

**Sheet Metal Workers International Association,  
Local 28, AFL-CIO and Astoria Mechanical  
Corp. Case 29-CC-1168**

February 27, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND HIGGINS

On July 9, 1996, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting 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 brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order as modified and set forth in full below.

We agree with the judge's recommendation that a broad remedial order against the Respondent is warranted in this case because the Respondent has been shown to have a proclivity to violate Section 8(b)(4) of the Act.<sup>2</sup> The Respondent's unlawful conduct here is the third instance within the 21-month period between April 1994 and February 1996 in which the Respondent engaged in threats or picketing in violation of Section 8(b)(4)(ii)(B) of the Act.<sup>3</sup> Contrary to the judge, however, in finding a broad order appropriate here, we do not rely on the Respondent's earlier conduct which was the subject of judgments by the U.S. Court of Appeals for the Second Circuit dated March 8, 1984, and October 23, 1986, enforcing Board Orders against the Respondent which were issued pursuant to the execution of formal settlement stipulations.<sup>4</sup> Both of these settlement stipulations contained standard non-admissions clauses. Under Board precedent, formal settlement stipulations which contain a nonadmissions

clause have no probative value in establishing that violations of the Act have occurred and therefore they may not be relied on to establish a proclivity to violate the Act.<sup>5</sup>

In addition, unlike the judge, we do not rely on an informal settlement agreement to which the Respondent was a party in Case 2-CC-2195, approved by the Acting Regional Director on February 3, 1994. Informal settlement stipulations cannot be assessed in determining whether a respondent has demonstrated a proclivity to violate the Act, because such stipulations have no probative value in establishing violations of the Act.<sup>6</sup> Even absent a consideration of the conduct covered by these formal and informal settlement stipulations, however, we find that a broad remedial order is appropriate here.

**ORDER**

The Respondent, Sheet Metal Workers International Association, Local 28, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from in any manner threatening, coercing, or restraining Astoria Mechanical Corp., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Astoria Mechanical Corp., or any other person, to cease doing business with AAA Sheet Metal Corp., or with any other person.

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

(a) Within 14 days after service by the Region, post at its New York, New York business offices and all meeting halls located within the State of New York copies of the attached notice marked "Appendix."<sup>7</sup> 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 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.

(b) Furnish the Regional Director with a sufficient number of signed copies of the notice for posting by Astoria Mechanical Corp. and by AAA Sheet Metal Corp., provided those employers are willing, at all

<sup>1</sup> 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), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> *Service Employees Local 87 (Trinity Maintenance)*, 312 NLRB 715 (1993); *Iron Workers Local 378 (N.E. Carlson Construction)*, 302 NLRB 200 (1991); *Iron Workers Local 433 (United Steel)*, 293 NLRB 621 (1989); and *Operating Engineers Local 12 (Associated Engineers)*, 270 NLRB 1172 (1984).

<sup>3</sup> See *Sheet Metal Workers Local 28 (Borella Bros.)*, 323 NLRB 207 (1997); and *Sheet Metal Workers Local 28 (Turner Construction Co.)*, JD-NY-7-95 (Mar. 29, 1995), which the Board adopted on May 17, 1995, in the absence of exceptions.

<sup>4</sup> These settlement stipulations, as well as the informal settlement stipulation discussed *infra*, were reviewed by Administrative Law Judge Steven B. Fish in his decision in *Turner Construction Co.*, *supra*.

<sup>5</sup> See *Tri-State Building Trades Council (Structures, Inc.)*, 257 NLRB 295 fn. 1 (1981).

<sup>6</sup> *Longshoremen ILA Local 1180 (Lake Charles Stevedores)*, 263 NLRB 954 fn. 2 (1982).

<sup>7</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."

places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## 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 in any manner threaten, coerce, or restrain Astoria Mechanical Corp., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Astoria Mechanical Corp., or any other person, to cease doing business with AAA Sheet Metal Corp., or with any other person.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 28, AFL-CIO

*Marcia Adams, Esq.*, for the General Counsel.  
*Edmund P. D'Elia, Esq. (Edmund P. D'Elia, P.C.)*, of New York City, New York, with *Jamie K. Nicastri, Esq.* and *Ron N. Greenfield, Esq.*, on the brief, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint alleges that Sheet Metal Workers Association, Local 28, AFL-CIO (the Respondent) threatened Astoria Mechanical Corp. (Astoria) that it would picket a jobsite, at which Astoria and its subcontractor, AAA Sheet Metal Corp. (AAA) were scheduled to perform work, if Astoria used AAA to install duct work for the air-conditioning and heating systems there. The complaint further alleges that the Respondent thereby has engaged in an unfair labor practice within the meaning of Section 8(b)(4)(ii)(B) of the Act. The answer filed by the Respondent denies these allegations.

