

Local 17, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (A&M Wallboard) and Cleofoster Baptiste. Case 29-CB-8980

July 31, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

The issue presented here is whether the judge correctly found that the Respondent attempted to cause, and did cause, A & M Wallboard, Inc. (the Employer) to discharge Cleofoster Baptiste in violation of Section 8(b)(1)(A) and (2) of the Act.¹ The 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,² and conclusions and to adopt the recommended Order as modified.

We agree with the judge that the Respondent did not provide Baptiste with sufficient notice of his dues arrearage and a reasonable opportunity to pay it before engaging in conduct which caused the Employer to terminate him pursuant to union-security provisions in its contract with the Union.³ In addition to factors cited by the judge, we note that each of the Respondent's varying, imprecise estimates of Foster's dues arrearage encompassed periods of time when Foster was not working in a bargaining unit represented by the Union.

[I]t is well settled that a union's demand for the payment of back dues which arose during a period when there was no contractual obligation to maintain membership in the union or during a period when the employee was not employed in the bar-

¹ On May 2, 1995, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the judge's decision.

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

² 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.

³ The Respondent excepts to the judge's finding that Shop Steward Steve Caputo acted as its agent when he told Baptiste and the Employer's superintendent that Baptiste could not work at his assigned jobsite. The record shows that the Respondent's shop stewards have regular responsibility for insuring an employer's compliance with the collective-bargaining agreement, for maintaining the Union's records of employees on a jobsite, for informing those employees about their dues obligations (and occasionally receiving dues from them), and for insisting that all employees have current workcards as a condition to working on the jobsite. In view of these duties, we agree with the judge that Caputo acted as the Respondent's agent. See *Carpenters Local 296 (Acrom Construction)*, 305 NLRB 822 fn. 1 (1991).

gaining unit cannot lawfully be imposed as a condition of employment even under a valid union-security agreement. [Footnote omitted. *Millwright & Machinery Erectors Local 740 (Tallman Constructors)*, 238 NLRB 159, 160-161 (1978).]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local 17, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, New York, New York, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

“(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. Substitute the attached notice for that of the administrative law judge.

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, A&M Wallboard, Inc. to discharge any of its employees for failure to pay their union dues when we have failed to give them notice of, and a fair opportunity to pay, the amounts which they are required to pay pursuant to a valid union-security provision in our collective-bargaining agreement with A&M Wallboard, Inc.

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 make Cleofoster Baptiste whole, with interest, for any loss of earnings and other benefits he suffered as a result of our having caused A&M Wallboard, Inc. to terminate his employment.

WE WILL notify A&M Wallboard, Inc. in writing, with a copy to Cleofoster Baptiste, that we have no objection to its employing him and that we request his reinstatement.

LOCAL 17, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
AFL-CIO

April Wexler, Esq., for the General Counsel.
Daniel Clifton, Esq. (Lewis, Greenwald, Kennedy, Lewis, Clifton & Schwartz), of New York City, for the Respondent.

DECISION

JAMES F. MORTON, Administrative Law Judge. The complaint alleges that Local 17, United Brotherhood of Carpenters & Joiners of America, AFL-CIO (the Respondent) has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) by having attempted to cause, and by having caused, A & M Wallboard, Inc. (the Employer) to lay off Cleofoster Baptiste for unfair, arbitrary, and invidious reasons, in breach of the Respondent's fiduciary duty it owed to him as his collective-bargaining representative. The Respondent denies that it committed a breach of its duty to represent Baptiste fairly and asserts that its actions were but a reasonable response to another effort by him to evade his obligation, as a member of the unit it represents, to pay clearly defined dues amounts.

