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Communications Workers of America, Local 13000, AFL-CIO (Verizon Communications, Inc.) and Susan L. Irving and Margaret L. Eichner.
Cases 6-CB-10814 and 6-CB-10830

August 29, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND WALSH

On April 21, 2003, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply 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 briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Communications Workers of America, Local 13000, AFL-CIO, Carnegie, Pennsylvania, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Prosecuting and fining any member for working mandatory overtime."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. August 29, 2003

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

² We shall modify the judge's recommended Order and notice to clarify that the Respondent is required to cease and desist from prosecuting and fining any member for working *mandatory* overtime. That was the violation alleged and proven and thus the remedial order need not go any further.

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT prosecute and fine any of you for working mandatory overtime.

WE WILL NOT discipline any of you for not obeying any directive to engage in unprotected activity that would subject you to lawful discipline by Verizon.

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

WE WILL, within 14 days from the date of the Board's Order, rescind the fines assessed against Susan Irving and Margaret Eichner for not obeying our August 4, 2000 no-overtime directive, and refund Irving for the fine she paid, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the fines assessed against Susan Irving and Margaret Eichner, and within 3 days thereafter notify them in writing that we have done so.

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 13000, AFL-CIO

Clifford E. Spungen, Esq., for the General Counsel.
Richard H. Markowitz, Esq. (Markowitz & Richman), of Philadelphia, Pennsylvania, for the Respondent Union.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These cases were tried in Pittsburgh, Pennsylvania, on December 11–12, 2002. The charges were filed July 2 and August 7, 2002, and the complaint was issued September 23, 2002, and amended at the trial.

On August 4, 2000,¹ to get concessions from Verizon Communications, Inc. in negotiations for a new contract—for a statewide Pennsylvania bargaining unit of approximately 7500 Verizon employees—the Respondent CWA Local 13000 (the Union) issued a directive, through its executive board, that its members work “No” overtime, “forced or voluntary till we get a contract” and that “At end of tour—leave/go home” (Tr. 16–17; GC Exhs. 2, 9; R. Exh. 8 p. 6).

In the directive, the Union promised: “There will be no contract till there is complete amnesty for disciplinary action taken against any member taking part in this action on 8/4 & 8/5/2000” (the 2 days before expiration of the old contract). Obviously the Union was not referring to disciplinary action for refusing temporary overtime, because employees cannot be disciplined for refusing to work temporary overtime. It directed the members not to work any overtime, including mandatory overtime, thereby directing them to engage in unprotected activity that would subject them to lawful discipline by Verizon.

In *GAIU Local 13–B (Western Publishing)*, 252 NLRB 936–938 (1980), the Board held:

It is well established that a union violates Section 8(b)(1)(A) of the Act if it disciplines members who refuse to engage in unprotected activity which would subject them to lawful discipline by their employer.

....

We find that [the union vote was] to impose the overtime ban solely as a bargaining tactic, designed to put economic pressure on Western [the employer] and to force Western to make bargaining concessions

Therefore, we conclude that . . . [the union’s ban on working mandatory overtime] constituted an unprotected partial strike and [the union] violated Section 8(b)(1)(A) by disciplining its members who refused to engage in such unprotected activity.

In that decision, the Board cited *Scofield v. NLRB*, 394 U.S. 423, 428–430 (1969), in which the Supreme Court held that Section 8(b)(1)(A) does not permit enforcement of union rules that “affect a member’s employment status.”

Clearly, if the Union’s discipline of Margaret Eichner and Susan Irving, the charging parties, 2 years later in 2002 was for working mandatory overtime, as in *Western Publishing*, it disciplined them unlawfully for refusing to engage in unprotected activity that would subject them to lawful discipline by Verizon.

When Verizon required Eichner on August 4, and Irving on August 5, either to work overtime or be disciplined, both employees avoided discipline by performing the assigned overtime. Verizon, in fact, did discipline other union members who refused to work assigned overtime. As discussed below, the Union has admitted that Verizon inflicted discipline “upon hundreds of our members for . . . refusals to work overtime on August 4th and 5th, before the contract expired” (GC Exh. 35).

For violating the Union’s overtime directive, the Union prosecuted Irving in an internal court on July 10, 2002 and fined her \$147.16 (GC Exhs. 16, 17, 19) and prosecuted Eichner on November 13, 2002 and fined her \$209.08 (GC 28, 32).

Despite conclusive evidence that the Union directed its members in the Verizon statewide bargaining unit to work *no overtime*, whether “forced or voluntary” on August 4 and 5, the Union repeatedly makes the misleading contention in its brief (at 1, 11, 15, 16, 17, 18, 19, 20, 21, 24) that it directed the members not to work *voluntary* overtime. This contention falsely implies that the Union prohibited its members from working only voluntary overtime, not also mandatory overtime.

The Union’s primary defense in its brief (at 24) is that it “properly fined Irving and Eichner for violating its lawful ban on working voluntary overtime”—even though admitting in the same brief (at 13) that Supervisor “Murray threatened Irving that if she refused to work the overtime, she would be subject to discipline up to and including dismissal” (citing Tr. 31, 85–86), and (at 16) that Supervisor “Banks informed [Eichner] that she was forced to work overtime, and if she refused, she would be subject to disciplinary action” (citing Tr. 128).

The primary issue in these cases is whether the Union—to defend and enforce its August 4, 2000 directive, banning member-employees of Verizon from working any overtime on August 4 and 5, 2000—violated Section 8(b)(1)(A) by prosecuting and fining Susan Irving and Margaret Eichner in 2002 for working mandatory overtime and not obeying its directive to engage in unprotected activity, which would subject them to lawful discipline by Verizon.

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

FINDINGS OF FACT

I. JURISDICTION

Verizon Pennsylvania, Inc. and Verizon Services Corp. (collectively called Verizon Communications, Inc. or Verizon), corporations, provide telecommunications services at sites throughout Pennsylvania, including a site in Pittsburgh, and annually derive over \$100,000 in gross revenues and receive goods valued over \$5,000 directly from outside the State. The Union admits and I find that Verizon is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ All dates are in 2000 unless otherwise indicated.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Union's Ban on All Overtime*

Rene Rupp was president of the Union's Unit 41, which represented 511 bargaining unit members in Pittsburgh. Margaret Eichner worked in the Main Distribution Frame (MDF) administrative group, consisting of 9 employees, excluding 3 employees absent on benefits the first week in August, and Susan Irving worked in the Network Control Center Surveillance (NCCS) administrative group, consisting of 28 employees. (Tr. 145, 154, 171, 248–250; R. Exhs. 1 & 2.)

About 8:30 on Friday morning, August 4, Rupp received a call from the Union, telling her that bargaining was going very badly, and in an effort to get Verizon to negotiate better, there was a directive from the Union's executive board about working overtime (Tr. 260–262).

Upon receiving this oral message, Rupp arranged for an extended conference call, enabling her to “give the instructions once” to all union representatives in the 511-member “unit,” including Jean Ryer, vice president of Unit 41 (Tr. 130, 262).

Ryer made a six-paragraph summary of the directive, which she signed and dated August 4 and which included the following three paragraphs (GC Exh. 9; Tr. 10–11):

- 1) No O.T. [overtime]—forced or voluntary till we get a contract

- 3) At end of tour—leave/go home

- 5) There will be no contract till there is complete amnesty for disciplinary action taken against any member taking part in this action on 8/4 & 8/5/2000

When testifying as a defense witness for the Union, Rupp gave conflicting testimony about what was said in the August 4 message from the union office. She first testified that she was told “we were not going to have overtime,” but then changed her testimony and claimed that “we were not going to participate in voluntary, for overtime.” She next claimed she was told “we were not going to be volunteering to have our members work any overtime.” (Tr. 261.)

When Rupp was next asked “if anything was said about mandatory overtime or forced overtime?” she answered no (Tr. 261–262). To the contrary, Rupp admitted (Tr. 293) that when she was asked by the union prosecutor at the Union's internal trial of Susan Irving on July 10, 2002 (GC Exh. 19 p. 9), “Were you advised of the executive board directive against working forced or voluntary overtime on August 4 and August 5, 2000?” she admitted, “Yes, I was.”

Later, at the internal trial of Margaret Eichner on November 13, 2002, Rupp provided to the trial court a copy of Ryer's August 4 summary of the directive, marked “EICHNER Exhibit 5” (Tr. 291; GC Exh. 32 p. 45; R. Exh. 8 p. 6; GC Exh. 9). On that copy, Rene Rupp had circled “6”) and had written: “Did not direct on this,” with her initials “RR.” Paragraph 6 reads: “Up to \$500.00 fine could be brought by union if you stay.” I find that by objecting only to this sixth paragraph, Rupp was admitting that she had approved the three above-quoted paragraphs.

The Union called only two witnesses, Rupp and Richard Johns, the Union's vice president of its Western (Pennsylvania) Region. Although Johns is one of the five members of the Union's executive board (Tr. 301, 303; GC Exh. 35), he was not asked about the overtime directive.

Besides Ryer's August 4 summary of the directive, there is other documentary evidence in which the Union admits the ban was against all overtime, not just voluntary overtime.

First, on September 18, after the August 6 strike, which lasted approximately 3½ week (Tr. 111), Unit 41 President Rupp signed formal charges “as the [unit] president” against a total of about 16 to 20 members in Unit 41 (Tr. 292–293), including Susan Irving and Margaret Eichner (GC Exhs. 5, 6). The charges refer to “an Executive Board policy that *no overtime* [emphasis added] was to be worked”—not to a voluntary overtime policy.

Second, there is such an admission also in a letter—over the printed name, “Local 13000 Executive Board,” and the names and titles of five top officials of Local 13000—which the Union sent to its members in the Verizon statewide bargaining unit on January 23, 2001 (Tr. 303; GC Exh. 35). This was about 4½ months after the Union had failed to fulfill the promise in the Union's August 4 overtime directive that “There will be no contract till there is complete amnesty for disciplinary action taken against any member taking part in this action on 8/4 & 8/5/2000.” The Union had signed a new contract (GC Exh. 3) without such an amnesty.

After the new contract was signed, the Union continued its “Non-Participation” policy against Verizon until an agreement was reached, effective December 18, that “all discipline, including any discharges, suspensions or write-ups, in conjunction with the refusals to work overtime on August 4th & 5th, will be rescinded” (GC Exh. 33, 35).

In the January 23, 2001 letter to its members, regarding this December 18 agreement, the five union officials referred to “the discipline inflicted upon hundreds of our members for . . . *refusals to work overtime* [emphasis added] on August 4th & 5th” (GC Exh. 35).

Even apart from other evidence cited below, I find that these admissions by the Union, in Ryer's August 4 summary of the Union's no-overtime directive (GC Exh. 9; R. Exh. 8 p. 6), in the charges referring to the Union's “policy that no overtime was to be worked” (GC Exhs. 5, 6), and in the Union's January 21, 2001 letter referring to “hundreds of our members” being disciplined for “refusals to work overtime on August 4th & 5th” (GC Exh. 35), are conclusive evidence that the Union's August 4 overtime directive was a complete ban on overtime, including mandatory overtime, on August 4 and 5.

Those were the 2 days before expiration of the Union's 1998 agreement with Bell Atlantic–Pennsylvania, Inc. and Bell Atlantic–Network Services, Inc. (the names of the employer before July 6, when Verizon began operating under the contract), covering the statewide bargaining unit (GC. Exh. 2).

B. EICHNER AND IRVING FORCED TO WORK OVERTIME

1. Eichner's forced overtime

Early Friday morning, August 4—before hearing about any directive issued by the Union against working overtime—frame

attendant Margaret Eichner volunteered, at Supervisor Darrell Banks' request, to work from 5 p.m. until midnight, after her 8-to-5 day shift (Tr. 123–126).

Eichner credibly testified that as soon as she heard rumors that the Union did not want the employees to work overtime that Friday or Saturday, she told Banks she could not work the overtime that evening (Tr. 127).

I NOTE that the Union falsely represents in its brief (at 15) that at 10 a.m. that Friday, "Union representative Mary Best indicated that Eichner, along with the other frame attendants, were informed of the Union's ban on accepting *voluntary overtime*"—referring to Best's written statement introduced at Eichner's internal union trial on November 13 (R. Exh. 8 p. 5). To the contrary, Best's written statement states that at 10 a.m., she was "advising everyone of no *forced or voluntary overtime*." (Emphasis added.) Best did not testify at this trial.

Later that day, Banks called the day-shift employees into a meeting, stated that both 4-to-12 p.m. employees would not be there, and stated he had no coverage. Following the overtime-selection procedure for forcing overtime, he first asked everybody present if they would volunteer to work the overtime, starting from the bottom of the overtime list, and they all said no. Banks then said he had to force overtime, but added that if somebody had a good reason not to be there, he would work with them. (Tr. 127–128, 146, 213–215, 222; R. Exh. 2.)

Banks started asking the employees again from the bottom of the overtime list. All of the employees on the list had reasons, or excuses, for not working except Eichner, who said she did not have an excuse. Then, as Eichner credibly testified, Banks told her, "You're being forced, and if you refuse, then you are subject to disciplinary action." (Tr. 128.)

Eichner also credibly testified that she did not make up an excuse, "Because I wouldn't lie," and that she worked the forced overtime that evening because of the threatened disciplinary action (Tr. 128–129). From their demeanor on the stand, both Eichner and Irving impressed me most favorably as truthful witnesses.

Banks credibly testified that he called the meeting around 1:30 that afternoon, explained that he knew the Union had told them not to work overtime, and because nobody wanted to volunteer to work overtime, he had to force overtime. He told them, however, that the strike was coming up and that if they gave him a compelling personal reason why they couldn't work the overtime, he would bypass them and go to the next person. (Tr. 156–157, 222). The Union admits in its brief (at 6, 25) that the supervisor has that discretion (GC Exh. 2, art. A3.022 p. 85).

Banks also testified that he asked everybody on the overtime list, starting with the low-overtime person, and "a lot of them gave me an excuse" until "I asked Peggy Eichner, and she said no excuse." A summer replacement, Tiffany Johnson, who was not on the overtime list, also said she had no excuse. Banks credibly testified that he told Eichner and Johnson they were forced to work the mandatory overtime. (Tr. 157–158, 162; R. Exh. 2.)

Eichner credibly testified that about 4:45 that afternoon, Unit 41 Vice President Jean Ryer phoned and told her to walk off the job. She told Ryer she was not going to because she was

being forced to work. Ryer said that didn't matter, that Verizon wouldn't do anything, and the Union would protect her. Eichner responded that if Ryer wanted her to walk off, Ryer would need to fax her something in writing that there would be no disciplinary action and that the Union would protect her. Ryer made no reply. (Tr. 130–131.) Ryer did not testify.

Eichner then stayed on the job and worked the assigned 7 hours of forced (mandatory) overtime, from 5 to midnight (Tr. 131).

2. Irving's forced overtime

Switching equipment technician Susan Irving, also a union member, regularly worked on the evening shift, from 4 to 12 p.m. (Tr. 24–26, 62–63).

On Monday, July 31, Irving volunteered at her supervisor's request to work overtime on the day shift the following Saturday, August 5. Three other night-shift employees, Al Martino, Gerry Toth, and William Murphy had also volunteered, presumably after ten other employees in the administrative group refused to work the voluntary overtime. (Tr. 26, 61–62, 64–66, 84; R. Exh. 1.) Irving's last scheduled evening shift that week was Thursday, August 3 (Tr. 63).

About 7:15 a.m. on Saturday, August 5, before Irving logged in, night-shift employees Gerry Toth and Al Martino told her that if she was there on overtime, the Union "didn't want us to work, they wanted us to go home" (Tr. 29–30) and "They said something to the effect that the Union wanted everybody to go home, they didn't want anybody to work overtime" (Tr. 70).

I NOTE that the Union falsely represents in its brief (at 12, citing both Tr. 30 and 70) that "Martino and Toth advised Irving that the Union did not want anyone to work *voluntary overtime*" (emphasis added).

In the absence of any supervisor on the weekend, a call was placed to First-Level Supervisor William Murray, the night-shift supervisor, at his home. Irving told Murray that the Union did not want them to work overtime, so she was going to leave. (Tr. 28–31, 71, 85.)

As Irving credibly testified, Murray said "I had to stay and work overtime, and that the manager at the second level, Christine Just, advised him to tell anybody that they would be subject to disciplinary action, suspension or dismissal if they refuse to work" (Tr. 31).

Murray credibly testified that about 7:25 that Saturday morning, Irving and three other employees (from the night shift) called "to make me aware that they were not going to work the overtime that they had volunteered to work," and he talked to them separately (Tr. 84, 86).

Murray testified that when talked to Irving, "She told me that she was not going to work the overtime that she had volunteered to work" and "I told her she was forced to work, and if she refused to work, she could be disciplined up to and including dismissal" (Tr. 85–86).

Murray then talked on the phone to each of the three night-shift employees that had volunteered to work overtime on the first shift that day. Murphy told each of them that if he refused to work the forced overtime, he could be disciplined up to and including dismissal. Two of them, Al Martino and Gerry Toth,

refused to work and left. The other one, Shelby Wilson, agreed to work, but “shortly left after I talked to him.” (Tr. 84, 87–88.)

As pointed out in the General Counsel’s brief (at 18–19), “No one else was available” to be assigned. The only employees who were present that morning were Irving and the three night-shift employees, all four of whom had been scheduled to work after they volunteered. Murphy assigned all of them.

Irving went to her desk, logged in, and began working (Tr. 34). The only other person who worked that day was employee Doak. The overtime list (R. Exh. 1) shows that he worked 4 hours, presumably when he was contacted later that day.

While she was working, Irving received a call from Union Representative Anita Summers, who “told me that the Union didn’t want anybody working overtime, that I should leave. . . . I told her that I had spoke to my supervisor, and he told me that I had to stay, or I would be subject to disciplinary action.” Then, “there were at least two other calls” from Summers, and “basically she kept telling me to leave, the Union didn’t want me to be there.” (Tr. 34–38.)

Finally, “I told [Summers] that I would call her back, I’d think it over, and I did call her back And it was basically the same thing, she wanted me to leave, and . . . I felt that I could have been disciplined. Plus, I thought that I had committed to the overtime, that it was the matter of principle, also.” (Tr. 38–39.) Summers did not testify.

As both Irving and Murphy credibly testified, Irving worked 8 hours of forced overtime that day (Tr. 39, 94).

C. Charges, Prosecution, and Fines

1. Charges filed and finally accepted for trial

On September 18—after the 3½-week strike ended about the first week in September—Unit 41 President Rene Rupp signed and filed internal union charges, in identical formal language (except for names and dates), against Susan Irving (GC Exhs. 5) and Margaret Eichner (GC Exh. 6). The charges, addressed to CWA Local 13000 Secretary-Treasurer Patricia Maisano at the Union’s headquarters in Philadelphia, Pennsylvania, state that the employee did violate the CWA constitution and the Local 13000 bylaws and

did work voluntary overtime on August [4 or 5] after being informed of an Executive Board policy that *no overtime* was to be worked on that date. [Emphasis added.]

Thus, these charges admit that the Union’s August 4 directive required its members to work *no overtime* on August 4 and 5—contrary to the Union’s misleading contention in its brief (at 1, 11, 15, 16, 17, 18, 19, 20, 21, 24) that its executive board directed members not to work *voluntary* overtime. As found, this contention falsely implies that the executive board’s directive prohibited members from working only voluntary overtime, not also mandatory overtime.

Although the charges that Rupp signed “as the [unit] president” allege that Irving and Eichner “did work voluntary overtime,” the Union, as indicated, admits in its brief (at 13, 16) that each of them was warned by the supervisor that she was subject to discipline if she refused to work the assigned overtime. Of course, forced overtime is not voluntary overtime.

I infer, from Rupp’s following testimony, that she did not *prepare* the charges that she filed against a total of about 16 to 20 members in Unit 41 (Tr. 292), including Irving and Eichner (GC Exhs. 5 and 6), but merely *signed* the charges prepared by the Union.

When called as a defense witness, Rupp was repeatedly asked why she filed the charges against Irving and Eichner. Each time she answered, because the employee “worked overtime”—not voluntary overtime (Tr. 264, 267, 278, 279). It was only after she was shown the charges (GC Exhs. 5 & 6) on redirect examination and asked “what type of overtime did you charge them with working?” that she finally answered “Voluntary” (Tr. 300).

That, of course, is what the charges she signed allege. Rupp did not retract her answers that she filed the charges because the employees worked overtime.

The Union finally accepted the charges for trial—in Secretary-Treasurer Patricia Maisano’s May 8, 2002 letter (GC Exh. 12) for the trial of Irving and (after Irving’s trial on July 10), Maisano’s July 22, 2002 letter (GC Exh. 26) for the trial of Eichner.

Union President Edward Carr appointed Unit 54 Secretary Charles Douglas as the prosecutor and Richard Johns, the Western Region vice president and member of the Union’s executive board, to serve as chairperson at the internal trials of both Irving and Eichner (GC Exhs. 12, 19, 26, 30, 32.)

2. Douglas’ and Johns’ notice of mandatory overtime

Both Irving and Eichner informed Douglas during his investigations that they had been forced to work the overtime (Tr. 42, 140), and each of them, before their trials, furnished Johns a written statement by the supervisor, confirming that she had been forced to work the assigned overtime (Tr. 49, 311; GC Exhs. 15 & 27). Yet Johns and Douglas proceeded with the trials, without contacting either supervisor to verify the facts (Tr. 69, 169–170).

It is undisputed that about late April or early May 2002, in the second conversation that Irving had with Douglas, when she again told him about the forced overtime, “He told me . . . that he felt that he had enough evidence to follow through” with the prosecution and to “fine me for working overtime”—not for working voluntary overtime (Tr. 43–44). Douglas did not testify.

It is also undisputed that in a second conversation that Eichner had with Douglas, after she was advised that Douglas had enough evidence to go to trial (GC Exh. 26), she told him “I was forced” and asked “what did he expect me to do?” Douglas answered that his people (in Unit 54) that were forced, “just walked out, and turned in their time sheets, and walked out” (Tr. 140–141). Obviously he not only admitted that union members in Unit 54 were also forced to work overtime, but in doing so, revealed his understanding that Eichner was forced.

Thus, Douglas twice indicated that he intended to enforce the Union’s no-overtime directive by prosecuting Irving and Eichner for working the forced (mandatory) overtime.

3. Internal union trial of Susan Irving

Prosecutor Douglas call two witnesses at Irving's internal trial on July 10, 2002. They were Unit 41 President Rene Rupp and Unit 41 Branch 1 Representative Anita Summers.

Before calling Rupp, his first witness, Douglas introduced into evidence, as Irving Exhibit 1, Summers' statement regarding Irving working eight hours "overtime" (not voluntary overtime) on August 5 (GC Exh. 19 pp. 8, 15), but did not introduce Verizon Supervisor William Murphy's statement that on August 5, "I forced Susan Irving to work 8 hours of overtime" (GC Exh. 15).

Upon calling Rene Rupp, Douglas asked her, "Were you advised of the executive board directive against working forced or voluntary overtime on August 4 and August 5, 2000?" Rupp admitted, "Yes, I was." (GC Exh. 19 p. 9.)

I NOTE that the Union falsely represents in its brief (at 18, citing GC Exh. 19 without a page number) that "Rupp testified that the Union had issued a directive prohibiting members from working *voluntary* [emphasis added] overtime."

Douglas next called Anita Summers and asked her, "Did you talk to Sue Irving about the directive on voluntary and forced overtime?" Summers answered, "Yes" and read from her pre-trial statement (GC Exh. 19 pp. 13–15.):

"I spoke to Sue Saturday morning and told her that the Union asked that members not work *overtime* [instead of voluntary overtime] because of how badly negotiations were going. She said that she had already told her boss that she would work and did not want to renege on that, but Sue also said she would be sure not to work any additional overtime she had not already committed herself to. . . . She worked eight hours *overtime* [not voluntary overtime]." [Emphasis added.]

Summers did not deny that Irving and other employees were being ordered to work overtime, or that Irving said she was being forced to work the overtime. Although Irving, during Rupp's testimony (GC Exh. 19 p. 11), had introduced into evidence Supervisor Murphy's statement that he forced Irving to work the 8 hours of overtime, Douglas did not ask Summers if Irving told her the overtime was forced.

Later at the trial, Irving testified three different times that she was forced to work the overtime (pp. 16, 20, 24). When she testified the second time about being forced and stated she did not know when Summers called, Summers spoke up (p. 20) and stated, "I don't remember what time it was." Summers did not dispute Irving's testimony that the overtime was forced.

When Irving was testifying, Douglas asked her nothing about the charge on which she was tried, that "Susan Irving did work voluntary overtime" (GC Exh. 5). This further indicated that he was prosecuting her for working overtime, not for working voluntary overtime.

The four trial court members, chosen by lot (GC 10 p. 4), none of whom testified at this trial, signed a document dated July 10, stating: "We, the undersigned of the Trial Court, find the accused, Susan Irving, guilty of violating Article 3, Section 3, Paragraph (f), of the CWA Local 13000 Bylaws" (not specifying voluntary overtime), and assessing a penalty of \$147.18 (Tr. 51; GC Exh. 16).

The next day, Chairperson Johns sent Irving a letter dated July 11, stating that the trial court "found you guilty of violating the *Local 13000 Executive Board policy on not working voluntary overtime* [emphasis added] on August 5, 2000" (GC Exh. 17)—contrary to the charge (GC Exh. 5) that Irving had been "informed of an Executive Board policy that *no* [emphasis added] overtime was to be worked on that date." Irving paid the fine (GC Exh. 18).

The transcript of the Union's internal trial does not reveal how the court members decided to assess the penalty of \$147.18.

I find, however, that Johns' testimony, when considered with the formal introductory statement that he read at the beginning of the trials, reveals how the trial court members decided to assess the \$147.18 penalty against Irving and a \$209.08 penalty against Eichner.

The bylaws and rules of Local 13000 (R. Exh. 5, art. 14, sec. 2(c), p. 11) require that "The trial court chairman *shall* [emphasis added] take part in the trial court's deliberations but shall not vote." Pursuant to this requirement, Chairperson Johns included in his formal introductory statement at the trial of both Irving and Eichner the following (GC Exhs. 19 p. 4 and 32 p. 6):

As trial court chairperson, I take *part in the trial court's deliberations*, but I have no vote. [Emphasis added.]

Johns testified (Tr. 310), "I do believe that [the court members] fined [Irving] three hours." In fact, that was how Eichner's, not Irving's, fine was figured. When this was pointed out by the union counsel, Johns responded: "I forget which, I'm sorry. I know one of them was."

There is nothing in the transcribed record of the trial of either Irving or Eichner (GC Exhs. 19 or 32) about a penalty for violating the executive board's directive against working overtime. I infer that when the court members decided on the penalty of a \$147.18 fine for Irving and the \$209.08 fine for Eichner, they were relying on what Chairperson Johns (a member of the Union's executive board) told them, when he took "part in the trial court's deliberations."

Johns also testified (Tr. 311–312) that the Irving court members "deliberated on the fact that during the proceedings, Ms. Irving had never brought to the prosecutor's attention that she had been forced until this came in." Johns was referring to Supervisor Murray's June 13, 2002 written statement, reporting that he forced Irving to work 8 hours of overtime (GC Exh. 15).

When asked what the court members said about not believing Irving, Johns testified (Tr. 312), "They said because she never used that defense up until that day, never, never told the . . . prosecutor/investigator that she had been forced." There is nothing in the transcript of evidence in Irving's trial that she had never brought to Prosecutor Douglas' attention her being forced to work overtime. To the contrary, as found, Irving had told Douglas on two previous occasions that she had been forced to work the overtime (Tr. 140–141).

I infer that Johns gave this false information to the trial court members when he took "part in the trial court's deliberations" and, if they did not believe Murray's statement that Irving was forced to work overtime, they were influenced by Johns' false representation to them.

Despite this evidence and contrary to the requirement in the Union's bylaws and rules that the "trial court chairman shall take part in the trial court's deliberations," Johns testified that "No," he did not "participate in their deliberations" (Tr. 308). I discredit his denial.

I find that Chairperson–Executive Board Member Johns' taking part in the deliberations enabled him to join Prosecutor Douglas in defending and enforcing the executive board's August 4 directive, prohibiting all union members in the Verizon statewide bargaining unit from working any overtime on August 4 and 5.

4. Internal union trial of Margaret Eichner

Eichner did not attend her trial 3 months later on November 13, 2002, being certain that "I was going to be found guilty" and that "It would be a waste of time" (Tr. 150). The trial proceeded without anyone representing her (GC Exh. 32).

In the short trial, Prosecutor Charles Douglas called and questioned five witnesses (GC Exh. 32 pp. 45–59), none of whom testified that Eichner worked voluntary overtime.

Douglas first called Unit 41 President Rene Rupp and asked her (GC Exh. 32 p. 46):

Q. And you were advised of the executive board decision of working *forced or voluntary* overtime on August 4th and August 5th, 2000?

A. Yes, I was. [Emphasis added.]

I NOTE that the Union falsely represents in its brief (at 19, also citing GC Exh. 32, but without a page number) that "Rupp . . . testified [at the internal trial] about the Union's ban on working *voluntary* [emphasis added] overtime," instead of both forced and voluntary overtime.

Douglas then asked Rupp (GC Exh. 32 p. 46), "Were you provided with statements from your reps and stewards that Margaret Eichner worked overtime [not voluntary overtime]?" she answered, "Yes, I was."

When Douglas called his next witness, Unit 41 Vice President Jean Ryer, Chairperson Johns asked Douglas (GC Exh. 32 pp. 51–52) if Ryer would need any of the exhibits that had already been introduced in evidence. Douglas responded "5 and 2" and Ryer confirmed that she had written both documents. Douglas then asked Ryer "to read the part of exhibit 2 [her pretrial statement] that just pertains to Peggy Eichner."

Douglas ignored and asked no questions about exhibit 5 (R. Exh. 8 p. 6) which, as quoted above, was Ryer's summary of the Union's executive board directive that members work *no overtime, forced or voluntary*.

Ryer read from exhibit 2 (GC Exh. 32 p. 52) that she was on vacation, that she called (Union Representative) Mary Best that Friday morning and "told her to go down and tell all my people *no overtime*," and "I also had talked to Bob Hofmann and told him to leave a note out on the desk, *no overtime*" (emphasis added).

Ryer next read from exhibit 2 (GC Exh. 32 p. 52): "At 3:30, I talked to Peggy Eichner, read her the above, which is Exhibit 5, *no overtime forced or voluntary* [emphasis added] . . . And she screamed at me, she said she was forced."

I NOTE that the Union falsely represents in its brief (at 19, also citing GC Exh. 32 p. 52) that Ryer "testified" (reading from exhibit 2, her pretrial statement) "that the Union's *no voluntary* [emphasis added] overtime policy had been communicated to Eichner's group, and that she had reiterated this directive to Eichner by telephone at 3 p.m. on August 4, 2000." To the contrary, Ryer read nothing about a "no voluntary" overtime policy being communicated to Eichner's group, nor about reiterating this directive to Eichner.

Ryer also read from her pretrial statement (GC Exh. 32 p. 53) that Eichner wanted a "guarantee on CWA letterhead faxed to her that there would be no action from the company taken against her . . . if she refused to work overtime." Then, reading from the statement (p. 53), Ryer revealed:

So I called Dick Johns [Richard Johns, the Union's vice president of the Western Region and later appointed chairperson at the internal trial] at the hall [the Western Region office in Carnegie, Pennsylvania], and he said he could not do that. And like I said . . . [Eichner] was working because she was being forced."

Ryer next read (GC Exh. 32 p. 53): "At 7 p.m., I talked to Anita Summers. She's a rep for Branch 1. And she confirmed that Peggy [Eichner] was working that night on the eighth floor"—nothing about voluntary overtime.

Ryer further read (pp. 53–54) that frame attendant Bob Hofmann told her that Supervisor Banks ran the overtime list to determine who "would be forced to work," and when Banks came to Eichner, "she said yes, I'll take it."

When Douglas called Hofmann as his next witness (GC Exh. 32 p. 55), he did not ask Hofmann any question about what Ryer told him (about leaving "a note out on the desk, no overtime"). Douglas asked Hofmann whether what Ryer just read from her statement regarding what Hofmann told her "was basically true?" Hofmann answered yes. When Douglas asked if he would change anything on that statement, he answered, "No, I wouldn't" (acknowledging that Ryer told him to "leave a note out on the desk, no overtime").

Hofmann also testified (p. 56) that (Banks) ran through the (overtime) list (to force overtime), that Eichner was last, and that Eichner said "I'll take it."

Thus, both Ryer and Hofmann testified that Eichner said she would take the forced overtime—not that Eichner worked voluntary overtime.

Anita Summers, Douglas' fourth witness, testified at the internal trial (GC Exh. 32 pp. 56–57) that what Ryer had written was true and that she had told Ryer at 7 p.m. over the telephone that Eichner was working on the eighth floor—nothing about voluntary overtime.

Union Representative Mary Best, Douglas' fifth witness, read (GC Exh. 32 pp. 57–58) from her pretrial statement (Exhibit 4, R. Exh. 8 p. 5) that at 10 a.m., she advised "everyone of *no forced or voluntary overtime* [emphasis added]."

