

**United Parcel Service and Teamsters Local Union 516, International Brotherhood of Teamsters, AFL-CIO.** Cases 17-CA-19015 and 17-CA-19729

March 23, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On April 14, 1999, Administrative Law Judge James M. Kennedy issued the attached bench decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the exceptions in light of the record and brief, and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the judge, and to adopt his recommended Order, as modified.<sup>2</sup>

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified and set forth in full below, and directs that the Respondent, United Parcel Service, Vinita, Oklahoma, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

1. Cease and desist from

(a) Breaching its obligation to bargain in good faith with the Teamsters Local No. 516, International Brotherhood of Teamsters, AFL-CIO, concerning grievances that the Union seeks to process.

<sup>1</sup> We agree with the judge that the Respondent violated Sec. 8(a)(5) and (1) on two occasions when it refused to allow employees Dave Walker and Larry Sexton to assist Union Secretary-Treasurer Jerry Van Allen at "local hearings" in grievances concerning the discharge of employee Troy McCarty. It is well settled that the Act bestows on employees, unions, and employers alike the right to select representatives of their choice for collective bargaining and grievance adjustment and imposes a concomitant obligation to deal with each other's chosen representatives absent extraordinary circumstances. Thus, Sec. 7, which states that "[e]mployees shall have the right . . . to bargain collectively through representatives of their own choosing," clearly "encompasses the right of employees, acting through their union, freely to select their representatives for the processing of grievances." *Missouri Portland Cement Co.*, 284 NLRB 432, 433 (1987), citing *Native Textiles*, 246 NLRB 228 (1979). Similarly, Sec. 8(b)(1)(B) of the Act provides that it is an unfair labor practice for a labor organization to "restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." See generally *American Broadcasting Co. v. Writers Guild of America, West, Inc.*, 437 U.S. 411, 429 (1978), and *NLRB v. Electrical Workers IBEW Local 1547*, 971 F.2d 1435 (9th Cir. 1992).

Member Hurtgen agrees with this result, but only because the contract is silent as to which individuals can be designated to represent employees at the "local hearing" stage of the grievance procedure. He finds that the contract therefore does not "cover" the dispute in question and that the "contract coverage" analysis cannot be used. See his opinion in *Dorsey Trailers, Inc.*, 327 NLRB 835 (1999).

<sup>2</sup> We shall modify the recommended Order to correct inadvertent omissions and to conform to our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

(b) Refusing to meet with union officials who have designated employees other than stewards to assist them in presenting grievances at the local hearing level of the grievance process.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Advise Teamsters Local 516 in writing that at the local hearing level of grievance processing, it has no objection to the Union's selecting a unit employee to assist the Union in presenting the grievance, even if that employee is not a job steward.

(b) Within 14 days after service by the Region, post at its Vinita, Oklahoma facility, copies of the attached notice marked "Appendix B."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, 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 employees 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 6, 1997.

(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 B

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.

Section 7 of the Act gives employees these rights.

To organize  
To form, join, or assist any union

<sup>3</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."

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT breach our obligation to bargain in good faith with Teamsters Local No. 516, International Brotherhood of Teamsters, AFL–CIO concerning grievances which that Union seeks to process.

WE WILL NOT refuse to meet with officials of Teamsters Local 516 who have designated employees other than stewards to assist them in presenting grievances at the “local hearing” level of grievance processing.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days of this Order, advise Teamsters Local No. 516, in writing, that at the “local hearing” level of grievance processing, we have no objection to the Union selecting a unit employee to assist the Union in presenting the grievance, even if that employee is not a job steward.

#### UNITED PARCEL SERVICE

*Francis A. Molenda, Esq.*, Tulsa, Oklahoma, for the General Counsel.

*Peter T. Van Dyke, Esq. (McAfee & Taft)*, of Oklahoma City, Oklahoma, for the Respondent.

#### BENCH DECISION AND CERTIFICATION

JAMES M. KENNEDY, Administrative Law Judge. This case was tried in Tulsa, Oklahoma, on March 25, 1998. The charges were filed on February 12, 1997, and June 10, 1998, by Teamsters Local Union 516, International Brotherhood of Teamsters, AFL–CIO. The consolidated complaint issued August 19, 1998. It alleges that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to permit the Charging Party to select an employee who is not a duly selected steward to assist it during one of the postinvestigation stages of grievance processing. Respondent’s answer denied the commission of any unfair labor practice.

