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Communications Workers of America, Local 13000, AFL-CIO, CLC (Verizon Communications, Inc.) and Michael San Agustin. Case 6-CB-10992

September 30, 2004

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

On June 18, 2004, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed an answering 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.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. September 30, 2004

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Barton Myers, Esq., for the General Counsel.
Richard H. Markowitz, Esq., (Markowitz & Richman), Philadelphia, Pennsylvania, for the Respondent.

¹ The General Counsel 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.

Member Schaumber finds it unnecessary to pass on *Longshoremen ILA Local 1575 (Navieras, NPR)*, 332 NLRB 1336 (2000), relied on in part by the judge.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Pittsburgh, Pennsylvania, on April 13 and 14, 2004. The charge was filed September 29, 2003, and the complaint was issued January 23, 2004.

The General Counsel alleges that Respondent, Local 13000 of the Communications Workers of America (the Union) violated Section 8(b)(1)(A) of the Act by initiating internal union disciplinary proceedings against four employee/members who continued to park their company-owned vehicles at Verizon Communication's remote facilities. Representatives of the Union told these employees that they were violating the Union's "non-participation policy" with respect to all Verizon's voluntary programs. The General Counsel alleges that Verizon supervisors required these employees to continue parking at the remote facilities. Thus, the primary issue in this matter is whether the four employees were voluntarily parking at these locations or whether they were required to do so 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 Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Verizon Communications, Inc, a corporation, provides telecommunications services throughout the State of Pennsylvania. It annually derives revenues in excess of \$100,000 and purchases and receives goods valued in excess of \$5000 from points outside the State of Pennsylvania. Verizon is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union, the Communications Workers of America, Local 13000, which represents Verizon employees in most of Pennsylvania, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Union has instituted a "non-participation policy" on several occasions during collective-bargaining negotiations with Verizon. Generally this policy requires all union members to cease participation in any of the Employer's voluntary programs, such as blood drives, charitable activities, and certain training activities.

On December 13, 2002, in response to layoffs by Verizon, the Union announced the commencement of another such program.¹ The Union's executive board informed its members that:

Local 1300 members will not voluntarily participate in any company sponsored initiative, committee or program of any kind.

This means that you come into work, do your job, go home at the end of your respective workday. Once a week you accept, sign, and cash your paycheck.

¹ The policy was rescinded in November 2003, after the successful conclusion of collective-bargaining negotiations.

There are no exceptions.

Any member violating this Executive Board policy will be subject to charges under the CWA Constitution and Local 13000 Bylaws and Rules.

GC Exh. 4.

In the late 1990s, Verizon implemented a remote garaging program. Pursuant to this program, some field technicians are encouraged and allowed to park their company-owned vehicles at a location other than the main garage or work center to which they are assigned. Many of these locations are “central offices” which contain switching equipment that generates the dial tone for customer’s telephones. The central offices are often unmanned. Verizon installed desks, telephones, and computer terminals at the central offices to accommodate remote garaging employees. These employees commute to the central office by privately owned vehicle, where they pick up their company vehicle and their work assignments via computer. At the end of their workday in the field, these employees return to the central office, where they park their company-owned vehicles overnight.

The remote garaging program was beneficial to both Verizon and the employees involved. The employees participating in the program generally, if not always, lived closer to the remote locations than to their work center. Verizon benefited because the employees were generally closer to their work assignments at the beginning of each workday.

In December 2002, the president of Local 13000’s unit 59, Charles “Buzz” Meddings, informed members of the unit that, pursuant to the Union’s nonparticipation policy, those members who were parking at remote locations were to cease doing so and park at the work center to which they were assigned. Unit 59 is part Local 13000’s western region and has approximately 300 members. It encompasses several work centers south of Pittsburgh: Uniontown, Washington, and McKeesport, as well as a technical center in Monroeville, Pennsylvania.

By February 2003, 10 of the 15 employee/members assigned to the Uniontown work center, that had been parking company vehicles at remote locations, had ceased to do so and were parking the vehicles at Uniontown. Verizon did not discipline or threaten to discipline any of the ten employee/members who complied with the Union’s nonparticipation policy. At some time prior to February 25, 2003, the Union notified employee/members Martin Hancock, Gary Spence, Michael San Augustin, David Cutwright, and Sam Rice, that they were required to park their vehicles at Uniontown, pursuant to the nonparticipation policy.²

On February 25, 2003, the Union sent a letter to each of the five informing these members that they were violating the Union’s nonparticipation policy by continuing to park at the remote central offices and that they would be subject to internal union discipline if they continued to do. Sam Rice apparently

² Hancock and San Augustin were initially told that they could continue to park at the Donora central office. However, sometime before February 25, 2003, Meddings informed them that to do so would violate the nonparticipation policy.

began parking his company vehicle at Uniontown shortly thereafter. However, Hancock, Spence, and San Augustin continued to park at the Donora, Pennsylvania central office. David Cutwright continued to park at the Masontown, Pennsylvania central office.

