

**Teamsters Union Local 287, affiliated with International Brotherhood of Teamsters, AFL-CIO (Airborne Express) and Robert Spencer.** Case 32-CB-3552

June 29, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On November 21, 1990, Robert Spencer, an individual, filed an unfair labor practice charge alleging that Teamsters Union Local 287, affiliated with International Brotherhood of Teamsters, AFL-CIO, the Respondent, violated Section 8(b)(1)(A) of the National Labor Relations Act. On January 25, 1991,<sup>1</sup> the Regional Director for Region 32 approved a bilateral settlement agreement in the instant case.<sup>2</sup> Subsequently, on October 7, the Acting Regional Director issued an order withdrawing approval of and setting aside portion of settlement agreement, complaint and notice of hearing, alleging that the Respondent violated Section 8(b)(1)(A) of the Act.<sup>3</sup> On October 21, the Respondent filed an answer to the complaint, admitting in part and denying in part the allegations in the complaint, submitting affirmative defenses, and requesting that the complaint be dismissed in its entirety.

On November 20, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On November 25, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted. The Respondent filed a timely response<sup>4</sup> and Motion for Summary Judgment. Thereafter, on March 26, 1992, the Board issued a Supplemental Notice to Show Cause why the Respondent's motion should not be granted. The General Counsel filed a response opposing the motion and the Respondent filed a statement of position in support of its motion.

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

<sup>1</sup> All dates hereafter are in 1991, unless otherwise specified.

<sup>2</sup> The settlement agreement required the Respondent, inter alia, to delete from its bylaws that portion of art. XX, sec. 2(6), that states: "All fines, assessments, and other indebtedness, must be paid before monthly dues are accepted from any member."

<sup>3</sup> The order stated that it had been determined that the Respondent failed to comply with that portion of the settlement agreement requiring it to delete the bylaw provision quoted above.

<sup>4</sup> In its response, the Respondent asserts, inter alia, that, although its bylaws contain the fines-payable-before-dues clause alleged to be unlawful, its bylaws also contain a clause specifying that the fines-payable-before-dues provision will not be incorporated into the good-membership requirements for union-security contracts.

Ruling on Motions for Summary Judgment

The complaint alleges, and the Respondent's answer admits, inter alia, that at all material times the Respondent has maintained and enforced a collective-bargaining agreement with Airborne Freight Corporation d/b/a Airborne Express, the Employer, containing a union-security clause.<sup>5</sup> The complaint also alleges, and the Respondent admits, that the Respondent's bylaws contain a provision at article XX, section 2(6), stating that "All fines, assessments, and other indebtedness must be paid before monthly dues are accepted from any member." The Respondent denies, however, that it has enforced the bylaws provision in an unlawful manner and, further, its answer denies that it has engaged in any unfair labor practices within the meaning of Section 8(b)(1)(A).

It is well settled that the mere maintenance of a provision unconditionally requiring the payment of fines and assessments before dues, in conjunction with a collective-bargaining agreement containing a union-security clause, violates Section 8(b)(1)(A) of the Act because it constitutes an implicit threat to the employment status of an employee who has not paid a fine or an assessment. See *Elevator Constructors Local 8 (San Francisco Elevator)*, 243 NLRB 53 (1979), motion for reconsideration denied 248 NLRB 951 (1980), enfd. 665 F.2d 376 (D.C. Cir. 1981). See also *Plumbers Local 631 (Brinderson-Newberg)*, 297 NLRB 267 (1989); *Plumbers Local 314 (American Fire Sprinkler)*, 295 NLRB 428 (1989); *Plumbers Local 460*, 287 NLRB 788 (1987); *Laborers Local 1445 (Badger Plants)*, 266 NLRB 386 (1983).

The Respondent asserts that it has not enforced the fines-payable-before-dues provision in an unlawful manner, but this is immaterial. The General Counsel does not allege unlawful enforcement here. The General Counsel's complaint and Motion for Summary Judgment allege only that maintenance of the provision in the Respondent's bylaws violates Section 8(b)(1)(A). As the Board held in *San Francisco Elevator*, 248 NLRB 951:

The implicit threat imposed by the coordinated operation of Respondent's rule and a union-security clause is an actual threat. No more explicit coercion is necessary to find a violation of Section 8(b)(1)(A). [Footnote omitted.]

As an affirmative defense, the Respondent contends, inter alia, that the Board is without jurisdiction to construe any provision of its internal governing documents or to require the Respondent to alter, amend, or delete any provision contained in its bylaws. We find no merit to these contentions. Clearly, this is not the type

<sup>5</sup> Specifically, the clause requires, as a condition of employment, that an employee pay certain dues or fees to the Respondent on or after the 30th day following the beginning of employment.

of internal union matter that Congress sought to insulate from the Board's consideration. *Laborers Local 1445 (Badger Plants)*, 266 NLRB 386 fn. 7 (1983). Furthermore, the Board has traditionally remedied violations of this type by ordering rescission of the offending provision from the union's internal governing documents. See, e.g., *Plumbers Local 631 (Brinderson-Newberg)*, supra; *Plumbers Local 314 (American Fire Sprinkler)*, supra; and *Elevator Constructors Local 8 (San Francisco Elevator)*, supra.

The Respondent also asserts that this unfair labor practice proceeding is preempted by the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 et seq. We reject this assertion because Section 603(b) of the LMRDA, 29 U.S.C. § 523(b) states that nothing "contained in [the LMRDA shall] be construed . . . to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended." Similarly, Section 10(a) of the National Labor Relations Act provides in pertinent part:

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise

. . . .