After Chairperson Johns excused Best, Douglas made the following false closing statement, obviously intending to mislead the internal court members (GC Exh. 32 at 59):

MR. DOUGLAS: You've been presented with five statements and also five witnesses that say that Peggy

Eichner was told that there was no *voluntary* overtime, and she basically did volunteer for it. [Emphasis added.]

To the contrary, none of the five witnesses testified that Eichner volunteered for voluntary overtime.

Before the trial, Eichner had sent the following letter dated November 8, 2002 to CWA Local 13000, Western Region, to the attention of Chairperson Johns, stating (GC Exh. 27):

I will not be attending the trial on Wednesday, November 13. Enclosed is a copy of my supervisor's letter stating I was forced overtime.

I will see you or your representative at the NLRB hearing in December.

Attached to the letter was Supervisor Darrell Banks' following October 9, 2000 memo:

Subject: FORCED OVERTIME

Margaret Eichner was forced to work overtime by management. Margaret refused to work overtime on the Friday before the contract deadline. Margaret was asked again to work overtime, she had refused again. The company informed Margaret that she was being forced to work overtime and, if she did not comply with the instructions given to her, she would be insubordinate and this could lead to disciplinary actions.

When testifying as a defense witness, Johns admitted (Tr. 313) that he had received this memo from Eichner. Yet, he did not reveal the memo at the internal trial—even though he testified that as trial court chairperson, “I oversee the proceedings, *make sure that everyone gets a fair trial* [emphasis added]” (Tr. 308), and even though, at the beginning of the trial, he read the Union's following rule in the formal introductory statement (GC Exh. 32 p. 6):

As trial court chairperson, I am responsible to *ensure a fair trial* for the accused, to maintain order, and to see that *the rights of all parties are preserved*. [Emphasis added.]

The Union contends in its brief (at 20) that “Johns appropriately determined that such ‘evidence’ could only be introduced by Eichner. Since Eichner had not bothered to attend her own trial, it was not Johns' place to put her case on for her. Tr. 313–314.”

On November 14, the day after the internal trial, Johns notified Eichner (GC Exh. 28) that the trial court found her “guilty of violating the Local 13000 *Executive Board policy on not working voluntary overtime* [emphasis added] on August 4, 2000”—again misstating the “Executive Board policy of no overtime,” as stated in the charge (GC Exh. 6)—and assessed a \$209.08 fine against her, which Eichner did not pay (Tr. 142).

In weighing the fairness of the trial, I take into consideration all the evidence, including what Unit 41 Vice President Ryer revealed at the internal trial (GC Exh. 32 p. 53), that Johns already had personal knowledge on August 4, that Eichner was being forced to work overtime.

As Ryer revealed (p. 53), she called Johns at his office on August 4, and reported that Eichner “was being forced” to work overtime and wanted a “guarantee on CWA letterhead faxed to her that there would be no action from the company taken

against her . . . if she refused to work overtime,” and Johns “said he could not do that.”

Johns, of course, had this personal knowledge when he later accepted Union President Carr's appointment to be the internal court's chairperson and when, as chairperson at Eichner's trial, he concealed from the court members his receipt of Supervisor Murphy's statement confirming that “Margaret Eichner was forced to work overtime.”

I find that the primary role of Chairperson–Executive Board Member Johns at the internal trial of Eichner, as well as at the trial of Irving, was to join with Prosecutor Douglas in defending and enforcing the executive board's August 4 no-overtime directive.

D. Union's Defenses

1. Irving and Eichner violated lawful ban on voluntary overtime

As indicated, the Union's primary defense in its brief (at 24) is that it “properly fined Irving and Eichner for violating its lawful ban on working voluntary overtime.”

In asserting this defense, despite conclusive evidence that the executive board, as found, directed union members in the Verizon statewide bargaining unit to work *no overtime*, whether “forced or voluntary,” the Union repeatedly makes the misleading contention in its brief (at 1, 11, 15, 16, 17, 18, 19, 20, 21, 24) that its executive board directed the members not to work *voluntary* overtime. As found, this contention falsely implies that the executive board's directive prohibited members from working only voluntary overtime, not also mandatory overtime.

I find this defense, that the Union lawfully disciplined Irving and Eichner for working *voluntary* overtime, is clearly designed to distinguish the Board's controlling decision in *GAIU Local 13–B (Western Publishing)*, above, 252 NLRB 936938 (1980), citing the Supreme Court's decision in *Schofield v. NLRB*, 394 U.S. 423, 428–430 (1969).

In that case the Board found that the union, which imposed a ban on working *mandatory* overtime to induce the employer to make concessions, violated Section 8(b)(1)(A) when it disciplined its members for refusing to engage in the unprotected activity of obeying the union's overtime ban, which affected their employment status with the employer.

Having found conclusive evidence that the executive board's directive was a ban on all overtime, including mandatory overtime, and having found that Irving and Eichner were forced to work mandatory overtime, I find that the Union has failed to distinguish the Board's decision in *Western Publishing*. I reject, as unfounded, the Union's primary defense that it properly fined Irving and Eichner for violating its lawful ban on working voluntary overtime.

2. Irving's overtime was voluntary because improperly forced

This defense is apart from the Union's unfounded defense that it lawfully fined Irving and Eichner because they violated the Union's ban on working voluntary overtime.

As found, on Saturday morning, August 5, Night-Shift Supervisor Murphy threatened Susan Irving and the three night-shift employees with discipline up to and including dismissal if they refused to work the day shift. Having volunteered earlier that week to work that Saturday before being advised of the

Union's August 4 no-overtime ban, the four employees were the only employees who were scheduled to work.

The Union contends in its brief (at 13) that the proper procedure for selecting employees for forced overtime is "first asking for volunteers and then forcing those employees with the least amount of overtime opportunities." It then contends (at 26):

Unless the employee is forced through this process to work the overtime to which he or she had originally consented, and then refuses, he or she is not subject to discipline [by the employer].

Apply these uncontroverted procedures to Irving's case, it becomes clear that the overtime she worked on Saturday, August 5, 2000, was voluntary [without explanation how working forced overtime could be considered "voluntary"].

Of course, those selection procedures are inapplicable, for obvious reasons.

First, there were no other employees present that Saturday morning to be assigned. The Union admits in its brief (at 5) that "only those employees actually present at the work site will be asked to volunteer for overtime from the [overtime] list. Employees who are at home or otherwise not scheduled that day will not be asked to volunteer."

Second, even if there were other employees present, there was no supervisor on duty on the weekend to follow the procedure.

Moreover, Supervisor Murphy had given Irving a direct order to perform the assigned overtime. Contrary to the Union's contention that she would not be "subject to discipline" for refusing the assignment, such a refusal clearly would be insubordination. Even if the direct order were improper, her recourse would have been to file a grievance, not to ignore the order.

