

Local 3, International Brotherhood of Electrical Workers, AFL-CIO and M.F. Electrical Service Co., Inc. Case 2-CP-938

March 30, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN
AND BRAME

On December 12, 1997, Administrative Law Judge Raymond P. Green 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, and conclusions¹ 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, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

¹The judge concluded that the Respondent violated Sec. 8(b)(7)(C) by engaging in at least 30 days of intermittent picketing over a 12-month period at various locations of the Employer with an object of forcing or requiring the Employer's employees to accept or select the Respondent as their collective-bargaining representative. In its exceptions, the Respondent contends, inter alia, that it did not violate Sec. 8(b)(7)(C) because it was entitled to picket each of the Employer's locations for 30 days. In agreement with the judge, we find no merit in this contention. In addition to the authority cited by the judge, we rely on *Retail Wholesale Union Local 1407 (J. M. Balter Co.)*, 215 NLRB 410, 412 (1974), and *Los Angeles Building Trades Council*, 183 NLRB 1032, 1038 (1970).

Laura Matlow, Esq. and Terry Morgan, Esq., for the General Counsel.

Norman Rothfeld, Esq., for the Respondent Union.

Larry Cole, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in New York on October 29, 1997. The charge was filed on November 21, 1996, and the complaint was issued by the Regional Director on July 15, 1997. In substance, the complaint alleged that from June to November 21, 1996, the Union has violated Section 8(b)(7)(C) by engaging in picketing for an organizational object without a petition for an election having been filed pursuant to Section 9(c) of the Act within a reasonable period of time after the commencement of the picketing.

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On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

The employer is a New York corporation located at 1114 Calhoun Avenue, Bronx, New York. It is engaged in the business of providing electrical contracting services and has provided services annually valued in excess of \$50,000 to commercial enterprises such as Bell Atlantic (formerly NYNEX), which themselves are directly engaged in interstate commerce.¹ Based thereon, I conclude that the employer is engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

As noted above, the company is an electrical contractor located in the Bronx, New York. It does business throughout the New York metropolitan area and has a work force which generally consists of about 14 to 16 employees, half of whom are mechanics and half of whom would be categorized as apprentices or helpers. During the time of its existence, the company has not been affiliated with any union.

In March 1996, while the company was working at a building located at 1059 Avenue of the Americas, then owned by NYNEX (now Bell Atlantic), a Local 3 representative approached Albert Faella, the company's president and his employees. This person asked why they weren't members of Local 3 and how come they were working in a union building. Thereafter, and for about 4 or 5 days in March, there were about four men patrolling with picket signs outside this building. One of the picket signs read:

Employees of M.F. Electrical Service Co., Inc.

JOIN LOCAL UNION NO. 3 IBEW
FOR
BETTER WAGES AND CONDITIONS²

Faella testified that he had a contract with Marciano Construction to perform electrical work at Twin Automotive in the Bronx, and that in August 1996, pickets appeared at this site with the same sign as described above. He testified that at Twin Automotive, there were about 9 days of picketing during a continuous stretch of time and that the Union there-

¹The Union and the Company executed a Stipulated Election Agreement which was approved by the Regional Director on April 30, 1997. In that agreement, the Union, by its attorney, stipulated that the Company met the Board's indirect standards for jurisdiction. Additionally, at the hearing, the Employer's representative testified to the Company's business and to its sale of services to Bell Atlantic.

²Faella recalled that the Union also used another sign which, from his description, had an area standards type of legend. Rothfeld, on behalf of the Union asserted that there was no such sign. In any event, as the General Counsel takes the position that any second sign is irrelevant and is not relied on by her to prove any particular point, I shall disregard the "second sign."

after engaged in intermittent picketing at this site on various days when the Company was at the site to perform work. It is not clear from the record what the total number of days that the Union picketed at this site.

In September 1996, the Company performed work for Rite Aid at a site also located in the Bronx. Faella testified that while he was at the site before work had begun, a man wearing an IBEW hat approached him and John Gernadola, the general contractor, and introduced himself as a Local 3 IBEW representative. Faella states that this man, after asking Gernadola who the electrical contractor was, and being told that it was M.F. Electrical, said that if M.F. was awarded the contract, the Union would picket the job whenever M.F. was present. (Faella testified that he kept his mouth closed and didn't identify himself during this conversation.) According to Faella, when the job started in October 1996, the Union engaged in picketing for about 9 days and thereafter picketed on an intermittent basis on occasions when his Company was working at the site. (The job was completed in March 1997.)