I heard this case in Brooklyn, New York, on February 23 and 24, 1995. On the entire record including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

1. Baptiste's status with the Respondent

Baptiste became a member of the Respondent in 1982 when it absorbed the Carpenters local in which he was a member. In 1983, the Respondent suspended him from membership because he had not paid his dues for the prior two calendar quarters. The Respondent had sent him a notice at the beginning of the third month of the first quarter of 1983 informing him that he was 2 months' delinquent in paying the dues for that quarter and thus was subject to being suspended from membership. On June 30, 1983, it notified him that he was suspended for not having paid dues for the first two quarters of that year. The amount of the quarterly dues then was \$75. He had the option, in order to be reinstated to membership, of paying accrued dues or paying a reinitiation fee of \$250. He paid no dues in 1983. He opted, in 1994, to pay the reinitiation fee and was readmitted as a member. He kept his dues payments current for that year, for 1985 also, and for the first two quarters of 1986. He did not pay dues for the last two quarters of 1986; at the end of 1986, he was notified that he was suspended for failure to pay them. Prior to that suspension, he had been sent the delinquency notice normally sent at the beginning of the third month of the previous quarter in which dues were owing. He paid no dues in 1987. In 1988, he opted again to pay a reinitiation fee, in lieu of accrued dues, and was readmitted as a member. He kept current in his dues payments for the rest of 1988 and until January 1991. He did not pay his quarterly dues then and, on March 1, 1991, the Respondent sent him a notice that he was subject to being suspended if he remained delinquent. On June 30 of that year, he was sent a notice that he was again suspended from membership for not having paid dues for the first two quarters of that year. Baptiste's testimony that he did not receive either of those notices is not credited.

2. The alleged unlawful conduct

Baptiste has worked as a carpenter in the construction industry at varying intervals, principally for the Employer. At all times material to this case, the Employer, as a member of an employer-association, has had collective-bargaining agreements with a district council, of which the Respondent has been a member. Those agreements have contained union-security provisions. Baptiste had not worked for the Employer in 1992 nor in the first several months of 1993.

In March 1993, Baptiste began working as a carpenter for the Employer at jobsites outside the Respondent's geographic area. In about late May of that year, the Employer assigned him to a jobsite, called the Caldor jobsite which is within the Respondent's area. On arriving there, Baptiste was asked by the Respondent's steward for his workcard, a card given by the Respondent to a member on payment of his current quarterly dues. When Baptiste was unable to produce one, the steward told him that he could not work. The Employer's job superintendent asked the steward to call the "hall," i.e., the Respondent's office, to see if Baptiste could be allowed to work. The superintendent was told later by the steward that he had called the hall and was told that Baptiste could not work because he was suspended from membership. Baptiste left that jobsite. The Employer assigned him to a jobsite outside the jurisdictional area serviced by the Respondent but warned Baptiste that he had to get a workcard. The Employer laid him off 3 days later because he had not obtained a workcard.

After Baptiste was let go, the Employer's president received a telephone call from the Respondent's financial secretary who asked if the Employer would pay Baptiste's dues arrearage of \$1200. The Employer declined. Baptiste was never apprised of the precise amount he owed in back dues or of the amount then charged as a reinitiation fee.

The Respondent's financial secretary testified that Baptiste could be reinstated as a member either by paying the back dues or by paying a reinitiation fee of \$300 plus \$5 for each month in which dues had not been paid.

3. Analysis

The General Counsel asserts that the Respondent unlawfully caused the Employer to terminate Baptiste's employment as it committed a breach of its fiduciary duty toward Baptiste by not having given him an adequate opportunity to make payment of outstanding union dues and without having given him a statement of the precise amount of dues he owed.

The Respondent contends, first, that its steward at the Caldor jobsite had no authority to cause the Employer to remove Baptiste from that jobsite, and that thus the Respondent is not responsible for Baptiste's termination of employment. The evidence in this case as to the authority of the Respondent's stewards closely parallels the evidence considered by the Board in holding a labor organization responsible for the acts of one of its stewards. See *Carpenters Local 296 (Acrom Construction)*, 305 NLRB 822 (1991). I therefore find no merit to this contention.

