JD--316--85
Southfield, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and

Case 7--CA--24183(P)

DETROIT DISTRICT AREA LOCAL,
AMERICAN POSTAL WORKERS UNION,
AFL-CIO

Richard P. Connolly, Esq., for
the General Counsel.
Karen A. Intrater, Esq., of
Washington, DC, for the
Respondent.
Lawrence S. Katkowsky, Esq., of
Keller and Katkowsky, of
Southfield, MI, for the
Charging Party.

DECISION

Statement of the Case

THOMAS A. RICCI, A.L.J.: A hearing in this proceeding was held at Detroit, Michigan, on 18 June 1985, on complaint of the General Counsel against United States Postal Service, here called the Respondent. The complaint issued on 15 February 1985, upon a charge filed on 10 January 1985, by Detroit District Area Local, American Postal Workers Union, AFL-CIO. The sole issue presented is whether the Respondent violated Section 8(a)(5) of the Act by bypassing the collective-bargaining agent and instead dealing directly with one of its employees. Briefs were filed after the close of the hearing by the Respondent and the General Counsel.

Upon the entire record and from my observation of the witnesses I make the following:

Findings of Fact

I. The Business of the Respondent.

The Board has jurisdiction over this matter by virtue of Section 1209 of the PRA. The Respondent is and has been at all times material herein an independent establishment of the Executive Branch of the Government of the United States, existing by virtue of the laws of the United States. The only facility involved in this proceeding is the Post Office located at Southfield, Michigan. I find that the Respondent is an employer within the meaning of the Act.

II. The Labor Organization Involved

I find that Detroit District Area Local, American Postal Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practice

On 13 June 1984, Hani Dallou, a rank-and-file employee in this Post Office, was given a notice of intended removal from the job because of an asserted bad record of repeated disregard of the work rules. It told him that no less than 30 days later he would be permanently discharged. The Union, through its steward, at his request filed a grievance about that intended disciplinary action. The matter was thereafter discussed, with management and union representatives present, at the regular first-step grievance procedure as provided for in the collective-bargaining agreement then in effect. The Company did not change position and the grievance was regularly scheduled for consideration at the second step of the contract grievance procedure.

Before that second meeting took place Dallou met personally with Norman Lovell, the Postmaster, who is the highest management official in this Post Office location. There was no union representative present. Dallou and Lovell discussed the merits of the disciplinary action intended by management, at times with other supervisors present. Admitting some of the past offenses claimed by the Company, Dallou pleaded for a lesser punishment. Lovell was receptive to his pleas. When Dallou, fearful of losing his job altogether, suggested a 30-day suspension would be enough punishment, Lovell agreed and said he would make it a 29-day suspension only. He even agreed that Dallou could suffer the disciplinary action -- loss of 29 days of work -- during a period of 30 days, soon to come, when he was going to be absent from work anyway for surgery. Dallou had no accumulated sick leave to his credit and therefore was not going to be paid for that necessary absence anyway. In this way he really suffered no punishment at all. It was Lovell's way, as he said at the hearing, of being nice to a man who was decent enough to admit his past errors.

Did the Respondent that day, acting through Postmaster Lovell, bargain, negotiate, deal directly with an employee, about a matter clearly involving a condition of employment, behind the Union's back, as it were? Did it disregard the statutory duty to deal with the established, exclusive bargaining agent, and thereby commit a straight violation of Section 8(a)(5) of the Act? I think yes. Absent a convincing affirmative defense, it is the clearest unfair labor practice imaginable.

In the course of the hearing the Company witnesses obliquely suggested a number of defenses -- such as: It was Dallou who wished to talk personally and individually with Lovell; the Union knew about the direct dealing and did nothing about it; the Union which appeared at the hearing is not the bargaining agent for this man; the Postmaster did not know, when settling the grievance personally with Dallou, that a grievance had been filed; etc. The Respondent even asserted at the hearing that if it wished the Union could go ahead with the successive steps in the grievance procedure now, as far as arbitration, to process the grievance according to the Union's contract. Given the Company's largesse towards Dallou in its private settlement of the

grievance with him, it would be pointless for the Union to take it to arbitration now. It could hardly do better there for Dallou, since as matters stand he suffered no punishment at all.

