

FINDINGS OF FACT

The Board readopts its Findings of Fact entered herein on the 23rd day of September, 1988, to-wit:

1. The International Association of Firefighters Local 2085 (IAFF 2085) is the duly authorized bargaining agent of the firefighters employed by the City of Bethany.

2. The Bethany Firefighters Association is a rival labor organization which is seeking to decertify IAFF 2085 as the authorized bargaining agent of the firefighters employed by the City of Bethany (City).

3. At all times pertinent hereto, Mr. Fred Moore was the President of IAFF 2085 (Tr. 83).

4. On January 25, 1988, Mr. Ernest Moore (employed by the City as a firefighter) filed a petition with the PERB seeking to decertify IAFF 2085 as the bargaining agent for the firefighters (Tr. 10).

5. On January 27, 1988, Ernest Moore informed Fred Moore that he had filed the petition to decertify IAFF 2085 (Tr. 10, 11).

6. Fred Moore became quite angry at this news and began shouting in Ernest Moore's face demanding to know who signed the authorization cards (Tr. 10, 11, 56-58).

7. There is no evidence in the record that Fred Moore threatened any member of the fire department with physical harm as alleged in the complaint.

8. On February 4, 1988 at a meeting of IAFF 2085, in front of approximately 12 members, Fred Moore handed Ernest Moore written charges of Union disloyalty and told him he had no rights at the meeting (Tr. 12, 13, 67; Complainant's Ex. 1).

9. At this same meeting, Fred Moore again demanded to know who signed the authorization cards (Tr. 14, 68), as did Gary Lillenas, Vice-President of IAFF, who also demanded to know who signed the cards at this meeting. At least one member of Local 2085, who had signed the cards felt intimidated by Mr. Moore's demand (Tr. 69).

10. Tom Riddle, an independent business agent who works from time to time for Local 2085 prepared a "Special Report" (Complainant's Ex. 2) for distribution and posting which listed Ernest Moore and seven other members of the Bethany Firefighters as "persons without honor and faithless in their obligations." Fred Moore examined the report prior to distribution and attested to its accuracy (Tr. 102, 103).

CONCLUSIONS OF LAW

The Board amends its Conclusions of Law to read as follows:

1. The PERB has jurisdiction over the parties and subject matter of their disputes pursuant to 11 O.S.Supp. 1986, § 51-104(b).

2. The fact and manner of removing Ernest Moore as a member of Local No. 2085 did not constitute an unfair labor

practice. In a decertification action the incumbent may expel a member seeking its decertification and such action does not constitute an unfair labor practice. Price v. NLRB, 373 F.2d 443 (9th Cir. 1967).

3. The Complainant Association has failed to prove that the written notice dated February 12, 1988 (See Finding of Fact No. 10) describing various members of the Association as "persons without honor and faithless to their obligations" was published by the Respondent. Due to this failure of proof, the Board will not determine whether publication of such a document is a privileged communication or constitutes an unfair labor practice.

4. The Complainant has established that two officers of Local No. 2085 did demand to know who signed authorization cards. The Board does not approve of the Respondent's actions. The issue before the Board is: Did the actions of the Union, constitute an unfair labor practice under the FPAA? The Board is reluctant to carve out narrow exceptions for Union activities which could conceivably compromise the sanctity of authorization cards particularly in the more volatile situation when corporate authorities (with their economic power) attempt to learn the identity of those executing the cards. However, in light of the restrictions on unions found in the FPAA (such as voluntary membership in unions), Complainants must show more than a mere demand by a Union official. The Complainant must show some implied or

actual threat of physical violence or economic benefit or detriment. NLRB v. Drivers Local Union No. 369, 362 U.S. 274 (1960); Perry Norvell Company, 80 N.L.R.B. 225. (1948).

The Board is persuaded that the Complainant's have not offered sufficient proof to indicate a demand coupled with an (implied or actual) threat of physical violence or economic benefit or detriment was made by the Respondent. Complainants have failed to offer sufficient proof to establish that the actions of the Union constitute an unfair labor practice under the FPAA.

O R D E R

THEREFORE, based upon the Findings of Fact and Conclusions of Law, the complaint filed herein is dismissed.

Dated this 15 day of Nov., 1988.

acting Donald L. Copelin
CHAIRMAN

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