

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

VENTRA SPD CORP.

and

Case 8-CA-36438

UNITED AUTOMOBILE AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA, INTERNATIONAL UNION, UAW

*Rudra Choudhury, Esq.*, for the General Counsel.  
*William L. Hooth, Esq.*, of Troy, MI, for the Respondent.

DECISION

Statement of the Case

**RICHARD A. SCULLY**, Administrative Law Judge. Upon a charge and an amended charge filed by United Automobile, Aerospace, and Agricultural Implement Workers of America International Union, UAW (the Union), on March 8 and May 30, 2006, respectively, the Regional Director for Region 8, National Labor Relations Board (the Board), issued a complaint on May 31, 2006, alleging that Ventra SPD Corp. (Respondent) had committed certain violations of Section 8(a)(1) of the National Labor Relations Act (the Act). The Respondent filed a timely answer denying that it had committed any violation of the Act.

A hearing was held on August 15, 2006, in Toledo, Ohio, at which all parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Brief submitted on behalf of the parties have been given due consideration. Upon the entire record and my observation of the demeanor of the witnesses, I make the following

Findings of Fact

I. Jurisdiction

At all times material, the Respondent has been a Delaware corporation with a facility in Toledo, Ohio, engaged in the assembly and sequencing of exterior plastic trim automobile parts. Annually, in the course and conduct of its business operations, the Respondent ships from and receives goods at its Toledo facility valued in excess of \$50,000 directly to points located outside the State of Ohio. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

5 During February 2006,<sup>1</sup> UAW Local 2 was engaged in an organizing campaign at the Respondent's facility. The complaint alleges that the Respondent violated Section 8(a)(1) on February 9 by removing a notice concerning a union meeting from a bulletin board that is available for use by employees and on February 24 by threatening employees that they would be considered to have voluntarily quit and would lose their employment if they engaged in union activity, specifically, joining in a work stoppage.

10 Jason Billheimer was employed at the Respondent's facility from July 2005 until he quit on May 5. While employed by the Respondent, he was active in Local 2's organizing campaign, giving employees information about the Union and soliciting their support. Billheimer testified that on February 9 a UAW organizer gave him about 10 bright yellow flyers giving notice of a union meeting and asked him to distribute them, something that he had done on a number of occasions since the Fall of 2005. Upon entering the plant, he gave a flyer to an employee, put a number on a table in the break room, and posted one on an information board located near the time clock where employees punch in and out. About an hour after going to his work station which is located about 30 feet from and has an unobstructed view of the information board, he saw plant general manager Donald VanBuskirk remove the flyer from the board and walk away toward his office. When Billheimer clocked out at the end of his shift, the flyer was missing from the board although some of those he put in the break room were still there.

25 During the week prior to February 24, there were rumors that there was going to be a work stoppage at the plant on that date. Billheimer testified that when he arrived at work on February 24, he noticed 2 police cars outside the plant, saw 6 or 7 temporary employees in the plant, and learned from another employee that the Respondent was anticipating that a strike would begin during their shift. Billheimer asked his supervisor Angelo Kelly why all the temps were there and Kelly responded that it was "a long story." At about 10 p.m., while at his work station on the front fascia production line, he saw Kelly and employees Dale Overy and Joe Duquette engaged in a conversation about 15 feet away. When Billheimer heard the word "strike" mentioned, he started "eavesdropping and listening to the conversation." He heard Kelly say, "If any Ventra employees decided they were going to strike, that Ventra would consider it a voluntary quit, and they'd be terminated on the spot." While the 3 men continued to talk, Billheimer stopped listening and did not talk to any of them about what he had overheard.

35 William Murray is a human resources manager for Flex-N-Gate, a corporation of which Ventra is a subsidiary. Murray testified that he was informed of the rumor about a walkout at the Ventra plant and went there on February 23 to meet with VanBuskirk and discuss the action to be taken if a walkout did in fact occur as well as the employees' rights. He informed VanBuskirk that if there was a walkout he should consider using temporary employees to replace strikers, but that no one should be terminated or laid off.

45 VanBuskirk testified that he was told by supervisor Kelly and some employees that there was a rumor going around that there would be a walkout and that picketers would try to stop them from shipping fascias out of the building. After meeting with Murray, he attempted to prepare for a "worst-case scenario" which included arranging to have temps present to fill in if a walkout happened. On February 23, he held a meeting with his supervisors, Kelly and Buddy Santus, to tell them what Murray had said and what they should and should not do. He also met with them separately on the 24th. He met with Kelly at about 3:30 p.m. and repeated that if a

50 <sup>1</sup> All dates are in 2006.

walkout occurred, no one was to be suspended or fired, that the temps would be used and the status of any employee who walked out would be taken up later. When no walkout took place, the temps he had ready to fill in were dismissed after 4 hours.

