California Newspapers Partnership d/b/a ANG Newspapers *and* Northern California Media Workers Guild/Typographical Union, Local 39521, TNG-CWA, AFL–CIO. Case 32–CA–20008

November 9, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND MEISBURG

On November 6, 2003, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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[1] and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(a)(1) by telling its employee, a reporter, that he created the appearance of a conflict of interest by appearing before the city council to seek support for the Union's efforts to negotiate a contract. We reverse and dismiss the complaint.

I. BACKGROUND

The Employer is a newspaper publisher. The Union represents a unit of about 200 reporters, editors, and other editorial employees. At the time of the events at issue here, the parties' collective-bargaining agreement had expired, and they were involved in protracted negotiations for a new contract. During this time, the Union and its members decided to seek support from local city councils. They did so by having the Respondent's reporters speak at the city council meetings and ask for resolutions supporting the Union's efforts to get a contract.

This case revolves around the Respondent's discussion with employee Tom Anderson about Anderson's city council appearance. Anderson is a bargaining unit member and a reporter for the Employer's *Fremont Argus*. On October 22, 2002,[2] Anderson attended a Fremont City Council meeting while off duty.[3] He identified himself as a business reporter for the Respondent and asked the council to pass a resolution supporting the Union's efforts to negotiate a contract. Anderson told the council that he would not promise more favorable news coverage in return for the resolution.

At the time of the meeting, Anderson was a business reporter who did not regularly attend city council meetings or report on the city council. During the course of his reporting in the past, however, Anderson had interviewed city officials, including the mayor and one city council member. Further, a few weeks after his city council appearance, Anderson wrote an article on the city's economic development, in which he quoted certain city officials who report to the city council. The article appeared in the paper about 1 month after Anderson's city council appearance.

Sometime after October 22, Business Editor Drew Voros and Deputy Business Editor Mark Stafforini, who supervised Anderson, learned that Anderson had addressed the city council. Later, they also learned that Anderson was writing an article about the city. Concerned about the appearance of a conflict of interest, Voros consulted other members of management and decided to speak to Anderson.[4]

Voros and Stafforini met with Anderson on November 22. After a routine discussion with Anderson about an unrelated article that Anderson was writing, Voros and Stafforini raised the issue of Anderson's city council appearance. They told Anderson that they were concerned about the appearance of a conflict of interest because Anderson had gone before the city council to ask for a favor, when Anderson might be reporting about the city or city council, and in fact had written a story that involved city sources and was about city government. Voros and Stafforini told Anderson that they felt someone else should have spoken to the council instead of Anderson. They explained the importance of protecting the integrity and credibility of the paper. They emphasized, however, that Anderson had the right to engage in union activity. They told Anderson that their concerns were unrelated to the fact that Anderson's remarks to the city council had been about the Union. At the end of the discussion, Voros reaffirmed that Anderson was a valued employee. Anderson was not disciplined.

The judge found that the Respondent violated Section 8(a)(1) by telling Anderson that he had created the appearance of a conflict of interest by speaking to the city council on behalf of the Union. We reverse.

[1] There are no exceptions to the 8(a)(1) allegations dismissed by the judge.

[2] All dates are in 2002 unless otherwise specified.

[3] A different employee was originally selected to address the council, but that employee was called away on a story. Anderson was selected to go in his place, because Anderson had the least amount of contact with the city council during the course of his reporting.

[4] The Respondent's upper management was aware of several other instances in which its reporters had addressed local city councils, and was discussing the appropriate course of action.

II. ANALYSIS

A. Appropriate Legal Standard

In finding that the Respondent violated Section 8(a)(1), the judge relied on two alternative rationales: one based on the Board's decision in *Peerless Publications*, 283 NLRB 334 (1987), an 8(a)(5) case, and another based on the Board's 8(a)(1) standard, under which the judge examined whether the Respondent's conduct reasonably tended to interfere with the employee's Section 7 rights. Under both rationales, the judge found that the Respondent's "admonition" to Anderson violated Section 8(a)(1).

As the judge acknowledged, *Peerless* involved an alleged violation of Section 8(a)(5). The issue was whether the respondent, a newspaper publisher, violated Section 8(a)(5) by unilaterally implementing a code of ethics without giving the union notice and an opportunity to bargain. The issue in the present case, of course, is different: whether the Respondent violated Section 8(a)(1) by telling an employee that he had created the appearance of a conflict of interest. Although *Peerless* addresses some of the same newspaper industry concerns as are involved herein, we find it more appropriate to examine this case under 8(a)(1) principles.[5]

Under the 8(a)(1) standard, the Board first examines whether the employer's conduct reasonably tended to interfere with Section 7 rights. If so, the burden is on the employer to demonstrate a legitimate and substantial business justification for its conduct. "It is the responsibility of the Board to strike the proper balance between the asserted business justifications and the invasion of employee rights in light of the Act and its policy." *Caesar's Palace*, 336 NLRB 271, 272 fn. 6 (2001); *Jeannette Corp*., 532 F.2d 916, 918 (3d Cir. 1976).

As explained below, even assuming that the Respondent's conversation with Anderson interfered with Section 7 rights, we find that the Respondent has demonstrated a legitimate and substantial business justification that outweighs the adverse effect on Section 7 rights.

B. The Respondent Demonstrated a Legitimate and Substantial Business Justification That Outweighs the Adverse Effect on Section 7 Rights

The Respondent has a legitimate interest in protecting its newspaper against the appearance of conflicts of interest that could damage the paper's credibility. As the District of Columbia Circuit has stated,

> [P]rotection of the editorial integrity of a newspaper lies at the core of publishing control. In a very real sense, that characteristic is to a newspaper or magazine what machinery is to a manufacturer. At least with respect to most news publications, credibility is essential to [a publisher's] ultimate product and to the conduct of the enterprise.

Newspaper Guild Local 10 (Peerless Publications) v. NLRB, 636 F.2d 550, 560 (D.C. Cir. 1980). We recognize that Anderson's beat did not cover the city council. However, the Respondent's witnesses testified that reporters cannot know with certainty what they will be covering in the future. Beats can change, and reporters are sometimes assigned to cover stories on which they would not ordinarily report. The Respondent's former executive editor also testified that readers, in assessing the credibility of a newspaper, see a reporter as working for the newspaper as a whole and do not necessarily recognize the distinction between beats. Even though Anderson did not regularly cover the city council, the newspaper for which he reported did, and Anderson himself wrote an article about the city's economic development only a month after his city council appearance. Significantly, it is undisputed that Anderson sometimes did deal with city officials during the course of his reporting, and in fact quoted city officials in his article about the city's economy. Under all these circumstances, the Respondent had the right to discuss with Anderson the possibility that his city council address created the appearance of a conflict of interest. Thus, the Respondent had a legitimate and substantial business justification for its discussion with Anderson.

That justification outweighs the adverse effect on Section 7 activity. The effect was minimal, if not nonexistent. Anderson was not disciplined. The Respondent made clear that Anderson was free to engage in union activity. Voros emphasized at least three times during the meeting that "this is not about representing the union, this is not a union issue." The Respondent refrained from meeting with Anderson about his city council appearance until the Respondent learned that Anderson was writing an article about the city. If not for that article, it is not even clear whether the Respondent would have called Anderson in to discuss the issue. The Respondent's legitimate interest in protecting the newspaper's credibility against the appearance of conflicts of interest justifies the minimal restraint on Anderson's Section 7 rights. See, e.g., *Caesar's Palace*, supra at 272 (employer had legitimate business justification for its confidentiality rule prohibiting discussion of ongoing drug

[5] We recognize that the Board took the *Peerless* guidelines into consideration in two decisions addressing whether an employer's rules of conduct violated Sec. 8(a)(1). See *Cincinnati Suburban Press*, 289 NLRB 966 fn. 2 (1988); overruled in part on other grounds by *Lafayette Park Hotel,* 326 NLRB 824 (1998); *Simplex Wire & Cable Co.*, 313 NLRB 1311 (1994). However, nothing in these decisions suggests that the Board intended *Peerless* to supplant the traditional 8(a)(1) standard.

investigation; justification outweighed the rule's infringement on employees' rights). Accordingly, the Respondent's discussion with Anderson did not violate Section 8(a)(1).

