

Oil, Chemical and Atomic Workers International Union, AFL-CIO Local 8-406 and IMTT-Bayonne. Case 22-CB-6685

July 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

Upon a charge filed by the Employer January 11, 1991, and an amended charge filed by the Employer on January 23, 1991, the General Counsel of the National Labor Relations Board issued a complaint February 12, 1991, against the Oil, Chemical and Atomic Workers International Union, AFL-CIO Local 8-406, the Respondent, alleging that it violated Section 8(b)(1)(A) of the National Labor Relations Act.

The complaint alleges that the Respondent is maintaining in its bylaws unlawful restrictions on resignation and has enforced this restriction on Joseph Sammarco, an employee of the Employer. On March 6, 1991, the Respondent filed its answer to the allegations in the complaint.

On April 24, 1991, the General Counsel filed a Motion for Summary Judgment. On April 30, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

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

Ruling on Motion for Summary Judgment

In its answer to the complaint and notice of hearing, dated March 4, 1991, the Respondent admitted the material facts as alleged by the General Counsel.¹ Specifically, the Respondent admitted that it refused to process employee Sammarco's request to resign pursuant to the relevant provisions in its bylaws which restrict resignations to the 10-day period preceding the anniversary date of that member's obtaining membership. The Respondent also admitted to maintaining and following this provision, which the General Counsel alleged to be unlawful. Further, in its memorandum in opposition

¹ In its brief in support of the Motion for Summary Judgment, the General Counsel alleged that the Respondent's answer to the complaint did not comport with Sec. 102.20 of the Board's Rules and Regulations, in that the answer was in narrative form and that it failed to specifically admit or deny the allegations in the complaint. The Respondent's answer stated, *inter alia*:

6. At no time did this Union coerce or restrain, but did invoke it's [sic] By Laws which all Union members pledged to uphold.

7. In November of 1990, Joseph Sammarco a member of the bargaining unit requested to resign his membership from this Union.

8. Joseph Sammarco was sent a letter on December 31, 1990 stating the procedure to withdraw under Local 8-406 By-Laws which he is well aware of.

We find that the Respondent's answer substantially admitted the material facts as alleged.

to the Motion for Summary Judgment, the Respondent again admitted the material facts, stating "the ByLaws prohibit the President of Local 8-406 from accepting any resignation which was not tendered within ten days of the anniversary date of that member obtaining membership. The General Counsel is correct to the extent that there is no dispute that the subject member [Sammarco] did not tender his resignation in accordance with Article III, Section 4 of the By-Laws of the Local." Thus, the Respondent has raised no factual issues that can be properly litigated, and we find that the instant dispute can be resolved as a matter of law. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, a corporation, has been engaged in the storage and distribution of oil and gas industry at its facility in Bayonne, New Jersey, where, during the preceding 12 months in the course and conduct of its business operations, it has purchased and received products, goods, and materials valued in excess of \$50,000 directly from points outside the State of New Jersey. We find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

For many years and at all times material, the Respondent has been recognized by the Employer as the designated exclusive collective-bargaining representative of the employees in the unit of employees in all classifications except administrative, executive, supervisory, professional, clerical, and facility protection employed at the Employer's Bayonne, New Jersey terminal, a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act. That recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period June 21, 1989, to June 20, 1992. At all times material, the Respondent, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

At all times material, the Respondent has maintained in its internal bylaws, article 3, section 4, a provision which provides in pertinent part:

Any member may resign his or her membership provided . . . that notice of such resignation is

submitted in writing by such member to the President of the Local Union within ten days preceding any anniversary of the date such member obtained membership.

By letter dated November 15, 1990, Joseph Sammarco, a unit employee of the Employer, resigned his membership in the Respondent. By letter dated December 31, 1990, the Respondent, by its president, Charles Horvath, refused to accept Sammarco's resignation relying, inter alia, on the provision of its bylaws cited above.

It is well established that union restrictions on membership resignation unlawfully restrain and coerce members in the exercise of their Section 7 rights. *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985); *Sheet Metal Workers Local 73 (Safe Air)*, 274 NLRB 374 (1985). In this case, however, the Respondent would have us carve out an exception to this principle, by allowing a union to maintain such restrictions in its governing documents provided that the union does not seek to sanction its members with monetary fines for attempting to resign in violation of the restriction. We find no merit in this contention.