Respecting the matter of the Respondent's obligations toward its members, Administrative Law Judge Edelman set forth the governing principles in a decision adopted by the

Board in *Electrical Workers IBEW Local 3 (Fischbach & Moore)*, 309 NLRB 856, 857–858 (1992). There, he wrote:

It is well settled that a union owes a fiduciary duty to employees it represents as the exclusive collective-bargaining representative to deal fairly and honestly with them. And if a union fails in such fiduciary duty, it forfeits the rights pursuant to a lawful union-security provision to demand the discharge of an employee who becomes delinquent in his union dues. Such fiduciary duty includes, at a minimum, the fulfillment of all the following prerequisites to a demand for discharge—a statement of the precise amount owed and a reasonable opportunity for the employee to meet his dues obligation.

The Respondent asserts in substance that Baptiste has had a history of evading dues payments willfully and that he should not be allowed to use the Board's processes to profit from his most recent dereliction in that regard. It cites several cases in support of its contention. See *I.B.I. Security*, 292 NLRB 648 (1989); *Big Rivers Electric Corp.*, 260 NLRB 329 (1982); *Teamsters Local 630 (Ralph's Grocery)*, 209 NLRB 117, 124 (1974), and *Seafarers Atlantic District (Tomlinson Fleet)*, 149 NLRB 1114, 1121 (1964). See also *John J. Roche Co.*, 231 NLRB 648 (1989). These cases are factually inapposite to the case before me. Baptiste had twice exercised the option of paying a reinitiation fee in lieu of paying accrued dues in order to obtain a workcard from the Respondent. He was not afforded the opportunity by the Respondent in May 1993 of exercising that option nor was he apprised of the precise amount of the dues he owed then or given a reasonable opportunity to meet his dues obligation. Rather, the Respondent summarily brought about his loss of employment from the Caldor jobsite and ultimately his discharge from employment with the Employer. In these circumstances, I cannot find that Baptiste willfully failed to meet, or intentionally sought to evade, his obligation to pay dues as required under the union-security provisions of the collective-bargaining agreement under which he was employed. Cf. *Carpenters Local 296*, supra at 828. The evidence compels a finding that the Respondent unlawfully caused the Employer to discharge Baptiste.

CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent is a labor organization as defined in Section 2(5) of the Act.
3. The Respondent has engaged in an unfair labor practice within the meaning of Section 8(b)(1)(A) and (2) of the Act by having attempted to cause, and by having caused, the Employer to terminate the employment of its employee, Cleofoster Baptiste, pursuant to the union-security provisions of its collective-bargaining agreement with the Employer without having complied with its fiduciary obligation to notify him of the precise amount of his past dues and without having afforded him a reasonable opportunity to meet his dues obligation.
4. This unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I recommend that the Respondent be ordered to notify the Employer, in writing, with a copy to be sent to Baptiste, that it has no objection to Baptiste's working for the Employer. The Respondent should also make Baptiste whole for any loss of wages and benefits he may have suffered as a result of the Respondent's having caused the Employer to terminate his employment in May 1993 and until he is actually reinstated by the Employer to his former position of employment or to the date he obtains substantially equivalent employment elsewhere. See *Teamsters Local 705 (Pennsylvania Truck Lines)*, 314 NLRB 95 fn. 3 (1994). Interest on the loss is to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Local 17, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, New York, New York, its officers, agents, and representatives, shall

1. Cease and desist from
 - (a) Causing or attempting A&M Wallboard, Inc. to discriminate against any of its employees in violation of Section 8(a)(3) of the Act.
 - (b) In any other 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) Make whole Cleofoster Baptiste for any loss of wages and benefits he may have suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.
 - (b) Notify A&M Wallboard, Inc., in writing, with a copy to Baptiste, that it has no objection to his employment and that it requests that Baptiste be reinstated.
 - (c) Post at its union office, and hiring hall in New York City, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, 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

¹ 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.

² 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."

be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by A&M Wallboard, Inc., if

willing, at all places where notices to employees 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.