C. Even Under Peerless, the Respondent's Discussion With Anderson Did Not Violate Section 8(a)(1)

Moreover, we would reach the same result even if we were to apply the *Peerless* principles. The issue in *Peerless* was whether the employer violated Section 8(a)(5) by unilaterally implementing a code of ethics, which included conflict of interest provisions. Recognizing a news publisher's interest in protecting its "editorial integrity," the Board found that subject to certain requirements, a publisher may unilaterally establish "reasonable rules" to prevent activity that would directly compromise its employees' standing as responsible journalists. 283 NLRB at 335. The Board set forth the following requirements for unilateral action:

> [T]he subject matter sought to be addressed by the employer must go to the protection of the core purposes of the enterprise. When that is the case, the rule must on its face be (1) narrowly tailored in terms of substance, to meet with particularity only the employer's legitimate and necessary objectives, without being overly broad, vague, or ambiguous; and (2) appropriately limited in its applicability to affected employees to accomplish the necessarily limited objectives.

Id. Again, we find this standard more appropriate for 8(a)(5) cases. If we were to apply it here, however, we would nevertheless reverse the judge and dismiss the complaint.

First, we would find that maintaining the credibility and integrity of its newspaper is one of the core purposes of the Respondent's enterprise. The Respondent's discussion with Anderson goes to the protection of this core purpose.[6]

Second, contrary to the judge's findings, the conversation with Anderson was narrowly tailored, and it was neither vague nor ambiguous. The Respondent privately spoke to one particular employee for one specific instance of conduct that the Respondent considered inappropriate. The judge stated that the conversation was overbroad because it "referenced the appearance of a conflict of interest arising from asking a favor of a news source." However, according to the credited testimony, the language actually used by the Respondent was more specific: Voros and Stafforini told Anderson that they were concerned because Anderson had asked the city council for a favor, when Anderson could end up reporting on the city or the council and actually did so. That is, Anderson's city council appearance was inappropriate because there was the possibility that he would report on the city or the city council. The fact that he later did so served to illustrate the problem. We find that the conversation, when viewed in context, was sufficiently clear and narrowly tailored to satisfy the *Peerless* test.[7]

Third, the conversation was "appropriately limited in its applicability to affected employees to accomplish the necessarily limited objectives." Id. at 335. The judge finds that it was unclear whether the conversation applied to Anderson alone or to all employees in the bargaining unit. Again, however, the conversation was with Anderson alone in response to a specific incident. There is no evidence that the Respondent's discussion with Anderson was even known to other employees.[8]

For the foregoing reasons, even if we were to analyze the issue under *Peerless*, we would find that the Respondent's discussion with Anderson did not violate Section 8(a)(1). Accordingly, we reverse the judge and dismiss the complaint.[9]

[6] Cf. *W-I Forest Products Co.*, 304 NLRB 957, 958–959 (1991) (ban on smoking "d[oes] not go to the heart of the Respondent's business in the way that, for example, a rule prohibiting a reporter from taking gifts from the source for one of her stories relates to the core entrepreneurial concern of a newspaper").

[7] The judge faults the Respondent for failing to suggest to Anderson other ways in which the Union could seek the support of the city council without creating the appearance of a conflict of interest. However, the Respondent had no obligation to do so.

[8] Even if the conversation did apply to other employees besides Anderson, there is nothing to suggest that it would apply to employees other than reporters. The Respondent's entire discussion with Anderson centered around the fact that Anderson is a reporter. Thus, the present case stands in marked contrast to *Peerless*, in which the Board found that the employer's ethics code was not appropriately limited, in part because it "applie[d] on its face to 'all employees,' without appropriate limitation to designated categories of employees (e.g., reporters and editorial personnel) as to which requirements differ." 283 NLRB at 336.

[9] Because we dismiss the complaint on other grounds, we need not pass on the Respondent's arguments that the First Amendment requires dismissal and that the judge erred in excluding certain evidence.

ORDER

The complaint is dismissed.