Paul Thompson, an employee of M.F., testified that in late October or early November 1996, he was working at the Twin Automotive job with his helper when he was approached by one of the people who were engaged in picketing. He states that this person asked him to join Local 3 and wanted to tell him about their benefits. Thompson also testified to a similar conversation in December 1996 with a person named Bobby Hernandez, who identified himself as a Local 3 representative and asked Thompson to sign up to join Local 3.

Terrance Pacheco, another employee of M.F., testified that in November 1996, he and his helper, Philip Pierre, were at the Rite Aid jobsite when a man named Joe, who identified himself as a representative of the Bronx District of Local 3, IBEW, spoke to them about becoming members of Local 3. Pacheco also relates another conversation in November 1996, with another man who approached him while he was having lunch and asked him to become a member of Local 3. He states that he recognized the man as one of the people who were engaged in the picketing.

In addition to the above, Faella testified that the Union engaged in picketing (using the same sign), on other occasions at Bell Atlantic locations where it was doing work. These included 1095 Avenue of the Americas, 1166 Avenue of the Americas, 240 East 38th Street, 405 East 42nd Street, and 2510 Westchester Avenue. In all, there is little doubt in my mind that the Union picketed for at least 30 days and engaged in picketing on an intermittent basis against this employer for a period of more than 30 days.

On April 21, 1997, the Union filed a petition in Case 2-RC-21844 wherein it sought to have an election in a unit consisting of all of the Company's electricians, maintenance mechanics, and helpers.

On April 29, 1997, the Company and the Union entered into a Stipulated Election Agreement which was approved by the Acting Regional Director on April 30, 1997.

On May 16, 1997 an election was held and the tally of ballots shows that 4 votes were cast for the Union and 11 against. This resulted in a Certification of Results which issued on May 27, 1997. No objections were filed.

III. ANALYSIS

Section 8(b)(7)(C) makes it an unfair labor practice for a Union:

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(C) where such picketing has been conducted without a petition under section 9(c) . . . being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing; *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) . . . or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Proved further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

For purposes of Section 8(b)(7)(C), there are two questions to be answered. First, was an object of the picketing either for recognition or for the purpose of organizing the employees; and second if so, did the picketing last for more than a reasonable period of time not to exceed 30 days.

In my opinion the picket signs themselves manifest an organizational object in that they are specifically addressed to the employees of M.F. and urge them to join Local 3. *Retail Wholesale Union Local 635 (J. W. Mays, Inc.)*, 145 NLRB 1091 (1964).

In the absence of some special circumstance, such as violence on the picket line, a union is generally accorded 30 days to engage in picketing with either a recognition or organizational object, without having to file a petition for an election. This is to say that picketing with a duration of up to 30 days, in the absence of a representation petition, is deemed to be a reasonable period of time and picketing for more than 30 days is deemed to be an unreasonable period of time.

In the present case, the Union filed a petition for an election on April 21, 1997, more than a year after it commenced picketing at the Respondent. The fact that the Union did not picket for 30 consecutive days is of no moment. As I conclude that the Union engaged in picketing over at least a 12-month period of time before filing a petition and engaged in at least 30 days of intermittent picketing over that period of time, this indicates to me that the Union engaged in organizational picketing for more than a reasonable period of time

without having filed a petition pursuant to Section 9(a) of the Act. *Electrical Workers IBEW Local 113 (I.C.G. Electric)*, 142 NLRB 1418, 1427 (1963).

CONCLUSION OF LAW

By engaging in picketing for an organizational object for more than 30 days, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(7)(C) and 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.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, International Brotherhood of Electrical Workers Local AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from picketing or causing to be picketed, or threatening to picket or cause to be picketed, M.F. Electrical Service Co., Inc., where an object thereof is forcing or requiring the employees of the employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees.

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 union office copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Re-

³If 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.

⁴If 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

gional Director for Region 2, 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.

(b) Sign and mail sufficient copies of said notice to the Regional Director for posting by M.F. Electrical Co., Inc., if the latter is willing, at all places where notices to its 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.

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 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 picket or cause to be picketed, or threaten to picket or cause to be picketed, M.F. Electrical Service Co., Inc., where an object thereof is to force or require its employees to accept or select Local 3, International Brotherhood of Electrical Workers, AFL-CIO as their collective-bargaining representative, unless we are currently certified as the representative of such employees.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO