Goad Company *and* United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO, *and* Steamfitters Local Union No. 420 of Philadelphia and Greater Delaware Valley. Cases 14–CA–25782 and 14–CA–25793

March 26, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On March 10, 2000, Administrative Law Judge George Carson II issued the attached decision. The General Counsel and the Charging Parties each filed exceptions and supporting briefs. The Respondent filed an answering brief. The Charging Parties filed a reply.

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, and conclusions[1] and to adopt the recommended Order.

ORDER

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

Paula B. Givens, Esq., for the General Counsel.
Mark W. Weisman, Esq., for the Respondent.
Dinah S. Leventhal Esq., for the Charging Parties.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in St. Louis, Missouri, on January 27, 2000. The charge in Case 14–CA–25782 was filed on October 8, 1999, and the charge in Case 14–CA–25793 was filed on October 19, 1999.[1] The complaint issued on November 30. The complaint alleges that the Respondent Company violated Section 8(a)(1) and (5) of the National Labor Relations Act by failing and refusing to bargain with Local Union No. 420 unless Daniel P. Murphy ceased to act as the Union's agent. Respondent's answer denies any violation of the Act.

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

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Goad Company, a corporation, is engaged in the manufacture of tank linings at its facilities in Ellisville and Independence, Missouri, from which it annually sells and ships products valued in excess of $50,000 directly to points located outside the State of Missouri. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO, the United Association, and Steamfitters' Local Union No. 420 of Philadelphia and Greater Delaware Valley, Local 420, are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The appropriate collective-bargaining unit involved in this proceeding is:

> All employees employed by Respondent at its Ellisville and Independence, Missouri, facilities who are engaged in plastic and/or rubber construction and/or lead burning, fabrication, repair, dismantling, preparation and remodeling; excluding office clerical and professional employees, guards, supervisors as defined the Act, and all other employees.

Since 1955, the employees in the foregoing unit have been represented by a local of the United Association. Initially the employees were represented by Local 498. In the mid-1980s, the United Association consolidated all employees performing the skilled craft of lead burning into Local 153. The remaining employees were transferred to Local 420. Goad Company and Local 420 entered into successive collective-bargaining agreements, the most recent of which expired on October 20.

The offices of Local 420 are located in Philadelphia. In December 1997, a grievance was handled on behalf of Local 420 by International Representative William Lille. In February 1998, Company President Curtis Goad learned that a transfer of the unit from Local 420 was being proposed. He called Local 420 Business Manager Joseph Rafferty, who confirmed that Local 420 was not going to service the contract and that the United Association had agreed to transfer the unit from Local 420 to Local 562 which is located in St. Louis. Rafferty testified that the distance between Philadelphia and St. Louis "creates a condition where rarely, if ever, a Local 420 business agent would ever have to be in the area." Lille testified that, in early 1998, he was assigned to investigate complaints from members of Local 420 regarding the representation they were receiving. He received a report from the stewards that "the vast majority of the employees wished to be transferred to Local 562." It is immaterial whether the impetus for transfer came from the union hierarchy in Philadelphia or the union membership in Missouri. It is undisputed that Lille recommended to

[1] In affirming the decision that the Respondent did not violate Sec. 8(a)(5) by refusing to bargain with Local 562 Business Agent Daniel Murphy as the purported agent of Local 420, we rely on the judge's conclusion that Local 420 did not simply enlist the aid of an agent, but transferred its representational responsibilities to Local 562. We do not rely on the judge's alternative rationale that the attempted transfer of representational jurisdiction from Local 420 to Local 562 extinguished the Respondent's continuing obligation to bargain with Local 420 and its legitimate agents.

[1] All dates are 1999 unless otherwise indicated.

United Association General President Martin Maddaloni that jurisdiction be transferred and that Maddaloni approved the recommendation and ordered the transfer. On June 24, 1998, Maddaloni wrote Goad informing him of the transfer. The letter, in pertinent part, states:

> Presently our Local 420, based in Philadelphia, Pennsylvania, represents your employees in both your … Missouri, shops. This has not worked well for either your employees or Local 420 due to the distance between your shops and Local 420.
>
> I now have a report from International Representative William Lille, who represents Missouri, recommending that jurisdiction over these shops be transferred to Local 562, St. Louis, Missouri. He also states that a majority of your employees are in favor of being represented by Local 562.
>
> Therefore, effective July 1, 1998, I am transferring jurisdiction over these facilities to Local 562.

