suspension from attendance at union meetings for 6 months.

In accordance with the decision of the trial board, Griffin made two \$20 installment payments toward his \$200 fine and was barred from several union meetings. However, subsequent to the issuance of the complaint herein, Respondent by letter dated January 4, 1983, advised Griffin that the Union's executive board had reconsidered their decision in his trial of November 8 and rescinded the action of that date. The letter stated that his record would be changed accordingly, and that the monthly installments he had paid on his fine would be returned to him. There is no contention that such installments had not been returned to him prior to the hearing.

an employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances."

### B. Positions of the Parties

Based on the foregoing undisputed testimony of Griffin which is hereby credited, the General Counsel argues that the conduct for which Griffin was punished by Respondent was the steps he took to stop Combustion Engineer employee John Thomas from allegedly harassing permit people and travelers working for the Employer under Griffin. It is further argued that Griffin's actions in this regard were in connection with his role as a representative of the Employer whose responsibilities included the investigating, handling, and adjustment of grievances and complaints in the interest of the Employer. By publicly punishing Griffin for his actions with regard to Thomas, the General Counsel asserts that Respondent interfered with, and chilled, the freedom and ability of the Employer's representative to handle and adjust grievances in the best interests of the Employer and thereby violated Section 8(b)(1)(B) of the Act. In support of this argument, the General Counsel cites *Plumbers Local 119 (Kamtech, Inc.)*, 264 NLRB 688 (1982); *Iron Workers Local 611 (Cement League)*, 259 NLRB 70 (1981); *Electrical Workers IBEW Local 323 (Drexel Properties)*, 255 NLRB 1395 (1981). Cf. *Florida Power & Light Co. v. Electrical Workers IBEW Local 641*, 417 U.S. 790 (1974).

Respondent in its answer and at the hearing declined to admit the complaint allegation that Griffin was at all times material a supervisor within the meaning of the Act and a representative of the Employer selected and retained for the purposes, inter alia, of collective bargaining or adjustment of grievances. Accordingly, the General Counsel was put to his proof on the issue which consisted of the testimony of Griffin which again was not contradicted by Respondent.

In its initial answer in this matter, Respondent raised as an affirmative defense the argument that the case was moot by virtue of the action of Respondent's executive board in rescinding its action and the penalties imposed on Griffin. It pressed that argument in a motion to dismiss or to vacate issuance of complaint filed prior to the hearing on March 24. The General Counsel in a response to that motion dated March 28, 1983, opposed Respondent's motion claiming that from the date of the imposition of the fines against Griffin until January 4, 1983, all members of Respondent and employees of the Employer were potentially coerced by Respondent's actions and that Respondent had submitted no evidence regarding, nor had Respondent argued, that members of Respondent had knowledge of the alleged rescission of the action against Griffin. In concurrence with the General Counsel's position, I issued an order on March 29, 1983, denying Respondent's motion to dismiss.

At the hearing herein, Respondent amended its answer to raise two new affirmative defenses. The first such defense asserted that the unfair labor practice charge was not filed in good faith and instead was filed and prosecuted with the intent and purpose of interfering with the internal workings of Respondent in an attempt to oust its present elected leadership and substitute in lieu thereof leadership which would be subservient to the interests of Georgia Power Company and its subcontractors, the Charging Party. The second affirmative defense asserted that the Charging Party did not use the applica-

ble grievance procedure in the collective-bargaining agreement.

The General Counsel at the hearing following amendment of Respondent's answer moved that the first defense having to do with the Charging Party's motivation in filing the charge be stricken as irrelevant and immaterial. He moved that Respondent's second defense also be stricken on the premise that this type of 8(b)(1)(B) case does not come within that category of cases which requires the exhaustion of a grievance procedure before the filing of a charge. The General Counsel's motion was granted with respect to Respondent's first defense. In view of Respondent's inability to cite any case authority in support of its second defense, the General Counsel's motion to strike the second defense was also granted. Respondent, however, was allowed to make offers of proof with respect to each defense including the submission of exhibits in support thereof. The offers of proof and exhibits were noted for the record but rejected.

