**Communications Workers of America, Local 1118 (New York Telephone Co.) *and* Susan Hodgson *and* Mark Glogowski.** Cases 3–CB–5563 and 3–CB–5571

November 29, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On April 29, 1991, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel 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 as modified.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3.

''3. By demonstrating and picketing at the residence of Thomas Hodgson, a nonstriking employee of the Company, the Respondent restrained and coerced an employee in the exercise of the rights guaranteed him in Section 7 of the Act and engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Communications Workers of America, Local 1118, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

Insert the following as paragraph 2(b) and reletter the subsequent paragraph.

''(b) Sign and return to the Regional Director sufficient copies of the notice for posting by New York Telephone Co., if willing, at all places where notices to employees are customarily posted.''

*Alfred M. Norek, Esq.,* for the General Counsel.
*Gabrielle Semel, Esq.,* for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on January 16, 1991, in Albany, New York. The consolidated complaint which issued on December 1, 1989,[1] was based upon unfair labor practice charges filed by Susan Hodgson on October 26 and by Mark Glogowski on November 6. The complaint alleges that Communications Workers of America, Local 1118 (Respondent) violated Section 8(b)(1)(A) of the Act by authorizing its officers, agents, and representatives to picket and engage in demonstations at the homes of nonstriking employees of the New York Telephone Co. (the Company), against whom it was engaging in a strike.

Upon the entire record, including the briefs received from the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a New York corporation, with its principal office in New York, New York, and numerous other offices throughout the State of New York, including Schenectady and Albany, is engaged in the business of providing and installing local and long-distance telephone communication and related services within the State of New York. Annually the Company derives gross revenues in excess of $1 million and, during the same period, purchases and receives goods and materials valued in excess of $50,000 which are sold and shipped to it within the State of New York directly from points located outside the State of New York. Respondent

[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.

We agree with the judge that the Respondent violated Sec. 8(b)(1)(A) of the Act by picketing on two occasions at the residence of Thomas Hodgson, a nonstriking unit employee. In so finding, we rely on the following facts. A significant number of strikers—described by the Respondent as approximately 10 people and by the Hodgsons as from 12 to 15 people on the first occasion and described by the Hodgsons as 5 or 6 people on the second occasion—demonstrated in Hodgson's residential neighborhood during nonwork hours with signs accusing Hodgson of being a ''scab.'' Each incident of picketing lasted about 30 minutes. One of the strikers told Hodgson's wife that they had come to picket because her husband was a scab; others stated to her, ''We don't want you, we want your husband,'' and ''We don't want you, we want your husband, we want him back, not back at work.'' Additionally, as found by the judge, one of the strikers remarked to Hodgson's daughter that she must be a brave little girl for her father to be returning to work. The police were summoned on both occasions. Under these circumstances, we find that the strikers' conduct constituted unlawful coercion and restraint. Cf. *Carpenters Local 1098 (Womack, Inc.),* 280 NLRB 875 fn. 1 (1986).

We find it unnecessary to pass on the judge's finding that the Respondent also violated Sec. 8(b)(1)(A) by picketing the residence of nonstriking unit employee Mark Glogowski about September 22, 1989, because any such finding would be cumulative and would not affect the Order. We have amended the judge's conclusions of law accordingly.

Finally, we dismiss the complaint allegations concerning three additional incidents of picketing at the Glogowski residence because there has been no showing that the picketing involved members or agents of the Respondent.

[1] Unless indicated otherwise, all dates referred to relate to the year 1989.

admits, and I find, that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. LABOR ORGANIZATION STATUS

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

## III. THE FACTS

Respondent represents certain of the Company's employees in the Albany, New York area. Beginning on about August 6 Respondent, together with other local unions of the Communication Workers of America, began a strike against the Company that lasted about 4 months. In furtherance of this strike Respondent picketed numerous of the Company's offices as well as jobsites. This picketing is not challenged herein. What is challenged is a number of incidents where the Respondent admittedly authorized or encouraged its members, stewards and officers to picket the homes of two unit employees of the Company who had originally supported the strike, but subsequently resigned their membership in Respondent, returned to work for the Company, and worked for the duration of the strike. The employees involved are Thomas Hodgson, who was employed by the Company as a switching equipment technician and was a member of the Respondent and participated in the strike for about 6 weeks, at which time he resigned his membership in Respondent and returned to work, and Mark Glogowski, who was also a switching equipment technician for the Company who, while in the unit, has not been a member of Respondent since 1984. Glogowski also participated in the strike for about 6 weeks, at which time he returned to work.

