

7-14-75
Wilder memo

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7-10-75
T-102

TO: ALL STAFF
FROM: J. J. Wilder
DATE: July 14, 1975
SUBJECT: N.L.R.B. Decision re representation of non-member by Union

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The following was taken from the "Weekly Summary of N.L.R.B. Cases, June 19-13, 1975", dated Wednesday, June 18, 1975:

"Electrical Workers (IBEW) Local 2088 (Federal Electric Corp.) (12-CB-1430; 218 NLRB No. 48), Cocoa Beach, Fla. June 11. Agreeing with the finding of an Administrative Law Judge, the Board decided that the Union violated the Act by failing to process a grievance of John S. Krupke because of his nonmembership in the Union.

The remedy proposed by the Judge, the Board ruled, was inadequate to redress the injury suffered by Krupke as a result of the unfair labor practices committed against him.

As a consequence of the Union's failure to process Krupke's grievance, no determination was ever actually made as to whether Krupke was entitled to a retroactive promotion from the classification of "B" technician to that of "A" technician.

In attempting to fashion an adequate remedy, the Judge recognized that the Employer was not charged as a respondent and thus a determination of Krupke's right to a promotion realistically could only be achieved by requiring the Union to fully utilize the grievance machinery in the parties' contract.

Thus, the Judge ordered the Union to proceed promptly to arbitration over Krupke's grievance. He further ordered that, if upon exhaustion of the arbitration procedures, no determination had been made on the merits of the grievance, the Union would be required to make him whole for loss of retroactive backpay from July 1973 to January 20, 1974, the same as if he had actually been promoted to the "A" technician classification. The Judge did not extend the backpay obligation beyond January 20, 1974, because Krupke was not in fact promoted on that date.

In the Board's opinion, the Judge failed to take fully into account the antagonism the Union exhibited toward Krupke. The Board said there is considerable risk that the Union will fail to provide full, fair and conscientious representation in the processing of Krupke's grievance.

The uncertainty as to whether Krupke's grievance would have been found meritorious, the Board said, is a direct product of the unlawful action of the Union and such uncertainty must be resolved in favor of the discriminatee and not the wrongdoer. Accordingly, the Board presumed that Krupke's grievance, if processed, would have been found meritorious on January 20, 1974, and that his promotion to "A" technician would have been retroactive to July, 1973.

The Board therefore directed the Union to make Krupke whole for losses resulting from his failure to be paid the wage rate of "A" technician for the period from July 1973 to the time an actual determination is made as to his current right to such a promotion.

(Members H. Jenkins, Kennedy and Penello participated.)

Charges filed by John S. Krupke; complaint alleged violation of Act's Section 8(b) (1) (A) and (2). Hearing at Patrick Air Force Base, July 16-17, 1974. Adm. Law Judge Thomas D. Johnston's Decision issued Sept. 19, 1974."

(W-1447)