### C. Conclusion

Considering first the issue of Griffin's supervisory status, Griffin testified that, as general foreman, he had authority to reprimand employees as well as fire them. In addition, he also had authority in conjunction with the crew foreman to make decisions with respect to laying off employees. This undisputed testimony, I find, clearly establishes Griffin's status as a supervisor within the meaning of Section 2(11) of the Act. In addition, Griffin testified that in the performance of his duties and after conferring with the crew foreman below him and the Union's shop steward, he undertook resolution of grievances by employees and testified specifically that he had authority to resolve or adjust these grievances. Indeed, it is in his capacity to consider and adjust complaints of employees that he investigated the complaints concerning John Thomas and reported them to higher management in an effort to have the complaints remedied. The establishment of an 8(b)(1)(B) violation requires that the Union's disciplinary action adversely affect the supervisor's conduct in the performance of duties in his capacity as a grievance adjuster or collective bargainer on behalf of the employer. *Florida Power & Light Co. v. Electrical Workers IBEW Local 641*, supra, 417 U.S. 790 (1974). That requirement is clearly satisfied here. Moreover, it is quite clear that the firing and suspension of Griffin from union meetings had a clear tendency to coerce and restrain the Employer in the selection of its representatives for collective bargaining or the adjustment of grievances. I find on this record that the Union's actions in trying, fining, and suspending Griffin constituted a classic violation of Section 8(b)(1)(B) of the Act.

Respondent's brief was devoted wholly to its affirmative defenses, and I shall accordingly treat the brief as a request for reconsideration of rulings made both before and at the hearing relative to those defenses. First, with respect to mootness, it is undisputed that Respondent rescinded its action against Griffin and had returned installments on his fine. In a similar case, the Board held that a union's repudiation of its action in fining a supervisor in violation of Section 8(b)(1)(B) and the return of the fine

did not render the violation moot. *Typographical Union 101 (Evening Star Newspaper)*, 193 NLRB 1089 (1971), enf. denied 470 F.2d 1274 (D.C. Cir. 1972). was premised essentially on the fact that the Act is designed to vindicate public rather than private rights, and that only the Board can remedy violations of the Act. However, the District of Columbia Circuit, in refusing to enforce the Board's decision, determined that the issue was moot. Subsequently, in *Musicians Local 76 (Jimmy Wakely Show)*, 202 NLRB 620 (1973), the Board in dismissing another 8(b)(1)(B) complaint involving only an unlawful threat of retaliatory action against a supervisor, which was subsequently withdrawn, cited the court's decision in *Typographical Union 101* with apparent approval. However, the *Typographical* case, as well as the decision of the Board in the *Jimmy Wakely* case, can be distinguished from the instant case on the grounds that the action which was taken by the respondents therein to remedy the situation occurred prior to the issuance of complaint. See also *Georgia Hosiery Mills*, 207 NLRB 781 (1973). That was not the situation in the instant case, and Respondent's action herein against Griffin was rescinded only after the complaint issued and was clearly responsive to the issuance of the complaint. While there was no pattern shown of harassment against supervisors generally by Respondent in the case sub judice, and although the fine on Griffin has been rescinded, Respondent has done nothing to demonstrate that it has publicized the rescission of the action against Griffin to employees of the Employer or Respondent's members. Respondent has never conceded that its actions with regard to Griffin were in any way improper and has never, so far as this record shows, given any assurances that similar future action will not take place. Under these circumstances, and also because Respondent's rescission of its action against Griffin could never completely restore the status quo ante in view of Griffin's suspension from attendance at several meetings, I conclude that the issue presented is not moot and that a remedial order is warranted.

As previously noted, Respondent's defense based on the Charging Party's lack of good faith was stricken on motion of the General Counsel. Respondent offered to prove that certain supervisors of the Charging Party who were members of the Union had urged the defeat of the incumbent business agent. Respondent claimed this showed Respondent had initiated the instant case in order to undermine Respondent's incumbent officials. It has long been held that motivation of the Charging Party is immaterial to the determination of the violation alleged and cannot serve to deprive the Board of its jurisdiction in the matter. See *NLRB v. Indiana & Michigan Electric Co.*, 318 U.S. 9 (1943); *Oliver Machinery Corp.*, 102 NLRB 822 (1953); *Fulton Bag & Cotton Mills*, 79 NLRB 939 (1948). Accordingly, the ruling striking Respondent's affirmative defense based on the Charging Party's motivation is reaffirmed.