The sole issue is the legality of Respondent's picketing of the homes of Hodgson and Glogowski; Hodgson's home was picketed on September 21 and 30 and Glogowski's home was picketed on about September 22 and 29 and October 24 and 29. The consolidated complaint alleges agency status of 19 individuals, including Respondent's president, shop steward, officer, and pickets. As Respondent admitted that it authorized and arranged for the picketing it is not necessary to determine the agency status of these individuals. However, the evidence establishes that two of those specified, Donald Rycheck and Rick Gepfort were not members of Respondent. James O'Hare, president of Respondent, testified that Respondent paid strike benefits to those in need who picketed when requested by Respondent. He also testified that the Respondent organized picketing at the residences of nonstriking employees: ''we would have a group of people . . . that wanted a picket assignment. We said, 'okay, here's some houses to picket,' we gave addresses of the places we wanted picketed, and gave them rules.'' He testified: ''We sent them out to picket houses.'' O'Hare also testified that the purpose of the picketing was to inform the public (and more particularly the picketed employees' neighbors) that he did not support the strike and to make the public aware of the fact that the strike was continuing. The three member-pickets who testified agreed that this was Respondent's purpose in picketing the residences and testified, like O'Hare, that it was not a purpose of theirs to convince the picketed employee to rejoin the strike.

O'Hare also testified that when Respondent sent the members out to picket the residences they gave them specific rules; there was to be a maximum of 10 pickets at each residence and pickets were to be spaced 10 feet apart and were to keep moving. The pickets were instructed not to block the individuals from getting in or out of their home and to picket in a quiet orderly manner, with no screaming or chanting. The pickets were also instructed to have no contact with anyone who was not a member of Respondent and they were given a letter from Respondent's attorneys to give to the police, if they appeared.

On September 21, at about 5 p.m., Susan and Thomas Hodgson returned to their home in separate cars, each with one of their children (then age 12 and 14); Susan Hodgson returned first and observed a car containing four or five individuals parked in front of their home, a private house. She stopped and asked if she could help and was told that they were there to picket her house because her husband was a scab. She told them: ''I'm upper management and this is a loser'' and then drove up her driveway into the garage. A few minutes later her husband drove up with their daughter and a picket told her that she must be a brave little girl for her father to be returning to work. A neighbor then called to tell her that she was concerned for her safety and had called the police. She then called her lawyer who told her to record the license plate numbers of the vehicles parked in front of her home. She testified that when she went outside to record the license plate numbers, some of the pickets said: ''no wonder why he went back to work, if I had to live with you,'' and: ''We don't want you, we want your husband. We see who wears the pants in the family.'' The pickets remained for about 20 to 30 minutes until a state trooper arrived ''and dispersed the crowd.'' She testified that during this period there were about 12 to 15 individuals who walked back and forth on the Hodgson's side of the shoulder of the road about 5 feet apart; during this period they had only one picket sign which stated: ''NYT SCAB.'' None of the pickets ever threatened her, but she was ''quite anxious'' and ''very, very uncomfortable with pickets being outside.'' She testified:

> I believe it was perceived as a threat to my children for their security and their safety and, also, their father's safety. I had many nights where they woke up hearing noises, wanting to know if someone was outside. Especially with him out of town, it wasn't very pleasant. [During this period, Thomas Hodgson spent a lot of time working out of the area and sometimes only spent one night every 2 weeks at home.]

Thomas Hodgson testified in a similar manner as his wife; there were about 12 to 15 pickets who remained for about 20 to 30 minutes carrying one sign saying: ''New York Telephone Company Scab.'' When he first arrived, as he got out of his car with his daughter, he heard one of the pickets say to her: 'You must have been a brave girl because your father went back to work.'' His daughter became upset when she heard this. He testified that the picketing ''made my family extremely nervous. My kids, because of their age, were nervous about it and worried about what might happen . . . with me being out of town.''

