

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

**Laborers' International Union of North America, Local 578 v.
National Labor Relations Board**

594 F.3d 732 (10th Cir. 2010) · No. Nos. 08-9564, 08-9569 · Decided February 2, 2010

SUMMARY

The Tenth Circuit denied a union's petition for review and granted the National Labor Relations Board's cross-petition to enforce its order concerning the discharge of an employee for delinquent union dues. The court held that substantial evidence supported the Board's findings that the union violated the National Labor Relations Act by failing to provide adequate notice of the amount owed, explain its calculation, provide a reasonable payment deadline, and honor an agreed payment plan before seeking the employee's discharge.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Gorsuch, Circuit Judge; McKay, Circuit Judge; Holmes, Circuit Judge
JURISDICTION	Federal
DECIDED	February 2, 2010
DOCKET	Nos. 08-9564, 08-9569
DISPOSITION	other
PROCEDURAL POSTURE	The union petitioned for review of an NLRB order finding that it committed unfair labor practices by threatening and securing an employee's discharge for delinquent union dues. The NLRB cross-petitioned for enforcement of its order.
STANDARD OF REVIEW	The court reviewed the NLRB's factual findings under the substantial-evidence standard, asking whether the record contained such relevant evidence as a reasonable mind might accept as adequate to support the Board's decision. The court did not reweigh the evidence or make its own credibility determinations.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Laborers' International Union of North America, Local 578 v. National Labor Relations Board

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QUESTIONS PRESENTED

1. Whether the union violated section 8(b)(1)(A) by threatening Lopez with immediate discharge without providing actual notice of the precise delinquency, an explanation of its calculation, a reasonable payment deadline, and notice that nonpayment would result in discharge.
2. Whether the union violated sections 8(b)(1)(A) and 8(b)(2) by causing Lopez's discharge before providing the required notice and before allowing him to complete an agreed payment plan.
3. Whether substantial evidence supported the NLRB's findings that Lopez did not receive the October 12 letter and that the union failed to satisfy its fiduciary duties before threatening and securing his discharge.

HOLDINGS

1. Before invoking a union-security clause against an employee, a union must deal fairly with the employee by providing actual notice of the precise amount due, including the months for which dues are owed; explaining how the amount was calculated; providing a reasonable deadline for payment; and explaining that failure to pay will result in discharge. A threat of discharge without these protections violates section 8(b)(1)(A).
2. The union violated sections 8(b)(1)(A) and 8(b)(2) by causing Lopez's discharge without adequately explaining the delinquency or providing a reasonable opportunity to cure, including by having him discharged before he could complete an agreed payment schedule.
3. The NLRB's findings were supported by substantial evidence, and the court was required to uphold them even if it might have reached a different factual conclusion.

KEY QUOTATIONS

“Among other things, before invoking the union-security clause against an employee, the union's obligation to deal fairly with employees requires it to: (1) provide the employee with actual notice of the precise amount due, including the months for which dues are owed; (2) explain how it computed the amount due; (3) give the employee a reasonable deadline for payment; and, (4) explain to the employee that failure to pay will result in discharge.” (738)

“The relevant test, then, is an objective, not subjective, one.” (738)

“The union's petition for review is denied and the NLRB's cross-petition for enforcement is granted.” (742)

FACTUAL BACKGROUND

The union and Shaw Stone & Webster were parties to a collective bargaining agreement containing a union-security provision. After Sebedeo Lopez fell behind on initiation fees and union dues, the union sent letters demanding his immediate discharge without explaining how the delinquency was calculated or providing a reasonable payment deadline. Although Lopez arranged to pay part of the claimed amount and received additional time to pay the balance, the union caused the employer to discharge him before that payment period expired.

PROCEDURAL HISTORY

An NLRB Administrative Law Judge found that the union violated sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act by threatening and causing Sebedeo Lopez's discharge without providing legally sufficient notice of the delinquency or a reasonable opportunity to cure it. The NLRB adopted the ALJ's decision and ordered remedial measures, including back pay and removal of references to the unlawful discharge. The Tenth Circuit denied the union's petition for review and granted the NLRB's cross-petition for enforcement.

DISPOSITION

other

CASES CITED

- NLRB v. Hotel, Motel & Club Employees' Union, Local 568, 320 F.2d 254, 257-58 (3d Cir. 1963)
- NLRB v. Gen. Motors Corp., 373 U.S. 734, 740-42 (1963)
- Int'l Bhd. of Elec. Workers, AFL-CIO, Local No. 99 v. NLRB, 61 F.3d 41, 43-44 (D.C. Cir. 1995)
- Radio-Electronics Officers Union v. NLRB, 16 F.3d 1280, 1286 (D.C. Cir. 1994)
- Local 545, Int'l Union of Operating Eng'rs, 161 NLRB 1114, 1121 (1966)
- Philadelphia Sheraton Corp., 136 NLRB 888, 896 (1962), enforced, 320 F.2d 254 (3d Cir. 1963)
- Coopers NIU (Blue Grass), 299 NLRB 720, 723-24 (1990)
- Western Publishing Co., 263 NLRB 1110, 1113 (1982)
- NLRB v. Local 1445, United Food & Commercial Workers Int'l Union, 647 F.2d 214, 217 (1st Cir. 1981)
- NLRB v. Constr. & Bldg. Material Teamsters Local No. 291, 633 F.2d 1295, 1298-99 (9th Cir. 1980)
- Operating Eng'rs, Local Union No. 3, 313 NLRB 25, 33 (1993)
- Teamsters Local Union No. 122, 203 NLRB 1041, 1041-42 (1973), enforced, 502 F.2d 1160 (1st Cir. 1974)
- Amalgamated Clothing Workers of America, AFL-CIO, Local 990 (Troy Textiles, Inc.), 174 NLRB 1148, 1151 (1969), enforced, 430 F.2d 966 (5th Cir. 1970)
- Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951)
- Energy West Mining Co. v. Oliver, 555 F.3d 1211, 1217 (10th Cir. 2009)
- NLRB v. Interstate Builders, Inc., 351 F.3d 1020, 1028 (10th Cir. 2003)
- Rosenthal v. Walker, 111 U.S. 185, 193-94 (1884)
- Teamsters Local Union No. 523 v. NLRB, 590 F.3d 849 (10th Cir. 2009)
- Narricot Indus., L.P. v. NLRB, 587 F.3d 654, 659 (4th Cir. 2009)

- Snell Island SNF LLC v. NLRB, 568 F.3d 410, 423-24 (2d Cir. 2009)
- New Process Steel, L.P. v. NLRB, 564 F.3d 840, 845-46 (7th Cir. 2009)
- Ne. Land Servs., Ltd. v. NLRB, 560 F.3d 36, 41 (1st Cir. 2009)
- Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469, 472-73 (D.C. Cir. 2009)

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