After hearing the evidence on March 25, 1999, I determined that it was appropriate for me to issue a bench decision under Board Rule §102.35(a)(10). Pursuant to Board Rule Section 102.45(a), I hereby attach pages 58–59 and 62–72 of the transcript to this decision as Appendix A and certify that it (including interlineal corrections), is an accurate transcription of my decision as delivered.<sup>1</sup>

Appendix B is the recommended notice to employees.<sup>2</sup> The Regional Director is given discretion to require its publication/posting in any foreign language he deems appropriate.

<sup>1</sup> 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.

<sup>2</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 Na-

#### APPENDIX A

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The above entitled matter came on for bench decision by telephone conference on March 31, 1999, at 1:00 p.m. pursuant to notice, before JAMES M. KENNEDY, Administrative Law Judge, the evidence having been taken at National Labor Relations Board, Federal Building, 224 South Boulder, Room 333, Tulsa, Oklahoma 74103, on March 25, 1999.

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#### APPEARANCES

On Behalf of the General Counsel:

FRANCIS A. MOLEND, ESQ.  
National Labor Relations Board  
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Tulsa, Oklahoma 74103

On Behalf of the Respondent:

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McAfee & Taft  
211 North Robinson  
Oklahoma City, Oklahoma 73102-7103

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#### PROCEEDINGS

JUDGE KENNEDY: The way this is going to proceed, I am going to explain the way the Bench Decision process works. In a short time, I am going to begin reading my Bench Decision. But this is issued, or the authority under which I am doing this, is Section 102.35 (a)10 of the Board’s rules.

The way that works is that after I read my Bench Decision into the record, the court reporter has ten days under their contracts to provide everybody with a transcript.

That transcript is given to me. And I then issue a certification that that is the decision. I usually attach—if it is a dismissal, I usually don’t attach a notice. But if it is—if I do find a violation, then I do attach a notice to it at that point. So I don’t usually deal with the notice during my Bench Decision.

The appealable order, of course, is the certification and Bench Decision when it is served on the party. And at that point, of course, there will be the standard amount of time for which to take exceptions, if anybody feels that they should.

Is there any question about the procedure?

MR. VAN DYKE: No, sir. Not from the Employer.

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MS. MOLEND: No, sir. Not from General Counsel either.

JUDGE KENNEDY: Very well. I would be happy to answer any questions. If any come up during the course of this matter, I would be happy to try and answer them.

All right. At this time, I am going to render my bench decision.

“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.”

*BENCH DECISION*

Based upon the evidence presented on March 25, 1999, I hereby make the following findings of fact and conclusions of law, and render this Bench Decision pursuant to Rule 102.35(a)(10) of the Board's rules.

Some of these findings are made pursuant to the pleadings. And others are through the testimony of the two witnesses: Jerry Van Allen, the secretary/treasurer of Local No. 516, and its principal officer; and Guy Cook, Respondent's labor relations manager for Oklahoma.

## FACTS AS DETERMINED FROM THE PLEADINGS

1. Respondent corporation is engaged in interstate transportation and delivery of freight and other commodities.

2. In the course of its business, Respondent operates the so-called Vinita Center in Vinita, Oklahoma.

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3. Respondent admits that it annually derives gross income in excess of \$50,000.00 for the transportation of freight/commodities from points within Oklahoma directly to points outside of Oklahoma.

4. It therefore admits, that it is an Employer within the meaning of Section 2(2), (6), and (7) of the Act.

5. It further admits that the Charging Party, Teamsters Local No. 516, is a labor organization within the meaning of Section 2(5) of the Act.

6. The Charging Party is the exclusive collective bargaining agent for certain employees in Eastern Oklahoma, as described in Paragraph 5(a) of the complaint, including those employees of the Vinita Center.

7. Respondent, and Local No. 516, are and have been bound by a national collective bargaining agreement between Respondent and the Teamsters United Parcel Service National negotiating committee, representing local unions of the International Brotherhood of Teamsters. That agreement includes a local supplement known as the Southern Conference Supplemental Agreement. It is all one document.

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## FACTS ADDUCED AT THE HEARING

8. The current collective bargaining agreement has a duration of August 1, 1997 to July 31, 2002, and the preceding agreement a duration of August 1, 1993 to July 31, 1997.

9. Article 4 of both collective bargaining agreements describes the right of the local Union to appoint a job steward and alternate stewards. It also limits the stewards duties to:

- a) Investigation and presentation of grievances
- b) Collection of dues;
- c) Transmission of official Union messages;
- d) The right to represent an employee in circumstances where discipline is reasonably contemplated.

