

Sheet Metal Workers International Association, Local Union No. 19 and Delcard Associates, Inc. and Omni Mechanical, Inc. and Joseph Stong, Inc.
Cases 4-CB-6783, 4-CB-6879, 4-CB-6944, and 4-CC-2005-1

April 26, 1999

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On February 23, 1995, the National Labor Relations Board issued its Decision and Order in the above-captioned cases.¹ The Board affirmed the administrative law judge's findings that the Respondent had violated Section 8(b)(1)(A) of the Act by engaging in numerous acts of picket line misconduct at jobsites occupied by the Charging Parties, and that it had violated Section 8(b)(4)(B) by engaging in unlawful secondary picketing in the course of a labor dispute with Charging Party Stong. The Board affirmed the judge's finding that, with regard to the conduct directed at Stong, the Respondent was involved in a joint venture with several other unions and therefore was liable for their conduct as well as for that of its own members and representatives. To remedy the 8(b)(1)(A) violations, the judge recommended a "broad" order enjoining the Respondent from restraining and coercing employees of the Charging Parties, *or of any other employer*, in the exercise of their Section 7 rights. The Board adopted the judge's recommended Order.²

The Board petitioned the United States Court of Appeals for the Third Circuit for enforcement of its Order, and the Respondent cross-petitioned for review. On August 31, 1998, the court affirmed the Board's findings that the Respondent had violated the Act by its own conduct but rejected the Board's finding that the Respondent was also liable for the actions of the other unions. Because the Board's broad cease and desist order was based in part on the conduct of the other unions, the court declined to enforce that Order and stated that it was remanding the cases to the Board for further proceedings.³ However, the court's judgment did not expressly include a remand order.

On October 16, 1998, the court vacated its original judgment and issued a substitute judgment proposed by the Board, which did include a remand provision. That judgment also contained a provision ordering the Respondent to cease and desist from restraining and coercing employees of the Charging Parties—but not of other employers—in the exercise of their Section 7 rights.

Except for the remand provision, the judgment was in all other material respects identical to the Board's Order.⁴

On February 5, 1999, the Board informed the parties that it had accepted the court's remand and invited them to file statements of position. The General Counsel, the Respondent, and the Charging Parties filed position statements. The General Counsel and the Respondent contend that the violations found here are not widespread or egregious enough to warrant a "broad" order. Accordingly, they argue that the Board should issue an order requiring the Respondent to cease and desist from coercing and restraining employees of the Charging Parties (at all of their present and future jobsites), rather than employees of employers generally.⁵ In other words, they urge the Board to issue the order already approved by the court in its October 16, 1998 judgment. The Charging Parties contend that the Board should reaffirm its original "broad" order in view of the pervasive unfair labor practices which the Board, with the court's approval, found were committed by the Respondent itself, and not in concert with the other unions.

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

Under all the circumstances presented here, we agree with the General Counsel and the Respondent that it is appropriate to affirm the Board's original Order as subsequently modified and enforced by the court. In the first place, the risk of the Respondent's committing similar unfair labor practices in the future appears to be considerably less than it was in 1995, when the Board issued its Order. Thus, although the Board affirmed the judge's finding that the Respondent's widespread violations indicated a proclivity to engage in the kind of unlawful conduct found in these cases, the Respondent apparently has not violated the Act in any similar respect in the intervening four years.⁶ The Charging Parties do not assert that the Respondent has committed similar violations since the date of the Board's Order.⁷

Second, both the General Counsel and the Charging Parties originally argued to the judge for an order such as the court approved, protecting employees of the Charging Parties at all of their jobsites but not employees of other employers. In any event, despite the Charging Parties' current contention that we should issue a "broad"

⁴ The modified judgment included a notice to be posted by the Respondent. The language of the notice was identical to that prescribed by the Board, as modified to be consistent with the court's judgment.

⁵ See, e.g., *Carpenters (Reeves, Inc.)*, 281 NLRB 493, 499-500 (1986).

⁶ The Respondent was found to have committed hiring hall violations in one case; see *Sheet Metal Workers Local 19*, 321 NLRB 1147 (1996). Those violations, however, were not like those found here.

⁷ In addition, we note that the judge recommended issuing a "broad" order solely on the basis of the violations committed in these cases, not because of any previous violations. The General Counsel asserts that the Respondent committed no similar unfair labor practices before the events in these cases.

¹ 316 NLRB 426.

² The remedy for the 8(b)(4)(B) violations is not at issue here.

³ *NLRB v. Sheet Metal Workers Local 19*, 154 F.3d 137 (3d Cir. 1998).

order protecting employees of all employers, the Charging Parties' interests will be fully addressed by an order covering only their employees.

For all the foregoing reasons, we agree with the General Counsel and the Respondent that the order approved by the court is adequate to remedy the violations found. We shall therefore affirm the Board's original Order as modified and enforced by the court of appeals.

ORDER

The National Labor Relations Board affirms its original Order, reported at 316 NLRB 426, as modified and enforced by the court of appeals, 154 F.3d 137 (3d Cir. 1998), and orders that the Respondent, Sheet Metal Workers International Association, Local Union No. 19, its officers, agents, and representatives, shall take the action set forth in the Order as modified and enforced.