In *Auto Workers Local 148 (McDonnell-Douglas)*, 296 NLRB 970 (1989), the Board held that restrictions on resignations are "invalid even where the constitutional provision can be enforced only through union discipline such as suspension and not by the imposition of monetary fines."² Similarly, here, we find that the provisions in the Respondent's bylaws, which restrict members' right to resign, are unlawful even though those provisions are enforced only to the extent that the members are denied the right to resign and no other additional sanctions, including monetary fines, are imposed. Accordingly, we find that, by the above-described acts and conduct, the Respondent has restrained and coerced, and is restraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and that the Respondent has thereby engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

CONCLUSION OF LAW

By maintaining the provision restricting membership resignation in its bylaws, and by enforcing such a restriction on employee Joseph Sammarco, the Respondent has been engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

²See also *Birmingham Printing Pressmen Local 55 (Birmingham News)*, 300 NLRB 1 (1990), in which the Board held that the respondent violated Sec. 8(b)(1)(A) by refusing to accept the resignation of an individual alleged to be a statutory supervisor, but found by the Board to be an employee. In that case, there were no allegations that the respondent had attempted to fine or discipline the employee in question; the respondent was alleged merely to have refused to accept the employee's resignation.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to cease and desist from refusing to accept the resignation of employee Joseph Sammarco, cease and desist from maintaining the restrictions on resignations of union membership, and expunge the provision restricting resignation from union membership from its bylaws.

ORDER

The National Labor Relations Board orders that the Respondent, Oil, Chemical and Atomic Workers International Union, AFL-CIO Local 8-406, Bayonne, New Jersey, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining and giving effect to the first paragraph of article 3, section 4 of its bylaws which reads:

Section 4. Any member may resign his or her membership provided all indebtedness is satisfied and no charges are pending against such member and further provided that notice of such resignation is submitted in writing by such member to the President of the Local Union within ten days preceding any anniversary of the date such member obtained membership.³

(b) Restraining or coercing its members by enforcing the first paragraph of article 3, section 4 of its bylaws against any of its members by refusing to recognize and give effect to their effective resignations from the Respondent.

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

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

(a) Remove from its bylaws and any other governing documents of Local 8-406 in which it may appear, the first paragraph of article 3, section 4, of the bylaws of Local 8-406.

(b) Give full effect to Joseph Sammarco's effective resignation from the Respondent, and remove from its records all references to its unlawful refusal to recognize and give effect to Sammarco's resignation.

³Although only a portion of the above-cited provision was alleged to be unlawful, we find it appropriate to order the Respondent to remove the entire provision as it relates to membership resignation. We rely on *Auto Workers Local 148 (McDonnell-Douglas)*, 296 NLRB 970 (1989), in which the Board ordered the expunction of an entire provision of the union's constitution which restricted membership resignation, despite the respondent's contention that some portion of that provision may have been lawful. The Board found that the entire provision, which included other restrictions, should be removed because it "was presented as a whole to the membership and it is not for the Board to rewrite constitutional language to bring it into conformity with the law."

(c) Post at its business office and meeting halls copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately 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.

(d) Deliver to the Regional Director for Region 22 signed copies of the notice in sufficient number to be posted by IMTT-Bayonne, if it is willing to do so, in all places where notices to employees employed in the collective-bargaining unit affected by this Order are customarily posted.

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

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 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 maintain and give effect to the following provision of the bylaws of Oil, Chemical and Atomic Workers International Union, AFL-CIO Local 8-406:

Article III, Section 4. Any member may resign his or her membership provided all indebtedness is satisfied and no charges are pending against such member and further provided that notice of such resignation is submitted in writing by such member to the President of the Local Union within ten days preceding any anniversary of the date such member obtained membership.

WE WILL NOT restrain or coerce our members by enforcing this provision against them by refusing to recognize and give effect to their effective resignations from the Union.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL remove from our bylaws and any other governing documents the above provision of our bylaws which restricts member's resignation from the Union.

WE WILL give full effect to Joseph Sammarco's resignation from the Union, and remove from our records all references to our unlawful refusal to recognize and give effect to his resignation.

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, AFL-CIO
LOCAL 8-406