I reject, as an obvious afterthought, this second defense that Irving's overtime on August 5, was voluntary because she was improperly forced to work it.

3. Eichner exceeded cap on overtime, therefore voluntary overtime

This defense is also apart from the Union's unfounded defense that it lawfully fined Irving and Eichner because they violated the Union's ban on working voluntary overtime.

Margaret Eichner worked a total of 11 hours of voluntary overtime the first week in August: 3 hours on Tuesday, 4 hours on Wednesday, and 4 hours on Thursday (R. Exh. 2). As found, she also worked 7 hours of mandatory overtime on Friday, August 4, because of Supervisor Banks' threat of disciplinary action against her if she refused.

The Union contends in its brief (at 28–29) that Banks "could not have forced Eichner to work 7 hours of overtime that night, as that amount of overtime would have caused her to work in excess of 15 hours of overtime [totaling 18 hours] that week," therefore

Eichner was free to decline to work the overtime pursuant to the terms of the [collective-bargaining agreement]. At the least, she could not have been forced to work more than 4 hours since she had already worked 11 hours of overtime in that week. Consequently, Eichner's overtime was voluntary in

nature, violative of the Union's ban on members working such overtime, and therefore could properly subject Eichner to a fine by a Trial Court [of the Union]."

Thus, the Union contends that Eichner was free to disobey the supervisor's order on the theory that under the expiring contract, every hour of voluntary overtime an employee worked during the week must be counted toward the 15-hour cap on overtime.

In asserting this defense, the Union relies solely on its own construction of article A3.0222 in the 1998 contract (GC Exh. 2 pp. 84–85), which read (in relevant part):

An employee *may elect not to work . . . more than a total of 15 hours overtime* in any payroll week [during 5 calendar months of the year (including August) and 10 hours in the other 7 months]. [Emphasis added.]

I reject this construction of the contract for a number of reasons.

First, article A3.0222, which provided that an employee "may elect not to work" more than "a total of 15 hours overtime," clearly was intended to apply to an employee electing not to work mandatory overtime. There was no restriction on the amount of voluntary overtime an employee may work, "other than normal safety considerations" (Tr. 216).

Second, the Union admits in its brief (at 6, 10, 29) that the employer disagreed with its construction of article A3.0222.

Supervisor Banks credibly testified that under the 1998 contract, only "forced overtime hours are counted" toward the 15-hour limit (Tr. 167). Verizon Senior Labor Relations Staff Consultant Richard Heimberger, who had been an employer representative in bargaining with CWA Local 13000 since 1992 (Tr. 209), credibly testified that in the 1998 agreement, the employer looked at the amount of forced overtime—not voluntary overtime—that counts toward the 15-hour cap (Tr. 219).

Heimberger also credibly testified the practice has been, that if an employee had already worked 15 hours of voluntary overtime, "We could still . . . force the employee to work 15 hours overtime"; that if an employee is forced to work overtime and refuses, "they can be disciplined for insubordination"; and that from his experience dealing with grievances, "If there is a dispute over whether or not that overtime could have been forced, the employee is free, of course, to file a grievance," which "can be processed to arbitration" (Tr. 219–221).

Third, because the practice had been not to count voluntary overtime toward the overtime cap, Local 13000 was proposing in its current negotiations with Verizon a provision that both forced and voluntary overtime would be counted toward the overtime cap and that the overtime cap would be lowered to 8 hours a week (Tr. 223).

Thus, in the "Joint Minutes of Contract Negotiations" on July 27, 2000, James Short, the chairperson of CWA Local 13000's negotiating committee, listed the following demand among the pending issues being negotiated (Tr. 225; GC Exh. 36 pp. 51, 54):

In *Section IV, Union Demand #13—Modify language on Forced Overtime—Article A3.0221 & A3.0222*, this demand has two parts; we want all the overtime hours reduced to eight hours and all hours, forced and voluntary,

counted towards the build-up of the eight hours overtime requirement. This issue is still on the table.

Agreement on this issue was not reached with the employer at the Local 13000 bargaining table in Pennsylvania. Agreement was later reached at the common issue table in Arlington, Virginia, in bargaining also with CWA District 2, which includes CWA locals in Maryland, Virginia, West Virginia, and the District of Columbia. (Tr. 225–226; Union brief at 3.)

The new agreement (GC Exh. 3 pp. 84–85) provided that the overtime cap would be reduced to 10 hours a week beginning September 1, 2000, and to 8 hours a week beginning January 1, 2001, and that “Voluntary overtime worked will be counted toward the overtime cap, except for the period from January 1, 2001 to September 1, 2001.”

I NOTE that the Union falsely represents in its brief (at 6, fn. 1, citing Vice President Johns’ testimony at Tr. 307) that these changes were “requested by the CWA bargaining unit in West Virginia,” and “not instigated by CWA Local 13000.”

This contention clearly misquotes the testimony of Johns, a member of the Local 13000 bargaining committee (GC Exh. 36 p. 51). He testified (Tr. 307): “To be quite frank, West Virginia wanted the hours reduced to absolutely nothing because they had forced overtime,” and “they wanted zero” forced overtime.

Therefore, the West Virginia local simply wanted “zero” forced overtime and neither requested that voluntary overtime be counted toward the overtime cap, nor requested that the overtime cap be reduced to 8 hours a week, as Local 13000 had already proposed in the Pennsylvania negotiations.

Moreover, nothing was said at the time of Eichner’s assignment about counting her voluntary overtime earlier in the week toward an overtime cap. There is no evidence that she had even heard of the Union’s rejected theory about including both voluntary and forced overtime in the overtime cap under the 1998 contract.

I reject, as another obvious afterthought, this third defense that Eichner’s 7 hours of forced overtime on August 4, exceeded the 15-hour overtime cap and consequently was “voluntary in nature” and “therefore could properly subject Eichner to a fine by a Trial Court.”

E. Concluding Findings

As found, the Union’s August 4, 2000 directive, which banned all overtime on August 4 and 5, before the expiration of the old contract, included a promise to its members that “There will be no contract till there is complete amnesty for disciplinary action taken against any member taking part in this action.”

Also, as found, it is obvious that the Union then recognized that by directing its members not to work any overtime, including mandatory overtime, it was directing them to engage in unprotected activity that would subject them to lawful discipline. Verizon did discipline hundreds of the member-employees for obeying the Union’s no-overtime directive.

Although the strike, which began August 6, lasted approximately 3½ weeks, the Union was unable to fulfill the promise to its members not to sign a contract until there was “complete amnesty for disciplinary action taken against any member.”

After the strike ended, the Union filed charges against an undisclosed number of its members, including 16 to 20 in Unit 41 in Pittsburgh, for working overtime in violation of its no-overtime directive. Two of these charges were filed on September 18, 2000, against the charging parties, Margaret Eichner for working on August 4, and Susan Irving for working on August 5.