There were some minor differences in the testimony of the pickets; William Lowes, a member of Respondent, testified that he was informed by Bruce Wade, Respondent's chief shop steward, that they would be picketing the homes of the nonstrikers that day and there were about nine pickets at the Hodgson residence that day. All of the pickets had picket signs which said: ''New York Tel Scab Lives Here'' or ''New York Tel on Strike.'' There was no yelling, chanting, or threats and they remained for about 30 minutes. As they were leaving he saw a state trooper arrive. The only thing he said to Susan Hodgson was, when she first arrived home that day, that they were there to picket their house. The only thing Susan Hodgson said was that the strike was a loser and that she was from upper management. Joan Hopkins, a steward for Respondent, testified that when Susan Hodgson arrived home that day Lowes told her that they were there to picket her home; he said it in a ''friendly tone.'' She also learned of the picketing from Wade at Respondent's hall. Other than Susan Hodgson's comment to them about the strike being a loser, nothing else was said between the pickets and the Hodgson family.

The next day of picketing at the Hodgson residence was September 30; on this occasion about five individuals came in one car while the Hodgson family was outside the house. They picketed with signs saying; ''New York Telephone Company Scab'' with Hodgson's name on the picket sign. They remained for about 20 to 30 minutes. At her attorney's suggestion she went to photograph the pickets. At this time she told them that she just wanted to be fair and one of the pickets answered that they also wanted to be fair. At that point, one of the pickets said something to the effect of: ''We don't want you, we want your husband, we want him back, not back at work.'' The state trooper arrived about 5 minutes before the pickets left and spoke to them at that time. Lowes testified that Wade informed him that they would be picketing Hodgson's home on September 30, as well. He picketed on that day with a few other people for about 30 minutes. About 15 minutes after they arrived, a state trooper came to the house and after speaking to the Hodgson's in the house came outside and asked them if they were harassing the Hodgsons. They said that they were not. He asked a few other questions and left; they left a few minutes later.

The testimony about the Glogowski picketing is not as precise; Glogowski testified that on about September 22, while he was doing some gardening at his house (presumably in the rear of the house) his neighbor told him that people were picketing the front of his house. The neighbor was ''quite upset'' and asked him to make a complaint to the police, which he refused to do. He remained in the rear or the property, observing the picketing through an alleyway. He estimates that there were from 6 to 12 pickets walking back and forth in front of his home. His wife and children, 15 and 16 years old, were home at the time. George Hext, a member of Respondent, testified that he and four or five other of Respondent's members picketed Glogowski's house on a Saturday in September; they met at Respondent's hall on that day and prepared their picketing schedule. They picketed with signs saying: ''On Strike Against New York Tel'' and ''Scab Lives Here.'' They saw Glogowski in the back yard of the house, but nothing was said between he and the pickets. There was no yelling or chanting and they left after about 30 minutes.

Glogowski testified that on about the following Saturday, while he was in his house, he received a phone call from a neighbor saying that there were pickets in front of his house. He looked out the front window ''for that one moment'' and saw pickets, but can not identify anyone by name. On about October 24 he again received a telephone call from a neighbor saying that pickets were in front of his house; he ''went to the front window, saw some people walk by the house, went back and got into the car and left.'' He could not identify any of the pickets or the contents of the signs. They next picketed his home on about October 29; on that day he and his wife became upset with the frequency of the picketing and felt that they were being harassed. There were between 8 and 12 pickets that day, but the only pickets he recognized that day were Rycheck and Gepfort, who are members of a sister local of Respondent. As a way of his expressing his annoyance with the picketing, Glogowski placed a sign outside of his house stating that he decided to return to work because Respondent gave away his health insurance benefits in 1986. While Glogowski was on his front porch, Rycheck, who was picketing about 15 feet away and told Glogowski that Respondent would get even with him; when the strike ended he would have to work with them and they would get him and make him sorry that he returned to work. The picket signs they carried that day said ''Scab'' and ''Superscab.'' All this picketing made his wife very nervous.

## IV. ANALYSIS

Both counsel for General Counsel and counsel for Respondent cite *United Mechanics Local 150-F (American Photography)*, 151 NLRB 386 (1965), as the case in point and my research confirms that it is the only case right on point. Counsel for Respondent, in her brief, also cites *Carpenters Local 1098 (Milton J. Womack)*, 280 NLRB 875 (1986); however that case is distinguishable as it alleges 8(b)(1)(B) violations by the picketing of the residences of the company's majority stockholder and its chief negotiator. *United Mechanics Union*, supra, involved an 8(b)(4) allegation as well as an 8(b)(1)(A) allegation for activity at the company's facility. However, it also involved picketing at the home of three nonstriking employees. In addition to the usual picketing with picket signs identifying the nonstrikers as scabs, the union's activities included foul language, a threat (''It would be too bad if anything happened''), chanting, yelling, and screaming by the pickets; there was no violence. As a result of this activity, a number of people became hysterical, scared, petrified, very upset, and ill. In finding a violation of Section 8(b)(1)(A) of the Act, Trial Examiner Sidney D. Goldberg first rejected the Union's argument that the picketing was protected under *Thornhill v. Alabama*, 310 U.S. 88 (1940). The conviction in that case was based upon the defendant's action on a picket line outside a struck plant in attempting peacefully to dissuade employees from returning to work, whereas in *United Mechanics Union* the activity took place at the homes of individuals who had exercised their rights guaranteed under the Act to return to work. He then discussed *Allen Bradley Local No. 1111 v. Wisconsin Employment Relations Board*, 315 U.S. 740 (1942), where the Supreme Court refused to find unconstitutional as repugnant to the Act an order of the State board enjoining ''Picketing