But the question is not did Dallou lose by dealing directly with Lovell instead of going through the Union. The question is: Does an employer have a right, under this statute, to ignore the established bargaining agent? The fact this man was represented by a labor organization, and covered by a written contract in effect, no matter what the precise name of that union, is so clear as to require no further comment. May the employer deal with a single employee as though the Union did not exist?

The real defense is that a special law applicable to veterans permits what would otherwise be an unfair labor practice under the National Labor Relations Act. In pertinent part the Veterans' Preference Act provides that a veteran -- and Dallou is a veteran -- when in danger of discharge by his employer has a right to meet with the highest members of management to discuss his problem before he can actually be dismissed. From Lovell's testimony: "Q. Why did this meeting take place, why were you meeting with Mr. Dallou? A. It was simply according to his rights. Under the Merit System Protection as a veteran to provide me with any input he cared to relative to a proposed removal action. Q. Are all employees accorded these rights? A. Only veterans." Again: "Q. Postmaster Lovell, at this meeting did you adjust Mr. Dallou's grievance? A. I would not have the authority to adjust a grievance. I was simply administering his benefits under the Merit System Protection Board Veterans' Preference Act."

I see nothing in that Veterans' Preference Act which cuts into any employee's rights -- including a veteran's -- which he enjoys under the now Taft-Hartley Act, and its Section 8(a)(5). The right of any employee to be represented in his employment by a labor organization takes the form of an obligation upon the employer to deal with his chosen union, and only with his chosen union. It is too late in the day to detail the benefits that law gives all employees -- representation by knowledgeable officers of his union, the use of experienced negotiators in place of the inexperienced, the strength of numbers acting together instead of individual employees pitting themselves singly against the economic strength of the company which hires him. True, the statute says a veteran has a right which a non-veteran does not necessarily possess -- to speak to the top man in the company when his job is in danger. But could Congress have intended, by giving him an added right, to take away from him the right he already enjoys under another law with all his fellow employees of being aided by his union? The Respondent reads more in the new law than is written in it. A right given a person by one law cannot, by implication, be denied or taken away from him by another, later law, which confers upon him an additional right!

Indeed, to read the later law as does the Respondent, would mean that Congress intended to put the veteran in a weaker position than the non-veteran. If the employer has a right to deal with a veteran apart from his chosen union, but may not do that with respect to the non-veteran, the non-veteran is being favored over the veteran. I cannot read such an unspoken implication into any law.

This brings us to the next question raised by the same basic defense, albeit indirectly. If the endangered veteran himself chooses to deal directly with the employer, without his established bargaining agent being present, does that fact excuse the otherwise clear violation of Section 8(a)(5) by the employer? I think not, although that question is not at issue in this case.

Dallou was worried about his job, and anxious to do something about saving it. He probably feared the 30-day period before the proposed discharge was to take place might expire, and he be left without a job before the grievance procedure could be completed. So he tried to rush the matter quickly up to the top man in management. On 8 July he personally wrote a note to the Post Master asking to meet with him; the note ended with the phrase "at this meeting I would like my union steward present." Right there the Respondent's now contention that it was Dallou who wanted the Union out of the picture fails.