See generally *Operating Engineers Local 400 (Hilde Construction)*, 225 NLRB 596, 605-606 (1976), enfd. by unpublished decision 95 LRRM 3010 (D.C. Cir. 1977).

In its response to the Notice to Show Cause, the Respondent raised for the first time its contention that article XXXII, section 1, of its bylaws makes clear that the fines-payable-before-dues provision will not be enforced in union-security contract situations and that this negates the implied threat to an employee's employment status. Article XXXII, section 1, the savings clause, provides:

The provisions of these By-Laws relating to the payment of dues, assessments, fines or penalties, etc., shall not be construed as incorporating into any Union security contract those requirements for good standing membership which may be in violation of applicable law, nor shall they be construed as requiring any employer to violate any applicable law. However, all such financial obligations imposed by or under the International Constitution and these Local Union By-Laws (and in conformity therewith) shall be legal obligations of the members upon whom imposed and enforceable in a court of law.

There is no reference to this savings clause in article XX, section 2(6), the fines-payable-before-dues provi-

sion, nor is there any indication within the fines-payable-before-dues provision itself making clear that it does not apply in union-security situations. Therefore, the implied threat still exists. In *San Francisco Elevator*, supra, neither the Board nor the D.C. Circuit found convincing the union's argument that a similar savings clause negated the implied threat.

Furthermore, even if the existing savings clause were to be physically incorporated into the existing fines-payable-before-dues clause, it would not be clear to the unsophisticated employee that his employment status would not be threatened by his failure to pay union fines and assessments. The phrase "shall not be construed . . . in violation of applicable law" is so vague that the import of the savings provision would hinge on the employee's knowledge or understanding of applicable law. In these circumstances, we find no merit to the Respondent's argument.

We conclude that the Respondent has raised no genuine issue of material fact regarding maintenance of the fines-payable-before-dues provision in its bylaws. Accordingly, we grant the General Counsel's Motion for Summary Judgment and deny the Respondent's Motion for Summary Judgment.

On the entire record the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

In its answer, the Respondent admits that the Employer, Airborne Freight Corporation d/b/a Airborne Express, is a Delaware corporation engaged in the business of air freight forwarding and has its principal place of business in Seattle, Washington, and a facility in San Jose, California. The Respondent further admits that, during the 12-month period preceding issuance of the complaint, Airborne Express, in the course and conduct of its business operations, sold and shipped goods or provided services valued in excess of \$50,000 directly to customers located outside the State of California.

Accordingly, the Respondent admits, and we find, that Airborne Express 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. THE ALLEGED UNFAIR LABOR PRACTICE

At all times material, the Respondent and the Employer have maintained and enforced a collective-bargaining agreement setting forth terms and conditions of employment for the Employer's employees the Respondent represents. The collective-bargaining agreement includes a provision which requires, as a condition of employment, payment of certain dues or fees to the Respondent on or after the 30th day following the beginning of such employment. Since about May

22, 1990, the Respondent has maintained the following provision in its bylaws as article XX, section 2(6), dues:

All fines, assessments, and other indebtedness must be paid before monthly dues are accepted from any member.

We find, for the reasons set forth above, that by maintaining this bylaw provision, in conjunction with a union-security clause, the Respondent has restrained and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act and, therefore, has violated Section 8(b)(1)(A) of the Act.

#### CONCLUSION OF LAW

By maintaining article XX, section 2(6), of its bylaws, unconditionally requiring the payment of fines before dues, in conjunction with a union-security clause, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(b)(1)(A) of the Act, we shall order it to cease and desist. In order to effectuate the purposes of the Act, we shall also require the Respondent to cease maintaining and rescind from its governing documents article XX, section 2(6), of its bylaws, or any similar unconditional rule, in conjunction with collective-bargaining agreements containing a union-security clause. Nothing here shall preclude the Respondent from re-drafting the fines-payable-before-dues provision in its bylaws to make clear that it will not be used in conjunction with a union-security clause.

#### ORDER

The National Labor Relations Board orders that the Respondent, Teamsters Union Local 287, affiliated with International Brotherhood of Teamsters, AFL-CIO, San Jose, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining, in conjunction with a collective-bargaining agreement containing a union-security clause, article XX, section 2(6), of its bylaws, which provides that "All fines, assessments, and other indebtedness must be paid before monthly dues are accepted from any member," or any similar unconditional requirement that fines, assessments, or other indebtedness must be paid before dues.

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

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

(a) Rescind from its bylaws and other governing documents article XX, section 2(6), quoted above, and any other provision unconditionally requiring the payment of fines, assessments, or other indebtedness before dues insofar as those provisions exist in conjunction with union-security clauses in collective-bargaining agreements or are applied in conjunction with such clauses.

(b) Post in its business office and all meeting halls copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, 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.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by Airborne Freight Corporation d/b/a Airborne Express, if willing, at all places where notices to employees are customarily posted.

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

<sup>6</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."

#### APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES  
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 and coerce you in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act by maintaining, in conjunction with a collective-bargaining agreement containing a union-security clause, article XX, section 2(6), of our bylaws, which provides: "All fines, assessments, and other indebtedness must be paid before monthly dues are accepted from any member," or any similar unconditional provision requiring the payment of fines, assessments, or other indebtedness before dues.

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

WE WILL cease maintaining in conjunction with union-security clauses and WE WILL rescind from our bylaws and other governing documents article XX, section 2(6), quoted above, and any other provision un-

conditionally requiring the payment of fines, assessments, or other indebtedness before dues.

TEAMSTERS UNION LOCAL 287, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO