

Brotherhood of Teamsters and Auto Truck Drivers Union, Local No. 85, International Brotherhood of Teamsters, AFL-CIO and Freight Checkers, Clerical Employees and Helpers Union, Local No. 856, International Brotherhood of Teamsters, AFL-CIO. Case 20-CB-10100

April 20, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Upon a charge filed on October 10, 1995 (amended November 27, 1995), by Freight Checkers, Clerical Employees and Helpers Union, Local No. 856, International Brotherhood of Teamsters, AFL-CIO (the Charging Party), the General Counsel of the National Labor Relations Board issued a complaint on November 30, 1995 (amended June 13, 1996), alleging that the Respondent, Brotherhood of Teamsters and Auto Truck Drivers Union, Local No. 85, International Brotherhood of Teamsters, AFL-CIO, violated Section 8(b)(1)(A), 8(b)(1)(B), and 8(b)(2) of the Act by filing a grievance against the Charging Party and by filing a Federal lawsuit against the Charging Party seeking to compel it to comply with the grievance and arbitration provisions of an alleged collective-bargaining agreement and to arbitrate the grievance it had filed against the Charging Party. The complaint alleges that the Respondent took these actions notwithstanding a determination by the Regional Director for Region 20 that the Respondent was not qualified to represent the Charging Party's unit employees. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint.

On December 17, 1996, the General Counsel, the Respondent, and the Charging Party filed with the Board a stipulation of facts and motion to transfer the case to the Board. The parties stated that the stipulation and the attached exhibits constituted the entire record in this case and that they waived a hearing and decision by an administrative law judge. On May 8, 1997, the Board approved the stipulation and transferred the proceeding to the Board for issuance of a decision and order. The General Counsel and the Respondent filed briefs.

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

On the entire record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Charging Party, a labor organization, is an unincorporated association with a place of business in San Francisco, California. At all material times, the Charging Party (like the Respondent) has been chartered by and has been an integral part of a multistate labor organi-

zation, the International Brotherhood of Teamsters, that maintains its national headquarters in Washington, D.C. During the 12 months ending January 31, 1995, the Charging Party, in the course and conduct of its operations, collected and received dues and initiation fees in excess of \$500,000 and remitted from its San Francisco facility to the Washington, D.C. facility of the International Brotherhood of Teamsters dues and initiation fees in excess of \$50,000.

We find that the Charging Party is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

On December 11, 1990, the Respondent filed a petition in Case 20-RC-16678 seeking an election among the Charging Party's unit employees. On January 25, 1991, pursuant to a Stipulated Election Agreement, an election was conducted. There were 3 votes for the Respondent, 2 against, and 1 challenged ballot. On March 27, 1991, Regional Director Robert H. Miller rescinded his approval of the Stipulated Election Agreement, set aside the results of the election, and dismissed the petition. The Regional Director stated that certification of the Respondent would have been inappropriate under *Teamsters Local 249*, 139 NLRB 605 (1962).¹ On July 15, 1991, the Board affirmed the Regional Director's order.

Later, the Charging Party voluntarily recognized the Respondent as the exclusive collective-bargaining representative of the Charging Party's unit employees. On June 9, 1992, the Respondent and the Charging Party executed a collective-bargaining agreement effective from October 1, 1991, through December 31, 1993. This agreement contained a provision requiring unit employees, as a condition of continued employment, to become and remain members of the Respondent after 30 days of employment. It also included a provision requiring that grievances not resolved at step one be referred to an Adjustment Board consisting of two members representing the Respondent and two members representing the Charging Party. Upon the request of either the Respondent or the Charging Party, grievances not resolved by the Adjustment Board would be decided by a neutral arbitrator chosen by the parties.