Amy Berbower, Esq., for the General Counsel.
Laurence R. Arnold, Esq., of San Francisco, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

MARY MILLER CRACRAFT, Administrative Law Judge. The General Counsel alleges that California Newspapers Partnership d/b/a ANG Newspapers (Respondent) committed six violations of Section 8(a)(1) of the National Labor Relations Act[1] during two meetings with its employee, Tom Anderson, occurring on August 28 and November 22, 2002.[2] Both meetings took place during the period of contract negotiations between Respondent and Northern California Media Workers Guild/Typographical Union, Local No. 39521, TNG-CWA, AFL–CIO (the Union).[3]

Allegations

Specifically, General Counsel alleges that at a meeting held on August 28, Respondent (1) told Anderson he could not receive a merit raise because of the Union; (2) asked Anderson how he felt about not getting a raise because of the Union; and (3) interrogated Anderson about his opinions of the Union and the status of contract negotiations. Further, General Counsel alleges that at a meeting held on November 22, Respondent (1) told Anderson that he had created a conflict of interest by speaking to the city council on behalf of the Union, (2) solicited a grievance by asking Anderson if he was happy working for Respondent, and (3) interrogated Anderson about his opinions of the Union and the status of contract negotiations.

The parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue the merits of their respective positions. On the entire record, including my observation of the demeanor of the witnesses,[4] and after considering the briefs filed by counsel for the General Counsel and counsel for the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent, a California partnership, maintains an office and place of business in Pleasanton, California, where it is engaged in the publication and distribution of daily newspapers. During the 12-month period ending January 28, 2003, Respondent derived gross revenues in excess of $200,000 and during the same time held membership in or subscribed to various interstate news services, published nationally syndicated features, and advertised nationally sold products. 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. BACKGROUND

Respondent publishes five newspapers in the San Francisco Bay area as follows: The Oakland Tribune, The Tri-Valley Herald, The Hayward Daily Review, The Fremont Argus, and The San Mateo Times. Drew Voros is the business editor for all publications and Mark Stafforini is the deputy business editor for all publications. Tom Anderson was hired in August 2001 as a business reporter for The Fremont Argus. In March 2003, Anderson began writing for the local section of The Fremont Argus.

Respondent and the Union were parties to a collective-bargaining agreement in effect from August 17, 1998 until August 16, 2001. The agreement covered a unit of approximately 200 employees at the five newspapers, including reporters, photographers, copy editors, and other editorial personnel. When the agreement expired, the Union and Respondent began protracted negotiations for a new contract. Near the 1-year anniversary of contract expiration, union members held rallies and picketed outside one of Respondent's offices to protest the lack of progress in reaching a new contract.

III. AUGUST 28 PERFORMANCE REVIEW MEETING

Facts

At about the same time as the 1-year anniversary of expiration, on August 28, Anderson met with Voros and Stafforini to discuss his first annual performance review.

The parties' expired contract provided for merit increases based upon performance review. A guaranteed merit fund, to be distributed in its entirety, was based on a percentage of the payroll and minimum merit increase amounts were set forth. The agreement specifically provided,

> However, upon the expiration or termination of this Agreement, unless it is extended beyond its term by a specific written agreement signed by the parties, [Respondent] shall be under no obligation to grant merit increases to any employee until a new agreement is reached.

There is no evidence that the agreement had been extended.

The three participants in the performance review presentation agree that Voros read Anderson's review and told Anderson it was the best review he had given any employee that year. At this point, the testimony of the three diverges.

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[1] Sec. 8(a)(1) of the Act, provides in relevant part that it shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act, to self-organization, to form, join, or assist labor organizations, to bargain collectively, to engage in other concerted activity, and to refrain from any such activities.

[2] All dates are in 2002 unless otherwise indicated.

[3] This case was tried in Oakland, California, on Thursday and Friday, July 24 and 25, 2003, based on a charge and amended charge filed by the Union on September 13, 2002, and November 27, 2002, respectively. The General Counsel issued the complaint on January 28, 2003.

[4] Credibility resolutions have been made based on witness demeanor, the weight of respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

Anderson testified that Voros said he would like to give Anderson a raise but "my hands are tied, I'd really like to give you a raise but I can't because of union bargaining." Anderson further testified that Voros said he would fight to get a raise for Anderson. Voros asked Anderson how he felt about that and Anderson expressed disappointment. According to Anderson, Voros then asked how Anderson felt about the current status of negotiations: the Union opposed mediation and Respondent wanted mediation. Anderson responded noncommittally.