On April 10, 2003, unit 59’s steward, Brad Stowers, filed charges against the four with Local 13000’s secretary-treasurer. Apparently, only unit 59 attempted to enforce Local 13000’s nonparticipation policy in this manner.³ On April 14, the secretary-treasurer of Local 13000 informed Stowers by letter that his charges were properly filed and that the Local’s president would be appointing someone to prosecute the charges. A copy of this letter was sent to Hancock, San Augustin, Cutwright, and Spence.

On April 24, 2003 Stowers and the four employee/members were informed by letter that Jean Ryer, unit secretary for unit 41, had been appointed to prosecute the charges filed by Stowers. Sometime in April or May 2003, Michael San Augustin filed an unfair labor practice charge against the Union. This charge was eventually withdrawn.

At about the same time, Hancock, Spence, and San Augustin solicited their supervisors for written documentation that the supervisor was requiring them to continue parking their company vehicle at the Donora central office. The supervisors, sympathetic with their plight and understanding that remote garaging was in Verizon’s best interests as well as the employees, were very willing to oblige them.

The testimony of Gary Spence and his supervisor, James Feick, makes it clear that he, San Augustin, Hancock, and Cutwright continued to park at the remote locations voluntarily. Spence testified that *after* he received the letter from the Union threatening him with discipline, he approached Feick. Spence testified, “he [Feick] flat-out told me that he doesn’t want me in Uniontown, he wants me to stay in Donora” (Tr. 48). Thus, by Spence’s account there was no indication that he was being *required* to continue parking at Donora, or that Verizon would discipline him if he ceased to do so. Moreover, Feick’s testimony at transcript pages 150–51 establishes that what he said to Spence was no different than what he said to the other employees who were parking at remote locations, and that there is nothing to distinguish Spence’s situation from other employees who worked for Feick.

A. [I]n approximately February of 2003, I received phone calls from my remote technicians, telling me they were being pressured to come back to the Uniontown work center. I told them I did not want them coming back, but most of them did return.

Q. And did you take any action concerning this?

A. No.

³ The Union did not take disciplinary action or even threaten disciplinary action against employee/members of other units of Local 13000, who continued to park at remote locations. This was true even in the case of Keith Wesoloski, a member of unit 57, who parked his vehicle at Scottsdale, Pennsylvania. This is the same remote location at which unit 59 Steward Brad Stowers parked, prior to complying with the nonparticipation policy, by parking in Uniontown.

Q. [Why] did you take no action against the ones who did return?

A. We [Feick and Area Manager Lynn O'Bradovich] decided not to. They requested to come back, and they volunteered to come back, and we honored that request.

A few days later, Feick told Spence he would honor his request to park at Uniontown. Then, Feick purported to reassign Spence permanently to Donora—apparently in violation of the collective-bargaining agreement.⁴ It is thus perfectly clear that Spence could have parked at Uniontown, without being disciplined by Verizon, had he desired to do so. I infer also that this was true with regard to Hancock, San Augustin, and Cutwright.

The testimony of Michael San Augustin and his supervisor, Frank Moyer, also leads me to infer that Moyer would not have “ordered” San Augustin to continue parking at Donora had San Augustin not asked him to do so. Indeed, San Augustin was quite candid in testifying that he solicited written “orders” to this effect:

I asked Frank [Moyer, his supervisor] . . . “Frank can I have something in writing, telling me that you require me to be in Uniontown” (Tr. 108).⁵

Hancock also solicited written “orders” from his supervisor, Jay Lieb, in May 2003, after both were aware that the Union was pursuing internal discipline against Hancock (Tr. 142). I infer that all the verbal “orders” issued to Hancock, San Augustin, Spence, and Cutwright were similarly solicited or were in response to inquiries that were either rhetorical or strongly suggested a desired response.⁶

I infer that Hancock, San Augustin, Spence, and Cutwright knew that Verizon would not discipline them if they complied with the nonparticipation policy. By the time they solicited their “orders,” all four were aware that other employees had complied with the Union’s nonparticipation policy by parking at Uniontown without any threat from Verizon of disciplinary action. There is nothing in this record that suggests that any of these four employees had a situation distinguishable from their coworkers who had complied with the Union policy. I assume

⁴ Both the General Counsel and the Union contend that the collective-bargaining agreement supports their position as to whether remote garaging was voluntary or mandatory. I find that the contract is at best ambiguous. Moreover, Verizon understood that it was problematic as to whether it could require employees to continue remote garaging; otherwise, it would have done so with regard to all the employees who complied with the “non-participation” policy by returning to the work centers.