On October 6, 1998, Daniel P. Murphy, a business agent of Local 562, wrote President Goad asserting that Local 562, pursuant to the transfer of jurisdiction, "legally represents" the employees in the unit. He requested Goad to contact him "to avoid any misunderstanding."

Respondent refused to bargain with Local 562, contending that the exclusive collective-bargaining representative continued to be Local 420. Local 562 and the United Association filed charges alleging, inter alia, that Respondent's refusal to bargain with Local 562 violated the Act. The Regional Director for Region 14 dismissed that aspect of the charges on March 18. Local 562 and the United Association appealed. The appeal was denied on May 11. In denying the appeal, the Office of Appeals characterized the actions of the United Association as an "attempted transfer of representation rights" and found that, unlike situations involving mergers or affiliations, there was not a "continuity of representation."

Business Agent Murphy, who had been assigned responsibility for the employees in the unit after jurisdiction was transferred to Local 562, sought to obtain authorization cards designating Local 562 as the employees' collective-bargaining representative. The record does not reflect the extent of his success. Although the June 24, 1998, letter from Maddaloni to Goad states that Maddaloni had received a report that a majority of the unit employees favored the transfer, there is no probative evidence either confirming or refuting the accuracy of that statement. No demand for recognition on the basis of majority status was ever made on behalf of Local 562. No representation petition was ever filed. There is no evidence that the transfer of jurisdiction effectuated by General President Maddaloni was ever formally rescinded.

B. Facts

Following the denial of the appeal of the dismissal of the charges, Local 420 and Local 562 entered into an agreement that, after reciting the parties to the agreement, provides as follows:

> WHEREAS Local 420 represents the employees of the Goad Company in Ellisville and Independence, Missouri, for the purpose of collective bargaining;
>
> WHEREAS it is more convenient for these employees to be represented by Local 562 due to the proximity of that local union to the Goad Company;
>
> WHEREAS the Goad Company objected to the order of the General President of the UA transferring those employees into Local 562;
>
> WHEREAS the National Labor Relations Board determined that the Goad Company did not commit an unfair labor practice in refusing to recognize Local 562 as the new representative of the Goad Company employees; and
>
> WHEREAS the current collective bargaining agreement in effect between Local 420 and the Goad company is set to expire a midnight on October 20, 1999;
>
> IT IS THEREFORE HEREBY AGREED:
>
> 1. That one or more Business Agents for Local 562 will be designated to serve as Local 420's agent(s) for the purpose of negotiating and servicing a new contract with the Goad Company which will be entered into in the name of Local 420. This responsibility will extend to processing grievances during the term of the new contract and to other actions comprising the duty of representation.
>
> 2. That Local 562 will hold Local 420 harmless, including defense costs, in that event of any claim arising during the term of the new contract between the Goad Company and Local 420 which claim arises from Local 420's duty of fair representation of the employees of the Goad Company or otherwise from Local 562's Business Agent(s) acting as Local 420's agent(s) in this manner.
>
> 3. In consideration of the above promises, Local 420 will pay over to Local 562 any and all membership initiation fees and dues received directly or indirectly from the Goad Company's employees.

The agreement was signed by Local 562 Business Manager James O'Mara on June 23 and by Local 420 Business Manager Rafferty on July 26. On August 2, International Representative Lille signed the agreement indicating its approval by the United Association. President Goad was unaware of the foregoing agreement.

There is no evidence that Local 420 made any claim to the Respondent that it represented the unit after July 1, 1998, until August 4, 1999. On August 4, Rafferty wrote Goad that Local 420 was exercising its right to reopen the collective-bargaining agreement that was to expire on October 20 and that a representative of Local 420 "will meet and confer with you for the purpose of negotiating a new contract."

On September 7, Rafferty wrote O'Mara authorizing Murphy to act on behalf of Local 420 "pursuant to our prior written agreement." At the hearing, Rafferty acknowledged that O'Mara had selected Murphy, that he trusted that O'Mara would assign a capable business agent, and that he did not have any input into the decision, indeed, he did not even know Murphy at that time. He testified further that, if Murphy were un-

willing to serve, that he would rely upon O'Mara to appoint a replacement.

