

**Mail Handlers Local Union No. 311 (Postal Service)
and Charles E. Hunt.** Case 16-CB-4101(P)

August 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On March 24, 1993, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Mail Handlers Local Union No. 311 (Postal Service), Dallas, Texas, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Elizabeth Kilpatrick, Esq., for the General Counsel.
Marvin Menaker, Esq., of Dallas, Texas, for the Respondent.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in Fort Worth, Texas, on January 26, 1993. The charge was filed by Charles E. Hunt, an individual, on June 11, 1992. Thereafter, on July 22, 1992, the Regional Director for Region 16 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging a violation by Mail Handlers Local Union No. 311 (the Respondent or the Union) of Section 8(b)(2) of the National Labor Relations Act (the Act). The Respondent's answer to the complaint, duly filed, denies the commission of any unfair labor practices.

The parties were afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel and counsel for the Respondent.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service (the Employer) provides postal services for the United States and operates various facilities throughout the United States in performance of that function, including its General Mail Facility in Dallas, Texas, the facility involved in this proceeding.

It is admitted, and I find, that the Board has jurisdiction over the Employer and this matter by virtue of section 1029 of the Postal Reorganization Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the Respondent is, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issue raised by the pleadings is whether the Union violated Section 8(b)(2) of the Act by attempting to cause the Employer to take disciplinary action against Charles Hunt, a union steward, in retaliation for his involvement in internal local union affairs.

B. *The Facts*

The facts are not in material dispute. Charles Hunt, the Charging Party, has been a union steward for a number of years. In 1992, prior to a union election in which Hunt was seeking the elected office of local union treasurer, he commenced the circulation of a petition among union members who worked at the Employer's General Mail Facility in Dallas, Texas. Hunt testified that he did not circulate the petition during working time; rather, he gave it to several employees who, in turn, circulated it and returned it to him thereafter. The petition, which was signed by approximately 124 union members who work at that facility, is as follows:

NATIONAL POSTAL MAIL HANDLERS
UNION LOCAL 311 DALLAS BRANCH

The undersigning persons charge that this Local Union through its Officers has violated this Union's Constitutions [sic] as it relate [sic] to Section 5 A 8, 12, 25 and Section 6 F.¹

¹ The cited sections refer to the Uniform Local Union Constitution of the National Postal Mail Handlers Union. Art. IV, sec. 5, Duties of Officers, lists the duties of the local president. Par. 8 thereunder specifies that "S/he shall insure that the affairs and business of this Local Union are being properly conducted"; par. 12 provides that "S/he shall be charged with the responsibility of protecting the craft jurisdiction of this Local Union"; and par. 25 states that "He shall be responsible for authorizing payment of all bills incurred by the local subject to the provisions of subsection 24 herein."

Continued

These signatures give witness that Clerk Craft Employee [sic] perform Mail Handlers duties on a daily basis.

Generally speaking, the gravamen of Hunt's complaint was that the Local Union president and executive board were not acting in the best interests of the Union, because Hunt believed that the Union had been remiss in not timely paying certain real property taxes on the building it owned, thus incurring a penalty from the county. Further, unrelated to the property tax matter, Hunt believed that neither the Local president nor the executive board had been sufficiently diligent in protecting the Union's jurisdiction (mail handling) against encroachment from clerks, who belong to a different collective-bargaining unit at the Dallas facility.

On April 14, 1992, in furtherance of his intraunion activities, Hunt filed charges with the National Union against the Local Union president and executive board. The charges allege the same matters as discussed above, and reference the aforementioned petition; however, Hunt neglected to enclose the petition with the charges. Thereupon, the National Union recording secretary requested a copy of the petition containing the signatures of the subscribing union members, and Hunt submitted it on April 24, 1992.

The petition was apparently forwarded to Local Union President Harold Emanuel by the National Union, and on May 19, 1992, Emanuel sent the following letter to Delward Stracner, manager of labor relations for the Employer's Dallas division, enclosing a copy of the petition containing the signatures:

It has come to my attention that one of the employees, namely Charles E. Hunt of the Dallas GMF Post Office is engaged in internal union politics. He, of course, has an absolute right to engage in internal union politics, but my concern is that he is doing this during business hours while he is on the clock. He has presented the Union with a petition containing approximately 124 names, and I have been advised that all of them were approached and signed during working hours at the Postal Service.

The Union does not condone a violation of the National Agreement that there will be no union business conducted on postal service time, except as set out in the National Agreement.

I give you this information so that you may take whatever you deem to be appropriate action.

Delward Stracner, labor relations manager for the Employer's Dallas, Texas division, to whom the aforementioned letter was sent, testified that he deals with Emanuel on a regular basis regarding labor relations matters. Further, Stracner testified that in accordance with the provisions of the collective-bargaining agreement, neither the shop steward nor employees may engage in any union business during scheduled worktime except for grievance-related matters; and in this event permission to discuss such matters must be obtained from both the employee's and the steward's supervisor. Further, the circulation and/or signing of union-related petitions

Sec. 6, executive board, of the aforementioned article, at par. F, provides that "It shall be the duty of the Executive Board to insure that the affairs and business are being properly conducted."

involving internal union matters during scheduled worktime is not permitted under any circumstances, and employees engaging in such activities are subject to reprimand and discipline. Stracner testified that on receiving the letter he turned it over to the facility manager because the letter, according to Stracner, was evidence of "misconduct." No action was taken against Hunt, and Stracner never spoke to Emanuel about the matter.

Emanuel, president of the Union, testified that he was concerned about the possibility of discipline against the employees who signed the petition, and he "wanted to make sure that no action was in turn brought by the Postal Service against those employees, including Mr. Hunt. That was my main reason." Further, he wanted to make sure that there would be no internal union "politicking" during working hours.