⁵ San Augustin meant to say, “that you require me to be in Donora,” as evidenced by Moyer’s undated memo, Exh. GC 14.

⁶ None of this written documentation was shared with the Union. If I thought the General Counsel’s case had merit in other respects, I would address the issue of whether the Union could reasonably be expected to know that the four employees were being required to continue remote garaging when neither Verizon nor the four employee/members shared the “written orders” with the Union. I doubt I would find that the Union violated sec. 8(b)(1)(A) when all it had was verbal assertions that supervisors were requiring the four to continue to park at the remote central offices. So far as the Union knew, the four were continuing to park at the central offices simply because they desired to do so.

that it was beneficial to Verizon and personally advantageous to every employee who was remote garaging to continue doing so.

On September 18, the Union advised Hancock, San Augustin, Cutwright, and Spence that Prosecutor Ryer recommended going forward with a trial on the charge filed against them by Stowers. On September 24, a trial was scheduled for October 28, 2003. Apparently, in response, Michael San Augustin filed the charge in this matter alleging that the Union was violating the Act by pursuing disciplinary action against himself, Spence, Hancock, and Cutwright. The trial was postponed on October 2 and no further action with regard to the charges has been taken by the Union.

Analysis

Internal union discipline, such as fining and expelling members, that affects only an employee’s relationship with the union, is governed by the test set forth in *Scofield v. NLRB*, 394 U. S. 423, 430 89 S. Ct. 1154 (1969):

Section 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.

The Supreme Court later held in *Pattern Makers v. NLRB*, 473 U.S. 95 (1985), that members are free to escape union discipline by resigning their union membership. Further, where the collective-bargaining agreement contains a union security clause, employees can seek financial core membership to avoid any possibility of union discipline.

In interpreting Section 8(b)(1)(A), the Board has drawn a clear distinction between instances in which a union seeks to discipline its members for complying with an employer’s mandatory requirements, i.e., those which put the member at risk of discipline or discharge, and those which are voluntary. For instance, this Respondent has been found to violate the Act in disciplining its members for working mandatory overtime, *Communications Workers of America, Local 13000 (Verizon Communications)* 340 NLRB No. 2 (2003).

In the instant case, the record makes it perfectly clear that employee/members Hancock, San Augustin, Cutwright, and Spence could have complied with unit 59’s insistence that they cease remote garaging had they desired to do so—without risking discipline from Verizon. They were able to solicit “orders” from supervision sympathetic with their situation, who recognized that it was advantageous to Verizon for the four to continue to park at the remote central offices. By the time these “orders” were solicited, the four employee/members and their supervisors were aware that many other unit 59 members had ceased remote garaging without being threatened with discipline by Verizon. The four did not have any reasonable basis for fearing disciplinary action against them in that there is nothing in their situations that is distinguishable from those employee/members who complied with the Union’s directives.⁷

⁷ I discredit the testimony of Richard Heimberger, a former Verizon labor relations department employee, at Tr. 82–83. Heimberger suggested that it was more necessary to Verizon’s business interests that Hancock, San Augustin, Cutwright, and Spence continue remote garaging.

In that I find that the four employee/members voluntarily continued to park at the remote locations, I conclude that the Union did not violate Section 8(b)(1)(A) in threatening them with internal union discipline or in commencing the process for such discipline. I offer no opinion as to the wisdom of the Union's policy or its enforcement only against members who belonged to unit 59. However, the record suggests no illegal or improper reason as to why the Union sought discipline only against unit 59 members, as opposed to members of other units.

ing than it was that other employees continue to do so. Heimberger offered no specifics to support this contention. I find that the only distinction between the four and other remote garaging employees is that they resisted the Union's directive and sought help from their supervisors in avoiding a return to the Uniontown garage. Finally, I would note that supervisor James Feick's testimony at Tr. 152, as to his conversation with Heimberger, provides no corroboration for Heimberger's testimony.

Moreover, the Board has held (reversing the undersigned judge) that Section 7 gives employees the right to be free from unfair or irrelevant or invidious treatment by their bargaining agent *only with regard to matters affecting their employment, International ILA Local 1575 (Navieras, NPR)*, 332 NLRB 1336 (2000). I therefore dismiss the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

ORDER

The complaint is dismissed.

Dated, Washington, D.C., June 18, 2004.

⁸ 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.