5 Angelo Kelly testified that he heard a rumor about a walkout and informed VanBuskirk. Later in the week, VanBuskirk told him about meeting with Murray and said that if a walkout did occur supervisors could not threaten anyone, could not tell employees they were laid off or fired, or that they would lose their jobs if they participated in the demonstration. Kelly testified that about one hour into the shift on February 24, as he was leaving the office and heading to the fascia line where two employees were arguing, he was stopped by Overy and Duquette. He said that he didn't give his full attention to the conversation because he was concerned about the argument going on between the other employees. Overy asked if he could bring his dog to work because he had been told "if we cross the line, we better watch our vehicles" and he wanted to chain his dog to his car to protect it. Kelly responded that nobody was going to threaten him or damage his car. Duquette commented that he could not afford to strike or leave work because he needed money. Kelly denied telling Overy and Duquette that employees who walked out would be terminated or considered to have quit. Kelly also testified that this conversation took place 25 to 30 feet from where Billheimer was working. He said that there was an aisle in between in which hi-lo's were constantly running back and forth and there was noise from air compressors that would have made it impossible for Billheimer to have heard their conversation.

Dale Overy testified that he had a conversation with Kelly and Duquette on February 24 which he placed at about 7:00 p.m. Overy said that Duquette talked about property damage from crossing the picket line and he responded that he was going to have his dogs in his truck and that no one was going to damage his vehicle. He testified that Kelly did not say that if employees walked out they would be terminated or that they would be considered to have quit. He said that the word "strike" was not mentioned but there was "something about a walkout." Kelly said that the employees could do what they wanted but there was production that had to be done and if necessary he would have temps do it. Overy said that Billheimer's work station was about 20 feet from where their conversation took place but that he doubted that Billheimer could have heard what was said because of the noise in the plant.

#### Analysis and Conclusions

35 Both issues in this matter turn on credibility. Looking first to the alleged coercive statements by supervisor Kelly on February 24, on one side there is the uncorroborated testimony of Billheimer and on the other the generally consistent testimony of Kelly and Overy about their conversation and their mutually corroborative testimony that the statements attributed to Kelly by Billheimer were not made. First, I find it unlikely that Kelly, who within the preceding 24 hours had twice been instructed by VanBuskirk as to what the company would do and what Kelly should and should not do as a supervisor in the event the rumored walkout took place, would completely ignore his instructions and tell Overy and Duquette the exact opposite of what VanBuskirk had told him. Second, I found Kelly and Overy to be credible witnesses and believed their testimony that Kelly did not make those statements and that it was unlikely that Billheimer could have overheard their conversation in the first place.

The General Counsel's attacks on the credibility of Kelly and Overy are not persuasive. Both remembered only a single conversation on February 24 in which a walkout was mentioned, although each placed it at a different time during the shift. Given the unremarkable nature of the conversation, I find the differences in their recollection as to when it occurred and exactly what was said do not detract from their credibility. Kelly credibly testified that the conversation

occurred when he was stopped by Overy and Duquette while he was heading to the production line because of an argument taking place there between two other employees and that he did not focus his full attention on it. I find it likely that the only reason he remembered it at all was because of the comments by Overy about bringing his dog to work to protect his vehicle. I also  
 5 find Kelly's and Overy's testimony about when this conversation occurred, either around 5 or 7 p.m., more credible than that of Billheimer who placed it around 10 p.m. By 10 p.m., it was obvious that there was not going to be a walkout. At that point, there was less than 3 hours left in the shift and the temps had already been sent home. Consequently, it was unlikely that the rumored walkout remained a matter of concern. I also find no evidence to support the  
 10 contention that Kelly and/or Overy were biased in favor of the Respondent simply because it was their current employer. Both were former UAW members and Overy credibly testified that he supported having the Union at Ventra but felt there were not enough people in favor of it. I shall recommend that this allegation be dismissed.

15 Resolution of the issue concerning the alleged removal of the union meeting notice from the bulletin board also involves credibility, that of Billheimer vis-à-vis VanBuskirk. VanBuskirk testified that prior to February 9 he had seen several union notices being handed out in the parking lot or on the table in the break room. but that he had never seen one on the bulletin  
 20 board and that he did not remove one from the board on that date. Having found that Billheimer's testimony concerning the alleged statements by Kelly was not credible, I have no reason to believe him in the face of VanBuskirk's credible denial that he removed the notice.<sup>2</sup> I shall recommend that this allegation also be dismissed.

25 Having found that the General Counsel has failed to establish either allegation that the Respondent violated Section 8(a)(1) of the Act, I shall recommend that the complaint be dismissed.

#### Conclusions of Law

- 30 1. The Respondent, Ventra SPD Corp., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 35 3. The Respondent did not violate the Act as alleged in the complaint.

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

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50 <sup>2</sup> Here again, counsel for the General Counsel's attack on the credibility of VanBuskirk is not persuasive.

ORDER<sup>3</sup>

The complaint is dismissed in its entirety.

5 Dated, Washington, D.C. December 8, 2006

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Richard A. Scully  
Administrative Law Judge

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<sup>3</sup> 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.