the domicile of employees.'' Trial Examiner Goldberg concluded: ''If Wisconsin's curb on the picketing of employees' homes was not unconstitutional under the *Thornhill* doctrine, neither would be a Board order herein.''

Only one although the picketing in *United Mechanics Union* did not include any violence, it involved more ''objectionable conduct,'' principally noise, than is present herein, but also involved one instance of foul language directed at the wife of a nonstriking employee and one threat regarding the tires of his car. In the instant matter the most serious incident was the picket's statements to Hodgson's daughter that she must be a brave girl since her father returned to work. Somewhat less serious, but still significant enough to be considered, is the statement to Susan Hodgson: ''We don't want you, we want your husband.'' Additionally, the picket signs referred to Hodgson and Glogowski as scabs, which, as Trial Examiner Goldberg said, is a term of opprobium. Respondent had the absolute right to picket at the sights of their dispute with the Company and they exercised this right by picketing the Company's offices as well as its jobsites. Picketing the residences of nonstriking employees could serve no lawful purpose. Section 7 of the Act gives the employees the right to strike as well as the right to cross a picket line to go to work. Picketing the homes of these nonstrikers interferes with this Section 7 right. As Trial Examiner Goldberg stated: ''parading on Saturday in residential neighborhoods, held the non-strikers up to ridicule and sought public condemnation for their failure to join the strike.'' Nonstriking employees know that when they report to their office or their jobsite they may have to cross a picket line and be subject to the possible abuses attached to it; however, when they and their families are picketed at their home, rather than at a work site, they are being restrained in the exercise of these Section 7 rights. The facts herein are a good example of such coercion. Even though there was no violence at Hodgson's home, there were a large number of pickets at his home on two occasions and veiled threats were made to his wife and his daughter. In addition, his neighbors were concerned enough about the situation to call the police. An employee who must choose between striking and not striking has a very difficult decision to make; he must choose between loyalty to his employer and loyalty to his union and fellow employees who support the strike and resulting animosities that may develop. He must also determine whether he is willing to forgo being paid by his employer. These are all valid issues that must be considered by an individual in deciding whether to go on strike. However, when a union pickets his home they add some improper considerations to this determination—pressure from the employee's spouse, children, or neighbors resulting from the picketing of his home.

I therefore find that when a union pickets the homes of nonstriking employees, even in the absence of threats or violence, it restrains and coerces these employees in the exercise of their Section 7 rights—whether to join the strike—and therefore violates Section 8(b)(1)(A) of the Act.

## Conclusions of Law

1. New York Telephone Co. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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

3. By demonstrating and picketing at the residences of Thomas Hodgson and Mark Glogowski, nonstriking employees of the Company, Respondent restrained and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, and engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

## The Remedy

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, principally the posting of the notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

## ORDER

1. The Respondent, Communications Workers of America, Local 1118, its officers and agents shall cease and desist from picketing or demonstating at the homes of employees of New York Telephone Co., or in any other like or related manner, restraining or coercing the employees of New York Telephone Co. in the exercise of rights guaranteed in Section 7 of the Act.

2. Respondent shall, additionally do the following:

(a) Post in conspicuous places, in its business offices, meeting halls, and all places where notices to members are customarily posted, copies of the attached notice marked ''Appendix.''[3] Reasonable steps shall be taken by Respondent to insure that the said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps 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 Employees
### Posted by Order of the
### National Labor Relations Board
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

We will not picket or demonstrate at the homes of any employee of New York Telephone Co. or, in any other like or related manner, restrain or coerce the employees of that

employer in the exercise of the rights guaranteed them by Section 7 of the Act.

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1118