Also as previously noted, Respondent's defense regarding deferral of the instant case to arbitration was stricken in the absence of a supportive citation of authority by Respondent. On reflection and on research, it appears that my ruling in this regard was in error. The Board has held 8(b)(1)(B) cases are deferrable under the policy of

*Collyer Insulated Wire*, 192 NLRB 837 (1971). *Mailers Union 36 (Houston Chronicle)*, 199 NLRB 804 (1972); *Typographical Union 101 (Washington Post)*, 207 NLRB 831 (1973). Accordingly, the ruling striking Respondent's answer as amended is hereby reversed, and Respondent's offers of proof in connection with such defense are hereby received, including Respondent's Exhibits 2 and 3, copies of the labor agreements applicable to the Charging Party and Respondent. I am nevertheless compelled to find no merit to Respondent's arguments regarding deferral. The only cases cited by Respondent in support of deferral<sup>3</sup> are cases involving the Board's doctrine under *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), having to do with deferral to an arbitration award already made. It is quite clear that the dispute in the instant case had never been presented for arbitration and no award had been made. Nor have arbitration proceedings been initiated which would warrant deferral under *Dubo Mfg. Corp.*, 142 NLRB 431 (1963).

While deferral under *Collyer* might be appropriate under certain circumstances, examination of the agreements here presented by Respondent contain nothing dealing with the propriety or impropriety of union fines as applied to supervisors. This case, therefore, is governed by the Board's decision in *ILWU Local 6, Longshoremen (Associated Food Stores)*, 210 NLRB 666 (1974), where the Board refused to defer an alleged 8(b)(1)(B) violation to arbitration distinguishing the *Houston Chronicle* and *Washington Post* Board cases on the basis that in each of these cases there were contractual provisions relating to the propriety of union fines applicable to supervisors. The *Associated Food Stores* case, supra, I conclude, is controlling here. I, therefore, find that deferral is unwarranted under either *Collyer Dubo*, or *Spielberg* principles.

#### CONCLUSIONS OF LAW

1. Superior Contractors Associates, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. Harold Griffin is, and has been at all times material, a supervisor within the meaning of Section 2(11) of the Act, selected by the Employer for the purposes, among others, of collective bargaining and the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act.
4. By trying, fining, and suspending from membership meetings Harold Griffin for actions in his capacity as grievance adjuster on behalf of the Employer, Respondent restrained and coerced Superior Contractors Associates, Inc. in the selection and retention of its representative for the purposes of collective bargaining or the adjustment of grievances, and thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

<sup>3</sup> *Fournelle v. NLRB*, 760 F.2d 331 (D.C. Cir. 1982); *G & H Products*, 261 NLRB 298 (1982); *United Technologies Corp.*, 260 NLRB 1430 (1982).

5. The unfair labor practices of Respondent set forth above in paragraph 4 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, and is engaging in, certain 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. Inasmuch as Respondent has rescinded the fine imposed on Griffin and has reimbursed him for installments thereon, I find no reimbursement remedy is necessary.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation<sup>4</sup>

#### ORDER

The Respondent, IBEW Local 1316, Macon, Georgia, its officers, agents, and representatives, shall

##### 1. Cease and desist from

(a) Restraining and coercing Superior Contractors Associates, Inc., or any other employer, in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances by trying, fining, and suspending from attendance at membership meetings, or

otherwise disciplining Harold Griffin, or any other supervisory employee, for acts performed during the course of his or their duties in connection with collective bargaining or in the adjustment of grievances.

(b) In any like or related manner coercing or restraining Superior Contractors Associates, Inc. in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

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

(a) Post in conspicuous places at its offices and meeting halls and other places where notices to members are customarily posted copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

(b) Furnish the Regional Director signed copies of such notice for posting by Superior Contractors Associates, Inc., if willing, at places where notices to employees are customarily posted.

<sup>4</sup> 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.

<sup>5</sup> 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."