On October 8, some 2 months after the letter of August 4, Rafferty wrote Goad the following letter, sent by facsimile:

> As you know, U.A. Local 420 is still the designated bargaining representative of your employees. As such, Local 420 has the right to name the person who will negotiate a new contract with the Goad Company on behalf of Local 420 and its members. Please note that Local 420 has authorized Mr. Daniel P. Murphy, who otherwise works as a Business Agent for U.A. Local 562 in St. Louis, to act as Local 420's agent for the purposes of negotiating and servicing a new contact with the Goad Company.
>
> We look forward to continuing a harmonious bargaining relationship with your company. Please extend to Mr. Murphy the same cooperation you have to employees of Local 420 in the past.

On October 8, Murphy called Goad. Goad told Murphy that it was nothing personal, but that Murphy was an agent of Local 562 and that he viewed Rafferty's letter as "a thinly veiled attempt to get 562 to bargain with Goad." Goad then called Rafferty stating that he did not want to meet with a Local 562 business agent. Rafferty replied that if there was any problem that he "would be willing to broker a meeting with Jim O'Mara." He also acknowledges stating that "Murphy is the guy we're going to . . . I'm not partaking in it. He's acting as the agent for 420." Rafferty also acknowledges saying that "562 would be representing Local 420 through the agent [Murphy]." Goad again objected to dealing with a representative of Local 562. Rafferty asked when Goad was going to "wake up," that "this was going to happen," and that Goad "owed Jim O'Mara his day in court." Goad testified that, although Rafferty did not specifically ask him to recognize Local 562, Rafferty's reference to owing O'Mara his day in court was "the same as [that] to me." Thus, even though Goad was unaware of the agreement, Rafferty's references to O'Mara confirmed to Goad that he was dealing with Local 562, not Murphy as an agent of Local 420. In further testimony Goad explained that he did not "want to be ping-ponged with now you're with this local."

On October 12, Goad wrote Rafferty stating that he had not been contacted by a representative of "your union." The letter continues, stating as follows:

> We have been contacted by a representative of Pipefitters' Local 562 in St. Louis. As you are aware, the National Labor Relations Board ruled that there is no obligation to bargain with Local 562. Your appointing Local 562 as your agent in this matter is a somewhat transparent attempt to get around the ruling of the National Labor Relations Board. Accordingly, further demand by Local 562 to negotiate with this company may be followed with a charge at the National Labor Relations Board.

In a postscript, Goad states that he received the letter dated October 8, that he had spoken with Rafferty, and that he had offered to meet with "anyone other than Local 562," that for over a year and a half "we have informed you that we do not want to deal with Local 562."

C. Analysis and Concluding Findings

It is "well settled that it is the duty of an employer to bargain solely with a statutory representative and no other person or group. However, a bargaining representative "may . . . confer upon an agent . . . authority to act on its behalf." *Rath Packing Co.*, 275 NLRB 255, 256 (1985). Employers and unions have the right "to choose whomever they wish to represent them in formal labor negotiations." *General Electric Co. v. NLRB*, 412 F.2d 512, 516 (2d Cir. 1969). It is undisputed that Goad refused to bargain with Murphy, who was purportedly an agent of Local 420. If those were the only facts herein, a violation of the Act would be apparent. Those, however, are not the only facts.

Respondent argues that the agreement entered into between Local 420 and Local 562 effectively transfers jurisdiction over the unit to Local 562. Although Counsel for the General Counsel and counsel for the Charging Parties argue that the agreement between Local 420 and Local 562 is a simple agency agreement, they first argue that Respondent may not rely upon it since Goad did not know about it in October. Goad's knowledge of the agreement is not material. On October 8, Goad told Murphy that he viewed his appointment as "a thinly veiled attempt to get 562 to bargain with Goad." Goad's concern that matters were not what they seemed was confirmed when, on the same day, Rafferty told him that he owed "O'Mara his day in court." On October 12, Goad characterized Local 420's actions as "a somewhat transparent attempt to get around the ruling of the National Labor Relations Board." The agreement pursuant to which Murphy was appointed as a purported agent of Local 420 is an integral part of this record, and my decision must be based upon the entire record.

