

Carpenters District Council of Detroit and Southeastern Michigan, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and The Douglas Company. Case 7-CC-1650

November 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

On June 6, 1996, Administrative Law Judge Steven M. Charno issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed a cross-exception with a supporting brief and an answering 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 briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

This case involves the Respondent's picketing in November 1995 of a construction jobsite at which the Charging Party, the Douglas Company (Douglas), was the general contractor. The Respondent did not have a labor dispute with Douglas, but rather had a dispute with a subcontractor on the jobsite, Central Ceilings and Partitions, Inc. (Central), over Central's failure to pay wages and fringe benefits prevailing in the area.² The judge found that the Respondent's picketing was engaged in solely for the lawful purpose of protesting Central's failure to meet area standards. Thus, the judge found that the General Counsel failed to show that the Respondent's picketing also had a proscribed secondary object directed at Douglas. Accordingly, the judge dismissed the complaint, which alleges that the Respondent's picketing violated Section 8(b)(4)(i) and (ii)(B) of the Act.

We agree with the judge's dismissal of the complaint, but consistent with the Respondent's cross-exception, find it necessary to correct a misstatement in the judge's decision. In accord with the credited testimony, he found that, on November 9, 1995, Douglas'

project superintendent, Edward Ventitelli, approached the Respondent's business agent, Richard Reynolds, at the picket line and asked Reynolds "what it would take to resolve this." Contrary to the judge's recitation of the facts, however, the record does not show that Reynolds answered that *Douglas* should have a prevailing wage contractor do the work. Instead, Reynolds' credited testimony is that he replied to Ventitelli's question by stating "to have a prevailing wage contractor do the work." This response does not evince unlawful secondary pressure on the Charging Party because it does not seek any affirmative action by Douglas to remove Central from the jobsite. It can reasonably be construed simply as a description of the primary dispute with Central, which could end the dispute by paying prevailing wages and benefits.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Andre Mays, Esq., for the General Counsel.
George Kruszewski, Esq. (Sachs, Waldman, O'Hare, Helveston, Bogas & McIntosh, P.C.), of Detroit, Michigan, for the Respondent.

DECISION

STEVEN M. CHARNO, Administrative Law Judge. In response to a charge timely filed by the Douglas Company (Douglas), a complaint was issued on November 28, 1995, which alleged that the Carpenters District Council of Detroit and Southeastern Michigan, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Respondent) had violated Section 8(b)(4) of the National Labor Relations Act (the Act), by encouraging individuals employed by Douglas and its subcontractors to strike and by coercing Douglas to cease doing business with one of its subcontractors. Respondent's answer denied the commission of any unfair labor practice.

A hearing was held before me on April 15, 1996, in Detroit, Michigan. Posthearing briefs were filed by the General Counsel on May 21 and by Respondent on May 30, 1996.

FINDINGS OF FACT

I. JURISDICTION

Respondent is admitted to be, and I find is, a labor organization within the meaning of the Act.

Douglas and its subcontractors at the Faith Medical Care Center jobsite in St. Clair, Michigan (jobsite), are admitted to be, and I find are, employers or persons engaged in commerce or an industry affecting commerce within the meaning of the Act.

II. ALLEGED UNFAIR TRADE PRACTICES

At the beginning of August 1995,¹ Douglas, acting as the general contractor, began constructing a 55-bed addition to

¹The General Counsel 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.

²It is undisputed that the Respondent had determined that Central did not pay its employees' wages and fringe benefits that were commensurate with those paid by unionized employers in the area. Thus, the Respondent's business agent, Richard Reynolds, testified without contradiction that he undertook an investigation which led him to the conclusion that Central did not meet area standards in its payment of wages and fringe benefits.