I heard this case in Brooklyn, New York, on May 14, 1996. Upon 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

### I. JURISDICTION—LABOR ORGANIZATION STATUS

The uncontroverted evidence establishes that Astoria is engaged in the business of constructing and installing air-conditioning and heating systems in commercial establishments and that, annually, it derives in excess of \$50,000 for work at sites outside the State of New York where its principal place of business is located. The direct outflow of its operations meets the Board's nonretail standard for asserting jurisdiction.

As noted below, the Respondent has been found by the Board to be a labor organization as defined in the Act.

### II. THE ALLEGED UNFAIR LABOR PRACTICE

Astoria was awarded a contract by a general contractor, I.C.S. Builders, Inc. (ICS), to install a heating and air-conditioning system at a building in Huntington, New York, to be occupied by a Barnes and Noble bookstore. It subcontracted the installation of the duct work there to AAA, the installation to begin in late November 1995. All dates are for 1995 unless stated otherwise.

Astoria's president, Daniel Murphy, received three telephone calls from Kenneth Branschback, a business agent of the Respondent. Richard Walsh, an estimator employed by AAA and who shares an office with Murphy, listened on an extension line during the last two calls.

The accounts of Murphy and Walsh are summarized as follows. Branschback called Murphy in late October and told him that it was going to be a problem if Astoria was going to use AAA to do the sheet metal work at the Barnes and Noble jobsite. Branschback called again a week later. Walsh was on an extension line. Branschback stated that AAA was not a member of the District Council. When Walsh commented that AAA had a right to do the sheet metal work, Branschback "disagreed." Branschback called again on November 3 and said that it would have to be only members of the Respondent doing the sheet metal work. When Murphy stated that he would use AAA's employees, who are represented by another labor organization, Branschback said, "We'll have to put up a picket line at your job." Walsh's testimony substantially corroborates Murphy's.

Branschback testified that he had called only to obtain information about the Barnes and Noble job so that he could make a report to an advisory committee of the Respondent. He testified further that, in the third conversation, Murphy brought up the subject of a picket line by asking him if he intended to picket the job, to which he responded that he did not know.

I credit the accounts of Murphy and Walsh, rather than Branschback's, as they struck me as the more plausible. It is not likely that Murphy would have introduced the subject of picketing addressed to his own company.

Based on the credited testimony, the evidence discloses that, in order to have sheet metal installation work assigned to its members, the Respondent, by its Business Agent Kenneth Branschback, threatened to picket the Barnes and Noble site with an object of forcing Astoria to cease doing business with AAA. By this conduct, the Respondent has violated Section 8(b)(4)(ii)(B) of the Act. See *Service Employees*

*Local 87 (Trinity Maintenance Bldg. Co.)*, 312 NLRB 715, 752 (1993).

Despite the threat, the Respondent did not picket the Barnes and Noble jobsite. AAA installed the sheet metal there without incident.

#### CONCLUSIONS OF LAW

1. Astoria and AAA are employers 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)(4)(ii)(B) of the Act by having threatened Astoria that it would picket the Barnes and Noble jobsite where an object thereof is forcing Astoria to cease doing business with AAA.
4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

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

The General Counsel seeks a broad remedial order against the Respondent. Its conduct here, its conduct in another case I decided today (JD-NY-40-96), its conduct in a case decided by Administrative Law Judge Steven B. Fish (JD-NY-17-95) which was adopted by order of the Board on May 17, 1995, in the absence of exceptions, and its conduct in the cases Judge Fish reviewed in his decision demonstrate that the Respondent has exhibited a blatant disregard of the Act and a clear willingness, if not eagerness, to violate the Act. In view of its proclivity to violate the Act and as the danger of recurrence by it of similar misconduct involving additional neutral employers is likely, a broad order is warranted under Board precedent. See *Iron Workers Local 378 (N.E. Carlson Construction Co.)*, 302 NLRB 200 (1991).

[Recommended Order omitted from publication.]