Contrary to the arguments of the General Counsel and Charging Parties, the agreement between Local 420 and Local 562 is not a simple agency agreement. When read in its entirety, the document reveals that the representational responsibilities of Local 420 are to be handled by Local 562. The document states that Local 562 business agents "will be designated to serve as Local 420's agent(s) for the purpose of negotiating and servicing a new contract" which is to be entered into "in the name of Local 420." Lest there be any doubt concerning what servicing the contract entails, the agreement provides that "this responsibility will extend to processing grievances . . . and to other actions comprising the duty of representation." The agent selected, Murphy, was chosen by the business manager of Local 562. Any doubt that the agent was an agent of Local 420 in name only, or that any contract was a Local 420 contract in name only, is resolved by the second numbered paragraph of the agreement which stands the law of agency on its head. That paragraph provides that Local 562 will hold Local 420 harmless, "including defense costs," for any claimed breach of the duty of fair representation that arises as a result of the actions of its business agents who act as agents of Local 420. Thus, Local 420 is to be indemnified by Local 562 for the acts of Local 420's own purported agents.

In *Sherwood Ford, Inc.*, 188 NLRB 131 (1971), a case involving circumstances quite similar to the facts herein, the Board found no obligation to bargain. *Sherwood Ford* involved a local union, Local 1, whose leadership was inexperienced in bargaining on behalf of automobile salesmen. That local sought

to affiliate with Local 604, an automobile salesmen's local. Refusal to bargain charges filed by Local 604 were dismissed when the investigation disclosed that the affiliation vote among members of Local 1 was defective due to a lack of notice. Thereafter, on August 21, 1968, the members of Local 1 ratified a resolution which designated Local 604 as the "duly constituted representative" of Local 1 "to appear on behalf of and represent" Local 1 in bargaining with Sherwood Ford, Inc." Id. at 132. Sherwood Ford refused to bargain with representatives of Local 604. The Board found no violation and adopted the decision of the trial examiner whose discussion of the issue presented stated:

> As Respondent could not lawfully have recognized Local 604 as the bargaining representative of the employees, we turn to the question whether it was required to recognize that Local as the bargaining representative of Local 1. Setting aside for the moment the legalisms in which the resolution [in which Local 1 appoints Local 604] is couched, the record otherwise fully supports Respondent's contention that the August 21 maneuver was a patent attempt to substitute Local 604 as the bargaining agent in place of Local 1 and that it was a device, subterfuge, or stratagem by which the two locals sought to circumvent the earlier rulings of the Regional Director [who had held there was no obligation to bargain with Local 604].
>
> Though the General Counsel cites authority for the familiar principle that a statutory bargaining representative may select outside experts and other advisors as personnel of its bargaining team, . . . the facts in the present case leave that principle without application, for here the parties were attempting an outright substitution of representatives, not just the association of expert aides. [Id. at 133, 134.]

None of the briefs herein cite *Sherwood Ford*. Counsel for the General Counsel points out that "one labor organization may act as the agent of another," a principle not in dispute. See *Mine Workers Local 17*, 315 NLRB 1052, 1064 (1994). Although a certified representative may delegate its duties under a contract, it cannot delegate its responsibilities. Ibid; see also *Reading Anthracite Co.*, 326 NLRB 1370 (1998). The Charging Parties argue that the agreement does not alter the legal responsibility of Local 420 to third parties and that the hold harmless clause "is like an actual insurance policy." This argument exalts form over substance. Although any contract was to be entered into in the name of Local 420, the substantive reality is that Local 420 delegated its representational duties and indemnified itself, not only for claims but also for defense costs, for any actions performed by its own purported agents relating to the "duty of fair representation of the employees of the Goad Company." The record establishes that only agents of Local 562 were going to negotiate and service the contract, process grievances, and perform "other actions comprising the duty of representation." Local 420 was to be a party to the contract and legally responsible in name only.

Local 420 did not simply enlist the aid of an agent. It transferred its representational duties and responsibilities. Although the agreement in the instant case does not contain words specifically substituting Local 562 for Local 420 as the collective-bargaining representative for the unit employees, the result is the same. Counsel for General Counsel argues that, if Local 420 was "bowing out," it would have no concern regarding liability. Contrary this argument, the provision absolving Local 420 of any liability for the actions of its own purported agents confirms that it was "bowing out" and that Local 562 was, in fact, the principal. Business Manager Rafferty told Goad, "Murphy is the guy we're going to . . . I'm not partaking in it." The final numbered paragraph of the agreement, providing that Local 420 will pay the initiation fees and dues of Goad Company's employees to Local 562, further confirms that Local 420 was not appointing an agent to represent it at bargaining but was substituting Local 562 as the bargaining representative. Confirmation of this conclusion is stated in the preamble of the agreement: "[I]t is more convenient for these employees to be represented by Local 562."