On December 21, 1993, the Respondent and the Charging Party extended the agreement indefinitely, subject to the right of either party to terminate the extension and the collective-bargaining agreement upon completion of a successor agreement or on the parties' negotiations

¹ That decision found that it was inappropriate for one local of an international union to represent the employees of another local when the international had many controls over the actions taken by the local unions as employee representatives.

reaching an impasse. In August of 1994, the Respondent and the Charging Party reached what each believed to be a tentative agreement on a successor to the expired collective-bargaining agreement. On August 31, 1994, the unit employees ratified what the Respondent believed to be the tentative successor agreement. This agreement included the union-security and grievance-arbitration provisions described above. Between September and December of 1994, the Respondent presented the ratified agreement to the Charging Party for execution. The Charging Party refused to sign. It claimed that the agreement did not accurately reflect the tentative agreement reached by the Respondent and the Charging Party. To date, the Charging Party has not executed a successor agreement.

On January 9, 1995, the Respondent asked the Charging Party to notify the Respondent of dates when the Charging Party would be available to participate in an Adjustment Board hearing concerning warning letters received from the Charging Party by unit employee Carol Derenale, and concerning her impending termination. By letter dated January 12, 1995, the Charging Party terminated Derenale. The next day, the Respondent filed a grievance regarding the termination. The grievance was timely in accordance with the grievance procedure set forth in the collective-bargaining agreement and in the alleged tentative successor agreement. By letter dated March 15, 1995, the Respondent again asked the Charging Party to proceed to an Adjustment Board hearing on Derenale's grievances.

On March 15, 1995, the Office and Professional Employees International Union, Local 3, AFL-CIO (OPEIU, Local 3), a labor organization within the meaning of Section 2(5) of the Act, filed a petition with the Board in Case 20-RC-17090 seeking an election among the Charging Party's unit employees. On receiving notice from Region 20, dated March 15, 1995, of the petition, the Charging Party withdrew recognition of the Respondent as the exclusive collective-bargaining representative of the Charging Party's unit employees.

By letter dated April 10, 1995, the Respondent made a third request that the Charging Party proceed to an Adjustment Board hearing on Derenale's grievances. The next day, Region 20 conducted an election pursuant to a Stipulated Election Agreement between the Charging Party and OPEIU, Local 3. All 5 votes were cast for OPEIU, Local 3. There were no challenged ballots. On April 19, 1995, OPEIU, Local 3 was certified as the exclusive collective-bargaining representative of the Charging Party's unit employees.

On May 9, 1995, the Respondent sent the Charging Party a bill for dues to be withheld from unit employee paychecks for the month of April, 1995, plus 10 percent liquidated damages. By letter dated May 25, 1995, the Respondent made a final demand that the Charging Party arbitrate Derenale's discharge. In June of 1995, the Re-

spondent sought and was granted strike sanctions from Teamsters' Joint Council No. 7 against the Charging Party. On June 28, 1995, the Respondent filed a complaint against the Charging Party in Federal district court to compel arbitration of Derenale's termination grievance. The Respondent's complaint sought an order directing the Charging Party to: (1) comply with the grievance and arbitration provisions of the alleged collective-bargaining agreement between the Charging Party and the Respondent; (2) arbitrate the Derenale termination grievance with the Respondent; and (3) pay the Respondent its costs of the court proceeding, including attorney fees. On July 25, 1995, the Charging Party filed an answer to the Respondent's complaint. By letter dated November 30, 1995, to Region 20, the Respondent disclaimed any present or future interest in representing the Charging Party's unit employees, retroactive to the time when OPEIU, Local 3 became the employees' collective-bargaining representative. The Respondent and the Charging Party stipulated that Federal district court proceedings on the Respondent's complaint to compel arbitration would be stayed pending the outcome of the instant proceedings before the Board, and a Stipulation and Order to this effect was filed on January 19, 1996.

B. Contentions of the Parties

The General Counsel argues that, because the agreement which the Respondent sought to apply to the unit employees contains a union-security clause, and because the Board has determined that the Respondent is unqualified to represent the unit employees, the Respondent violated Section 8(b)(1)(A) and 8(b)(2). In support of this argument, the General Counsel cites, inter alia, *Teamsters Local 688 Insurance & Welfare Fund*, 298 NLRB 1085 (1990). The General Counsel also contends that the Respondent's dues payment request, supra, violated Section 8(b)(1)(A) and 8(b)(2), although this action was not alleged as a violation in the complaint.