¹All dates hereinafter are 1995, unless otherwise specified.

the Faith Medical Care Center. In so doing, Douglas used the following subcontractors: Greslay-McKay Plumbing; Murray-Zimmer, Inc.; Morgan Watt; Royal Roofing; David Schwehofer, Inc.; Rimac Construction; Russell Electric; and Central Ceilings and Partitions, Inc. (Central).² It was admitted that Respondent (1) has had a labor dispute with Central concerning that subcontractor's alleged "failure to meet prevailing wage and fringe benefit standards in the area" ("area standards") and (2) has not had a labor dispute with Douglas.³ It appears uncontested that Central's employees were not represented by a union. When Douglas' project superintendent, Edward Ventitelli, was informed in November that the jobsite would be picketed, he arranged to have large signs set up identifying the two gates to the jobsite as "Gate A" and "Gate B." Ventitelli informed the subcontractors during the first week of November that "union contractors" were to use gate A and the remaining subcontractors were to use gate B.⁴

On Monday, November 7, Respondent's representatives, carrying signs protesting Central's failure to meet area standards, picketed the jobsite until midafternoon.⁵ On Tuesday and Wednesday, Respondent's representatives picketed both gates at the jobsite.⁶ After the pickets arrived on Tuesday, Douglas put the "Gate A" and "Gate B" signs in place. Initially, neither sign bore any indication of which subcontractors were to use which gate.⁷ On Wednesday, Ventitelli approached Respondent's admitted agent, Richard Reynolds, at the picket line and asked "what it would take to resolve this." Reynolds replied that Douglas should "have a prevailing wage contractor do the work" and noted that Central's owners also controlled an employer which met area standards.⁸ On Thursday, Respondent's representatives again

picketed both gates at the jobsite,⁹ and Douglas' union subcontractors refused to cross the picket lines.¹⁰ Thursday night or early Friday morning, Douglas modified its gate signs to specify for the first time that Central was to use gate B while the remaining subcontractors were to use gate A.¹¹ Respondent's representatives picketed only one gate on Friday,¹² and all picketing ceased the following Monday.¹³

Based on the foregoing facts, I find that Respondent was not shown to have had a proscribed secondary objective when picketing the jobsite and conclude that Respondent was engaged in lawful area standards picketing. See *Giant Food Markets*, 241 NLRB 727, 728 (1979). I therefore conclude that the General Counsel has failed to prove a violation of the Act by a preponderance of the credible evidence. Accordingly, I shall dismiss the complaint.

CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) and Section 8(b)(4) of the Act.
2. Douglas and its subcontractors at the jobsite are employers or persons engaged in commerce or an industry affecting commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4) of the Act.
3. A preponderance of the credible evidence does not establish that Respondent violated the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER

The complaint is dismissed.

olds, and admitted that he could not recall the latter's exact words. In contrast, Reynolds testified carefully, in a detailed manner, with apparent certainty, and consistently on cross-examination notwithstanding questions premised on assumed facts not in evidence. In addition, Reynold's account is supported by the admitted message on the picket signs. For the foregoing reasons, I credit Reynolds over Ventitelli on the content of their conversation.

⁹ Reynolds credibly so testified on cross-examination.

¹⁰ Ventitelli credibly so testified without controversy.

¹¹ I credit Reynolds' uncontroverted testimony to this effect.

¹² Reynolds credibly so testified without controversy, while Ventitelli never indicated which gate or gates were picketed on Friday.

¹³ This fact appears undisputed.

¹⁴ 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 This finding is based on the admission contained in Respondent's answer to the complaint.

³ This finding is based on pars. 7 and 8 of the Respondent's answer.

⁴ Ventitelli's testimony concerning his attempts to set up a reserved gate system was undisputed.

⁵ Ventitelli credibly testified to this effect without controversy.

⁶ Richard Reynolds credibly so testified on cross-examination.

⁷ Reynolds credibly testified without controversy as to the installation of and messages on the signs.

⁸ Reynolds so testified, while Ventitelli denied Reynold's mention of prevailing wage levels and variously testified that Reynolds had responded that "he was picketing for a union contractor," picketing against Central or wanted Douglas to "use a union contractor." Ventitelli exhibited generally poor recall (e.g., he could not recall the names of all the subcontractors admittedly used by Douglas at the jobsite), gave rushed and confused summary testimony, conceded that he was unsure of the number of his conversations with Reyn-