The agreement between Local 420 and Local 562, like the agreement in *Sherwood Ford, Inc.*, supra, reveals that the purpose and intent of the agreement was to attempt to circumvent the decision of the Regional Director who, sustained by the Office of Appeals, found no obligation on the part of Goad Company to bargain with Local 562. Murphy, selected by the Business Manager of Local 562, appeared as a purported agent of Local 420 pursuant to that agreement, not pursuant to a bona fide appointment as an agent of Local 420. The practical effect of the agreement was to substitute Local 562 as the collective bargaining representative in place of Local 420. In view of the foregoing, I find that Respondent did not violate the Act when it refused to bargain with Murphy.

Although none of the parties address the issue, the record establishes a second basis that is at least as, if not more, compelling for finding that Respondent had no obligation to deal with Murphy. Even if Murphy had been a bona fide agent of Local 420, Board precedent establishes that, in the absence of unusual circumstances such as schism or defunctness, a local union's action in transferring its representational rights to another local constitutes a disclaimer of interest. *Sisters of Mercy Health Corp.*, 277 NLRB 1353 (1985); *Teamsters Local 595 (Sweetener Products)*, 268 NLRB 1106, 1111 fn. 11 (1984). In *Sisters of Mercy*, a majority of the unit employees signed a petition requesting a change in the local union that represented them. The international union honored the request and administratively transferred the unit. A letter was sent to the company advising that the unit had been transferred to a different local "in accordance with 'the stated wishes of the majority of those in the bargaining unit." Id. at 1353. The company refused to bargain with the new local, and it filed charges alleging a refusal to bargain. The Regional Director in that case, just as in this case, dismissed the charges. Thereafter, as in this case, the original local demanded bargaining for a new contract prior to the expiration of the existing contract. The Board held that the original local "unequivocally disclaimed any interest in further representing unit employees when it transferred jurisdiction." Id. at 1354. The Board noted that the original local did not engage in any action inconsistent with its disclaimer for 2 months. Under those circumstances, the Board concluded that "the Respondent could refuse to recognize [the original local] as the

unit employees' representatives and [the original local] could not thereafter resurrect its bargaining status." Ibid.

In *Royal Iolani Apartment Owners*, 292 NLRB 107 (1988), the Board discussed *Sisters of Mercy* and found it inapposite. *Royal Iolani* involved a recently certified local union that represented a unit that, under a jurisdictional understanding, should have been represented by a different local. The Board specifically noted that the unit employees, when given an opportunity to vote upon the jurisdictional transfer, rejected it. The Board held that, in those circumstances, the certified local union made a premature and mistaken disclaimer of its "certified representative status." Id. at 108. The holding in *Sisters of Mercy* was not disturbed.

In this case, there is no evidence that Local 420 acted inconsistently with the disclaimer established by the transfer of jurisdiction. So far as the record shows, the last grievance handled by Local 420 was the one resolved by Lille in 1997. There is no evidence of any communication between Local 420 and the Respondent for over a year, from Goad's receipt of Maddaloni's June 24, 1998 letter advising him of the transfer of jurisdiction until August 4, 1999. It is clear that Rafferty was fully satisfied with the action that General President Maddaloni had taken in transferring the unit to Local 562, an action that appears to have never been formally rescinded. In the interim, Murphy had demanded that Respondent bargain with Local 562, and charges were filed by Local 562 and the United Association when Respondent refused to bargain. On August 4, more than two months after the dismissal of those charges was sustained by the Office of Appeals, Local 420 informed Goad that it was exercising its right to reopen the collective-bargaining agreement and that a representative of Local 420 would meet with him. More than two months after this, on October 8, Rafferty informed Goad that Murphy was the agent, and "I'm not partaking in it." Even if the foregoing actions establish an attempt by Local 420 to resurrect its bargaining rights, that attempt came more than a year after the disclaimer established by the transfer of jurisdiction. I find that it was insufficient to resurrect the bargaining status of Local 420. *Sisters of Mercy Health Corp.*, supra at 1353. The disclaimer established by the transfer of jurisdiction from Local 420 to Local 562 extinguished Respondent's obligation to bargain with Local 420. Thus, since Respondent had no obligation to bargain with Local 420, it did not violate the Act by refusing to bargain with Murphy even if Murphy had been a bona fide agent of Local 420.

CONCLUSION OF LAW

The Respondent has not engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

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

ORDER

The complaint is dismissed.

[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.