The General Counsel further maintains that the Respondent's suit violates Section 8(b)(1)(B) of the Act, which makes it an unfair labor practice for a union to coerce an employer in the selection of its representatives for the purpose of adjusting grievances.

The Respondent argues that its suit did not violate the Act in view of the fact that the contract, as well as the establishment of the allegedly improper collective-bargaining relationship, involve events that took place outside the 10(b) limitation period.

The Respondent also submits that *Local 249*, supra, which the Regional Director cited in dismissing its petition, does not hold that a collective-bargaining relationship giving rise to the conflict described in that decision constitutes an unfair labor practice. The Respondent further argues that the Board has not stated that contract obligations growing out of such a relationship cannot be enforced without violating the Act. The Respondent

contends that *Local 249* represents a situation in which the Board has declined to process a representation petition that could conflict with statutory policies, but it does not follow that the parties commit an unfair labor practice by voluntarily undertaking a bargaining relationship.

The Respondent argues that the practical significance of the instant case is whether Derenale will get a hearing on her termination by the Charging Party. The Respondent contends that, if the Board issues a remedial order, nothing therein should adversely affect the continued prosecution of the lawsuit filed by the Respondent to compel the Charging Party to arbitrate the termination.

C. Discussion

We find that the Respondent has not violated the Act, and we therefore dismiss the complaint.

The instant case is distinguishable from *Teamsters Local 688 Insurance & Welfare Fund*, 298 NLRB 1085 (1990), relied on by the General Counsel. In *Local 688*, the Board adopted an administrative law judge's finding that the respondents had violated the Act by maintaining and enforcing a collective-bargaining agreement containing union-security and dues-checkoff provisions when the respondent union was disqualified from representing the employees of the respondent fund. Officers and agents of the union exerted substantial control over the day-to-day operations of the fund in regard to personnel and labor relations matters.

In the instant case, however, the collective-bargaining agreement between the Respondent and the Employer has expired, and the Respondent has disclaimed interest in representing the Employer's employees. The Respondent seeks not to maintain in effect a collective-bargaining agreement containing union-security and dues-checkoff provisions, but merely to arbitrate a grievance left over from its former relationship with the Employer. We fail to see how the Union's efforts to pursue this grievance on behalf of a terminated employee can violate the Act.

Indeed, the Employer's employees are now represented by another Board-certified union, which has not complained about the Respondent's efforts to finish

processing Derenale's grievance. Nor can we discern any conflict between the Respondent's work on that grievance and the interests of the Employer's employees.² Accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

MEMBER HURTGEN, concurring.

I do not necessarily agree with my colleagues that the General Counsel has failed to establish a violation. However, assuming *arguendo* that he has done so, I see no need for a remedial order. Thus, I join in the dismissal of the complaint.

The assumed violation is that Respondent is continuing to represent the employees (through the processing of Derenale's grievance), notwithstanding the fact that Respondent is not qualified to represent the employees. In light of the gravamen of the assumed violation, the Board would normally seek to end the representational relationship between Respondent and the Employer. However, that relationship has voluntarily come to an end, and Respondent has disclaimed interest in representing these employees.

Concededly, the Board could also order Respondent to cease and desist from its representation of Derenale. However, that would essentially mean that Derenale's grievance would not be heard. In order not to injure an innocent party (Derenale), and in the exercise of remedial discretion, I would decline to enter such a cease and desist order.

In sum, a remedial order is not necessary and would not effectuate the purposes of the Act. See, e.g., *American Federation of Musicians, Local 76 (Jimmy Wakely Show)*, 202 NLRB 620 (1973). Therefore, I would dismiss the complaint.

² With respect to Respondent's request for dues payment for April 1995, there is no evidence that the Charging Party complied therewith or that Respondent continues to pursue this claim. In any event, as noted *supra*, the General Counsel's complaint does not specifically allege this as a violation.