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Local 1657, United Food & Commercial Workers, AFL–CIO, CLC (Food World) *and* Richard Hamrick. Case 10–CB–7863

September 26, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

Upon a charge filed by Richard Hamrick, an Individual, on September 4, 2002, the General Counsel of the National Labor Relations Board issued a complaint on November 6, 2002 against the Respondent Local 1657, United Food & Commercial Workers, AFL–CIO, CLC, which as amended on January 8, 2003, alleges that the Respondent has breached its duty of fair representation in violation of Section 8(b)(1)(A) of the National Labor Relations Act by failing and refusing to provide a bargaining-unit employee with photocopies of an arbitration decision disposing of his grievance.

The amended complaint alleges, and the Respondent, pro se, admits in its answer, that the Respondent and Employer have been parties to a collective-bargaining agreement, effective by its terms from September 26, 1999, through September 27, 2003, which covers all employees employed by the Employer at its Alabama retail establishments who handle or sell merchandise or perform other incidental or related services. On or about May 15, 2001, Charging Party Richard Hamrick, an employee covered under the bargaining agreement, filed a grievance over his termination on April 13, 2001. In August 2002, an arbitrator disposed of the grievance and issued a decision reinstating Hamrick under certain specified terms and conditions, and awarding him a portion of the backpay sought in the grievance. That decision was subsequently clarified in response to requests by the Respondent and the Employer. Since on or about August 19, 2002, and continuing to the present, Hamrick has requested copies of the arbitrator's decision (as clarified) from the Respondent to verify that the Respondent and the Employer had complied with the decision's terms, including the computation of backpay and his return to work, and to see what effect, if any, the decision had on his seniority and other benefits. Since on or about August 20, 2002, the Respondent has failed and refused to provide Hamrick with photocopies of the arbitrator's decision (as clarified). The complaint alleges that, by refusing to provide Hamrick with photocopies of the arbitrator's decision (as clarified), the Respondent has breached its duty of fair representation and has violated Section 8(b)(1)(A) of the Act.

Although it admits all of the allegations, the Respondent denies that it has committed the unfair labor practice alleged in the complaint. The Respondent contends in its answer that it fairly represented Hamrick because it allowed him to review the decision and it offered to give the requested photocopies to Hamrick's attorney if Hamrick signed a confidentiality agreement.

On May 14, 2003, the General Counsel filed a Motion for Summary Judgment, asserting that the Respondent's answer to the complaint raises no genuine or material issues of fact which require an evidentiary hearing and urging that the Board issue a Decision and Order against the Respondent in accordance with the allegations of the complaint. Thereafter, on May 27, 2003, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. In its response to the Notice to Show Cause, the Respondent argues that it fairly represented Hamrick because he was allowed to visually inspect the arbitration decision on two occasions and it gave him a copy of the backpay and benefits settlement, which it reviewed with him and a representative of the Employer.

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

Ruling on Motion for Summary Judgment

The Respondent's admission of all the factual allegations in the complaint establishes that the Respondent refused to provide Hamrick with the requested photocopies of the arbitration decision (as clarified) disposing of his termination grievance. The Board has found that such conduct violates Section 8(b)(1)(A) of the Act. See *Letter Carriers Branch 758 (Postal Service)*, 328 NLRB 952, 953 (1999) (union breached its duty of fair representation by refusing to provide bargaining-unit members with photocopies of their grievance files, because "the right to photocopy union documents is merely a corollary of the employee's right of access to the documents"); *Letter Carriers Branch 529*, 319 NLRB 879 (1995) (union breached its duty of fair representation by refusing to provide charging party with photocopy of her grievance forms). Thus, Hamrick had a legitimate *general* interest in obtaining copies of the requested documents as they pertained to his grievance. His asserted legitimate *particular* interest (verifying that the Respondent and the Employer complied with the arbitration decision as subsequently clarified) was effectively communicated to the Respondent. The Respondent raised no substantial countervailing interest in refusing to provide Hamrick with photocopies of the requested documents, after having

permitted him to inspect the documents.[1] Id. at 881. There being no material facts in dispute, and in absence of any cause to the contrary having been shown by the Respondent (even assuming all facts alleged by the Union to be true), we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following findings.

FINDINGS OF FACT

I. JURISDICTION

The Employer, an Alabama corporation, is engaged in the retail grocery business. During the year preceding the issuance of the complaint, a representative period, the Employer, in conducting its operations described above, purchased and received at its Huntsville, Alabama facility, goods valued in excess of $50,000 directly from points outside the State of Alabama. We find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and we find, that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

The Respondent has refused to provide a unit employee with photocopies of an arbitration decision disposing of his grievance. By such conduct we find that the Respondent has violated Section 8(b)(1)(A) of the Act. *Letter Carriers Branch 758 (Postal Service)*, supra; *Letter Carriers Branch 529*, supra.

CONCLUSIONS OF LAW

1. Bruno's d/b/a Food World, Huntsville, Alabama, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By arbitrarily failing and refusing since at least August 19, 2002, to provide Richard Hamrick with photocopies of the arbitration decision (as clarified) disposing of his grievance, the Respondent breached its duty of fair representation, and violated Section 8(b)(1)(A) of the Act.

4. The foregoing unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(b)(1)(A) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to provide the Charging Party with the requested photocopies of the arbitration decision (as clarified) disposing of his grievance.

ORDER

The National Labor Relations Board orders that the Respondent, Local 1657, United Food & Commercial Workers, AFL–CIO, CLC, Birmingham, Alabama, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Arbitrarily failing and refusing to provide to Richard Hamrick photocopies of the arbitration decision (as clarified) disposing of his grievance.

(b) In any like or related manner restraining or coercing Richard Hamrick or any other employees represented by Local 1657, United Food & Commercial Workers Union, AFL–CIO, CLC, 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) Provide to Richard Hamrick photocopies of the arbitration decision (as clarified) disposing of his grievance.

(b) Within 14 days after service by the Region, post at its business office in Birmingham, Alabama, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 14 days after service by the Region, deliver to the Regional Director for Region 10 signed copies of the notice in sufficient number for posting by the Employer at its Huntsville, Alabama facility, if it wishes, in all places where notices to employees are customarily posted.

[1] Despite letting Hamrick review the arbitration decision on two separate occasions, the Respondent gave no reason for refusing to give him the requested photocopies.

[2] If this order is enforced by a judgment of the 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."

(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 the Respondent has taken to comply.

Dated, Washington, D.C., September 26, 2003

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND 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 a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT arbitrarily fail or refuse to provide to Richard Hamrick photocopies of the arbitration decision (as clarified) disposing of his grievance.

WE WILL NOT in any like or related manner restrain or coerce Richard Hamrick, or any other employee represented by Local 1657, United Food & Commercial Workers Union, in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL provide Richard Hamrick with photocopies of the arbitration decision (as clarified) disposing of his grievance.

LOCAL 1657, UNITED FOOD & COMMERCIAL WORKERS, AFL–CIO, CLC