10. a) As a matter of practice, certain grievances are processed on a local level, initially under procedures described Article 50 in the Southern Conference Supplemental Agreement found on page 126 and 127 of the Exhibits.

b) In general, this procedure requires an aggrieved employee to first report the matter to a job steward, who is to seek to adjust the matter with the supervisor. If the grievance is not resolved at that level, the steward is to forward the grievance to the Union, where

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the parties again attempt to resolve it. Failing resolution, it is to be forwarded to a joint committee known as the Southern Conference Area Partial Grievance Committee, whose acronym is SCAPGC, which is composed of Respondent's representatives and the local Union's representatives.

11. a) The stage preliminary to submission of the grievance to SCAPGC, is commonly called a "local hearing" by the parties, and in Eastern Oklahoma, usually consists of a meeting between Local No. 516's secretary/treasurer Van Allen, and Respondent's labor relations manager, Guy Cook.

b) Van Allen is usually assisted by the steward or alternate steward and Cook is usually assisted by those managers and supervisor whom he deems appropriate to the circumstances.

12. a) In 1997, Local No. 516's duly appointed job steward at Vinita was Randall Robinson. And the alternate was Larry Newcomb.

b) In 1988, the duly appointed job steward was Larry Newcomb, and the alternate was John Spradling.

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13. a) On two occasions, February 6, 1997 and June 5, 1998, grievances regarding the discharges of an employee named Troy McCarty, were to be the subject of a local hearing.

b) On each occasion, McCarty asked in addition to being represented by Union secretary/treasurer Van Allen, that he be represented by an employee other than the steward. In 1997, that employee was Dave Walker. And 1998 that employee was Larry Sexton.

c) Van Allen agreed on both occasions, that the presence of Walker and later Sexton, would be helpful. And on each occasion, he selected him to do so and asked labor relations manager Cook for them to be present for the local hearing.

14. a) On each occasion, Cook refused to permit the local hearing to proceed unless the employee (Walker and later Sexton) was removed from the room.

b) Van Allen advised McCarty of Cook's conditions, and in order to permit the matter to be heard, McCarty abandoned his request for the employee's assistance.

c) Both matters proceeded without the employee's

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assistance.

d) But the Union filed the unfair labor practice charges.

## DISCUSSION

The question raised by this case is whether Cook had any right to deny Van Allen the assistance of an employee other than a duly appointed steward, in his representation of McCarty at the local hearing.

The question must be resolved by observing that the general rule is that a Union, as the duly selected collective bargaining agent of the unit employees, has the statutory right to select persons, whether they be employees or not, to negotiate with the Employer regarding grievances.

That right may be waived by the Union. But the waiver, to be effective, must be clear and unmistakable. (See *Ground Breakers, Inc.*, 280 NLRB 146, enfd 814 F.2d 655 (4th Cir. 1987))

Therefore, the only question that needs to be answered is whether Respondent has shown that the Union has clearly and unmistakably waived its right to select its representatives to participate in a local hearing.

## CONCLUSIONS OF LAW

I conclude that the Respondent has made no such showing.

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Articles 4 and 50 of the contract/local supplement, speak only to the initial level of grievance presentation.

They do not describe or place limits on the Union's right to seek additional assistance or input at higher levels of presentation.

Indeed, nothing in the contract itself, describes the local hearing, except that in general terms, it requires efforts to settle the grievance prior to invoking the committee level.

Accordingly, I find that the Union has not waived its statutory right to designate its representatives for grievance processing at the local hearing level, and that it is and was entitled to a grievant's fellow employee, as a Union representative to serve as the Union's assistant in presenting the grievance at that level.

I further find that in denying the Union the right to select such an individual as its assistant at the local hearing stage,

Respondent breached the good faith bargaining requirements of the act, thereby violating Section 8(a)(5) and (1) thereof.

That conduct intruded into an area expressly reserved to the Union by law. In support of those conclusions, I rely upon

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*Native Textiles, Inc.*, 246 NLRB 228 (1979); and *Missouri Portland Cement*, 284 NLRB 432, fn. 13 (1987).

MS. MOLEDA: Nothing from General Counsel

MR. VAN DYKE: Nothing from Respondent.

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JUDGE KENNEDY: all right Thank you, very much. The hearing is closed, Goodbye, gentlemen.

(Whereupon, the hearing in the above-mentioned matter was closed.)

[Recommended Order omitted from publication.]