Instead of proceeding to prosecute these charges, the Union gave priority to continuing its “Non-Participation” policy against Verizon until an agreement on amnesty could be reached. Verizon finally agreed, effective December 18, that “all discipline, including any discharges, suspensions or write-ups, in conjunction with the refusals to work overtime on August 4th & 5th, will be rescinded” (GC Exh. 33).

On January 23, 2001, the five top Local 13000 officials on the executive board sent a letter (GC Exh. 35) to its members in the statewide Pennsylvania bargaining unit of about 7500 Verizon employees, reporting this amnesty agreement.

After referred in the letter to “the discipline inflicted upon hundreds of our members for acts of ‘Union Solidarity’” (obeying the Union’s August 4 no-overtime directive), the union officials credited the success in negotiating the amnesty agreement to the “overwhelming support and Solidarity” of the membership. They then assured the members, “This agreement does not prohibit the Union from any and all future actions, taken on behalf of its members, in regards to other issues it may feel warrant actions.”

Thus, the Union was clearly indicating that it could take future actions on “other issues it may feel warrant actions,” again directing its members to engage in unprotected activity, forcing them to choose between subjecting themselves to employer discipline in support of union “Solidarity,” or being prosecuted by the Union for disobeying.

Meanwhile, there were the pending charges against members, such as Eichner and Irving, who chose to avoid Verizon’s discipline by performing assigned mandatory overtime, rather than obeying the Union’s August 4, 2000 no-overtime directive.

Even after the amnesty agreement was reached, the Union did not proceed with prosecuting the charges filed against Eichner and Irving.

An evident problem was the wording of the Union’s charges against them. As found, the charges alleged, in identical formal language, that Irving and Eichner worked voluntary overtime. Yet, the charges admitted that they worked the overtime “after being informed of an Executive Board policy that *no overtime* [emphasis added] was to be worked.”

Finally in 2002, instead of withdrawing the unfounded charges against its members who worked assigned mandatory overtime on August 4 or 5, 2000, the Union decided to proceed with the prosecutions. It decided—despite all the facts to the contrary—to defend and enforce its August 4 no-overtime directive by misstating it as a directive prohibiting only voluntary overtime.

Then the Union selected which of the charges to prosecute. I infer that it selected the charges against Irving and Eichner because of the particular circumstances of their working assigned overtime.

The Union evidently expected that if these circumstances provided additional grounds for the Union to have disciplined them, apart from its unfounded claim that the August 4 directive prohibited only voluntary overtime, there may be a better chance of defending the directive and perhaps enforcing its charges against other members.

The Union selected Irving who had worked overtime on Saturday, August 5, when there was no supervisor on duty and only three other employees were scheduled to work. When the four employees refused to work because of the Union's overtime ban, a supervisor threatened on his home telephone to discipline all four of them if they continued to refuse to work. Under this threat, Irving agreed to work, but the other three employees still refused and left the job. Although there was no other employee present for assignment, the Union decided to make the unfounded claims that Irving was not forced to work through the proper overtime-selection procedure, that she was not subject to discipline, and that therefore her overtime was voluntary.

The Union selected Eichner to prosecute after deciding to make the unfounded claim that because she had worked 11 hours of voluntary overtime earlier in the week, her 7 hours of forced overtime on Friday, August 4, was "voluntary in nature," because the total of 18 hours of overtime exceeded the 15-hour weekly overtime cap—ignoring the fact that voluntary overtime had never been included in the overtime cap.

To prosecute the two charges, the Union selected Richard Johns, a member of the Union's executive board, and Charles Douglas, the Unit 54 secretary. As found, their primary role was to defend and enforce the Union's August 4 directive.

In the internal trials that followed, the evidence showed that both Irving or Eichner worked mandatory overtime, not voluntary overtime. Yet Johns notified each of them (a) that she was "guilty of violating the Local 13000 executive board policy on not working voluntary overtime," although both charges alleged that they were informed of an executive board policy that "no" overtime was to be worked, and (b) that a fine was assessed: \$147.18 against Irving, who paid the fine, and \$209.08 against Eichner, who did not.

Contrary to the Union's contention in its brief (at 32) that the complaint should be dismissed in its entirety, I conclude that the Union—to defend and enforce its August 4, 2000 directive, banning member-employees of Verizon from working any overtime on August 4 and 5, 2000—violated Section 8(b)(1)(A) by prosecuting and fining Susan Irving and Margaret Eichner in 2002 for working mandatory overtime and not obeying its directive to engage in unprotected activity, which would subject them to lawful discipline by Verizon.

CONCLUSIONS OF LAW

By prosecuting and fining Susan Irving and Margaret Eichner for working assigned mandatory overtime, to defend and enforce its August 4, 2000 directive banning all overtime on August 4 and 5, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent Union 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 Respondent having unlawfully fined Susan Irving and Margaret Eichner, it must rescind the fines and make whole Irving, who paid her fine, by refunding the amount of the fine, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Communications Workers of America, Local 13000, AFL-CIO, Philadelphia, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Prosecuting and fining any member for not obeying its August 4, 2000 directive prohibiting member-employees in the Verizon statewide Pennsylvania bargaining unit from working any overtime on August 4 or 5, 2000.

(b) Disciplining any member for not obeying any directive of the Union to engage in unprotected activity that would subject the member to lawful discipline by Verizon.

(c) In any like or related manner 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) Within 14 days from the date of this Order, rescind the fines assessed against Susan Irving and Margaret Eichner for not obeying its August 4, 2000 no-overtime directive, and refund Irving for the fine she paid, plus interest.

(b) Within 14 days from the date of this Order, remove from its files any reference to the fines assessed against Susan Irving and Margaret Eichner, and within 3 days thereafter notify them in writing that it has done so.

(c) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix,"³ after being signed by the Respondent's authorized representative, to all member-employees in the contractual Verizon statewide Pennsylvania bargaining unit.

(d) 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.

² 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.

³ 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."

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist any union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT prosecute and fine any of you for not obeying our August 4, 2000 directive prohibiting member-employees in the Verizon statewide Pennsylvania bargaining unit from work-

ing any overtime (not just temporary overtime) on August 4 or 5, 2000.

WE WILL NOT discipline any of you for not obeying any directive to engage in unprotected activity that would subject you to lawful discipline by Verizon.

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

WE WILL, within 14 days from the date of the Board's Order, rescind the fines assessed against Susan Irving and Margaret Eichner for not obeying our August 4, 2000 no-overtime directive, and refund Irving for the fine she paid, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the fines assessed against Susan Irving and Margaret Eichner, and within 3 days thereafter notify them in writing that we have done so.

COMMUNICATIONS WORKERS OF AMERICA,
 LOCAL 13000, AFL-CIO