Asked why he simply didn't approach Hunt and admonish him about such activities on working time rather than send an accusatory letter which had the potential of causing the Employer to take disciplinary action against Hunt and the 124 signers of the petition, Emanuel stated that "I couldn't satisfy Mr. Hunt, so I had no other way to—but to take the course of action which I did and make sure that Mr. Hunt understood that what he was doing was wrong." Emanuel further testified, when again asked why he did what he did, that he wanted to show Hunt that he was in the wrong: "Politics was the motive there. They were using [the petition] as a means of pyramiding Mr. Hunt into the position of treasurer."

On July 12, 1992, Emanuel responded to the charges filed by Hunt with the National Union, explaining the Local Union's position. He concluded the letter by stating:

Mail Handlers who have questions about the handling of the Union affairs, whether about taxes, jurisdiction or anything else, should come to the Union meetings and bring the matters up on the floor at the meeting, or contact the Local President, Harold L. Emanuel relative to your concerns, it would be easier to give the answers to resolve legitimate questions. Having Mail Handlers sign a petition based upon representations by a person who then later changes the purpose of the petition is not the proper way to conduct business affairs of the Union.

On August 5, 1992, the National president dismissed the charges, and stated that "The charges by Brother Hunt contain bald, unsubstantiated allegations of wrongdoing."

C. Analysis and Conclusions

The Respondent maintains that Emanuel's motive for sending the letter to the Employer was to protect the employees "because he knew that signing a petition during working hours would constitute a violation of the contractual prohibition against conducting union business on the clock," and, realizing the potential gravity of the situation, sought to put an end to this type of activity. Moreover, the Respondent seeks to excuse Emanuel's conduct because Hunt was not disciplined by the Employer, and he suffered no adverse consequences from Emanuel's letter; and further, while Emanuel has the authority to remove Hunt from his position as steward, he has not done so and Hunt has remained in this posi-

tion. Thus, the Respondent argues that the evidence shows that Emanuel's actions were not retaliatory against Hunt, but rather were designed to afford those involved—Hunt, the union members signatory to the petition, and the Union—a measure of protection against possible repercussions by the Employer.

Clearly the May 19, 1992 letter was designed to cause the Employer to reprimand or discipline Hunt for circulating the petition. Thus, the letter states, "I give you this information so that you may take whatever you deem to be appropriate action." Having advised the Employer that the petition was circulated during working time in contravention of established work rules, and having invited the Employer to take "appropriate action," the Respondent's argument that Emanuel's motive was benign and that the letter was designed to accomplish the very antithesis of its unambiguous meaning is patently illogical and unconvincing.

I find that as alleged in the complaint, Emanuel sought to cause the Employer to take corrective or disciplinary action against Hunt because of Hunt's activity in attempting to discredit Emanuel and his administration in furtherance, apparently, of Hunt's political agenda in seeking the office of union treasurer. While Emanuel may have been understandably piqued with Hunt by what he considered to be knowingly false and politically motivated allegations against Emanuel and his administration, nevertheless a labor organization is prohibited from attempting to interfere with the employment relationship of its members for any reason other than the member's failure to pay dues pursuant to a valid union-security clause; clearly that was not Emanuel's motivation here.

Such conduct by Emanuel, discussed above, is violative of Section 8(b)(2) of the Act, as alleged. *Toledo World Terminals*, 289 NLRB 670, 703 (1988); *Operating Engineers Local 675 (Multi-Craft Installation)*, 271 NLRB 1227 (1984). Contrary to the Respondent's contention, the fact that Emanuel was not successful in this endeavor does not preclude the finding of a violation. See *Postal Service*, 240 NLRB 1198, 1204 (1979), enfd. as modified 618 F.2d 1249 (1980); *Groves-Granite*, 229 NLRB 56, 64 fn. 42 (1977).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Employer, the United States Postal Service, and this matter by virtue of section 1209 of the Postal Reorganization Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated Section 8(b)(2) of the Act by attempting to cause the Employer to discriminate against Charles E. Hunt in violation of Section 8(a)(3) of the Act.

THE REMEDY

Having found that the Respondent has violated the Act by unlawfully attempting to cause the Employer to take disciplinary action against employee Charles E. Hunt, the Respondent shall be required to cease and desist from such conduct.

The Respondent shall also be required to post an appropriate notice attached hereto as "Appendix."

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Mail Handlers Local Union No. 311 (Postal Service), Dallas, Texas, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Attempting to cause the United States Postal Service to take disciplinary action against any employee because of his or her involvement in internal union matters.

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

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

(a) Request, in writing to the Employer, that the May 19, 1992 letter and attached petition be disregarded, removed from the personnel file of Charles Hunt, and returned to the Union.

(b) Post at its union office or union hall copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by Respondent's authorized representative, shall be posted by 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 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.

²If 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.

³If 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 cause or attempt to cause the United States Postal Service to take disciplinary action or any other action against Charles Hunt which may effect his employment relationship, because such employee has engaged in internal union activities.

WE WILL NOT retaliate against any union member for his or her involvement in internal union matters, including inter-

nal union politics, by attempting to cause the Postal Service to take disciplinary action against such union members.

WE WILL NOT write letters to the United States Postal Service advising the Postal Service of employees' alleged unauthorized union activity during working time as a means of retaliating against union members for engaging in internal union matters, including internal union politics.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such rights

may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

WE WILL request, in writing, that the Postal Service disregard the letter written by the Union regarding the intraunion activity of Charles Hunt, and that it remove such letter and attached petition from Hunt's personnel file.

MAIL HANDLERS LOCAL UNION NO. 311