The notice of proposed removal was served on Dallou on 11 June; in it he was also told he had 10 days in which to submit defense material, in person or in writing, to the Postmaster, who would then make his final decision. The first thing Dallou did was request, with the assistance of his union steward, information about his past employment record, to defend himself. He tried to meet with Lovell within the 10-day period but the Postmaster was not available. On 22 June he wrote Lovell a note, telling him he was prepared, with his "representative," to meet. Again, twice, on 27 and 29 June, Dallou went to see Lovell but because the latter was unavailable the meeting did not take place. Meanwhile the step-one meeting of his grievance had been held, but decision was put off. With the grievance taking so long Dallou was understandably worried about his job. He testified that on one occasion in his repeated attempts to talk to Lovell he told another supervisor "they /the company representatives/ could go through Anne Malinowski /a union steward/ as far as a meeting is concerned." At another point, still according to Dallou's testimony, he asked Supervisor Lemaster "how come the grievance procedure was going so slow?," and was told "it /the grievance/ was in hold until I see the Post Master." On 8 July again Dallou sent a note to the Post Master, complaining about not being able to meet with him, and adding: "At this meeting I would like my union steward present."

The two finally met on 13 July when, after about an hour's talk -- as Dallou recalled it -- the agreement was reached to reduce the proposed discipline to 29 days suspension. When it was finally decided, Lovell had a settlement agreement written up and signed by Dallou. It includes the following statement:

> However you have requested a 29-day suspension without pay as full and complete settlement of the subject case, and with the understanding that this document exhausts any further appeals of this and all other issues that pertain to this case, to include all grievances, EEO complaints etc.

It is clear to me that Dallou wanted the union agent to be present that day, and that management knew it. All the supervisors certainly knew the union grievance was on that day still pending as to the question involved. It is also true that "that day," as Dallou testified, he did not request union representation while talking with Lovell. In fact, he also recalled Lovell

asking him: "You do not think you will have any trouble with the union over this." His answer was: "No, this is my case. I figured that I would save my job."

One can look at this situation both ways. The Company supervisors knew Dallou wanted the Union present at that interview, for he told them several times, in writing, and yet, when the meeting finally took place he was there without any union agent and was perfectly satisfied to handle the problem alone. Does this excuse the Respondent?

However I look at it, Lovell was bypassing the Union that day and he knew it. His statement at the hearing that he did not even know there was a grievance pending is absolutely false. Every supervisor beneath him knew about it; how could he not? One of Dallou's written requests for information is dated 23 June. On the back of it appear the following two statements, each written in completely different handwritings.

> Mr. L. not available at 9 is at 9:30 -- Is a representative going to be with him?
>
> * * * * *
>
> You can tell him I'm not going to see him. He can go ahead with the action.

Lovell testified the second statement was not written by him and that he never spoke to anyone of the Union about the pending grievance. Lemaster testified she wrote the second statement herself. I am not a handwriting expert, but neither was I born last night. That Lemaster did not write the second part is absolutely obvious -- as any kid can see. Who else would say I am not going to see him but Lovell? What action was he talking about, except it be Dallou's contemporaneous proceeding via the grievance route?

And besides, if Lovell did not know about the grievance why did he have Dallou sign a paper agreeing that the settlement reached on 13 July "exhaust any further appeals . . . to include all grievances . . . .?" Enough.

I find that by dealing directly with Dallou for the purpose of adjusting his pending grievance, while ignoring his request to be accompanied by a union representative, the Respondent committed an unfair labor practice within the meaning of Section 8(a)(5) of the Act.

The Remedy

The Respondent, by its management agents, must cease and desist, via the usual Board order, from dealing directly with its individual employees on matters affecting their conditions of employment so long as there exists in the shop an exclusive bargaining agent.

IV. The Effect of the Unfair Labor Practice Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close,

intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions of Law

1. By dealing directly and individually with its employees on matters affecting their conditions of employment while they are represented by an exclusive bargaining agent, the Respondent has engaged in and is engaging in violations of Section 8(a)(5) of the Act.

2. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:[1]

ORDER

The Respondent, United States Postal Service, Southfield, Michigan, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Dealing directly with its employees on matters affecting their conditions of employment while bypassing their chosen bargaining agent.

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

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post at its postal location in Southfield, Michigan, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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1 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 thereto shall be deemed waived for all purposes.

2 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."

(b) Notify the Regional Director for Region 7, in writing within 20 days from the date of receipt of this Decision, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. October 18, 1985

Thomas A. Ricci
Administrative Law Judge