Voros testified that he told Anderson he could not give him a raise because there was no contract. Voros explained that Respondent was not giving raises because there was no mechanism in place for giving raises. However, Voros opined that there were always exceptions to the rule and he would request that Anderson be made an exception. Voros continued that from his standpoint, it appeared that contract negotiations were at a standstill and that one of the sticking points was whether to utilize mediation. Voros expressed frustration at the failure to agree on use of mediation so that negotiations could continue and good employees like Anderson could be rewarded. Voros denied that he told Anderson he was not getting a raise because of the Union or the Union's position in bargaining. Voros denied that he asked Anderson what he thought about the fact that he was not getting a raise because of the Union and denied that he asked Anderson what he thought about the status of negotiations.

Stafforini recalled that Voros told Anderson that despite the strong review, unfortunately management had informed him "that because there was no contract with the union and because there was no official mechanism for giving raises," Respondent decided not to give raises. Stafforini recalled that Voros said he would try to persuade the executive editor to make an exception for Anderson. Voros told Anderson he felt bad about this but he was "stuck in the middle and there wasn't much he could do about it." Voros suggested that Anderson might want to talk with the Union about pursuing mediation to move things along. Stafforini denied that Voros or he asked Anderson what he thought about negotiations, how Anderson felt about not getting a raise, or told Anderson he was not getting a raise because of the Union.

Credibility Resolution

All three of the witnesses exhibited impressive testimonial demeanor coupled with extremely thoughtful, detailed recollections. Moreover, the testimony of the three witnesses is very similar. Anderson's testimony differs from that of Stafforini and Voros only with respect to the exact language utilized in discussing his not receiving a raise. Of course, Anderson, a current employee, may be accorded enhanced credibility because he was testifying against his economic self-interest. See, e.g., *Georgia Rug Mill*, 131 NLRB 1304, 1305 fn. 2 (1961). However, this is only one factor to be considered. *Flexsteel Industries,* 316 NLRB 745 (1995). Because these facts arose in the midst of protracted, somewhat bitter negotiations, which polarized the parties, I have determined that current employee status does not provide enhanced credibility in this case.

Based upon testimonial demeanor, I credit the testimony of Stafforini over that of Anderson and Voros, when there is a conflict. Additionally, as to testimonial content, I note that all three witnesses testified in free narrative. Both Voros' and Anderson's testimony, in this form, was highly scripted and well organized, as if their memories had solidified over time. I conclude that both were completely genuine in their beliefs but that their memories had naturally evolved as time elapsed. Stafforini, on the other hand, exhibited gaps in his memory. Thus, his testimony was fresher and more believable.

Analysis

Based on this credibility resolution, I find that Respondent did not ask Anderson how he felt about not getting a raise because of the Union and did not interrogate Anderson about his opinions about the Union and about the status of contract negotiations. Moreover, I find that Respondent did not tell Anderson that he would not receive a raise because of the Union. Rather, Voros told Anderson that he would not receive a raise because there was no contract with the Union and no official mechanism in place for giving raises.

Further, I conclude that in telling Anderson that Respondent's policy was that no raises would be given because there was no contract and no official mechanism in place for giving raises, Voros was merely stating the parties' agreement that Respondent was under no obligation to grant merit increases until a new agreement was reached. This does not rise to the level of blaming the Union for failure to award a merit increase to Anderson.

IV. OCTOBER 22 CITY COUNCIL MEETING

On October 22, Anderson attended a Fremont city council meeting. Anderson addressed the city council as a representative of the Union. He asked the city council to support a resolution in favor of the Union in the ongoing negotiations with Respondent. Anderson was not working at the time; he did not wear a press badge, and did not sit at the press table. Anderson did not regularly attend city council meetings as a business reporter. However, he had interviewed city government employees and officials, including the mayor and at least one council member, as part of his reporting.

V. NOVEMBER 22 MEETING

Facts

On November 22, Anderson met with Voros and Stafforini at Respondent's Pleasanton office. By this time, Anderson had received a raise based on Voros' efforts to create an exception to Respondent's policy. Anderson was told that the reason for going to Pleasanton was to review a story. There is no dispute that in the ensuing meeting, attended by Voros, Stafforini, and Anderson, Voros admonished Anderson that his remarks to the city council could create a perception of conflict of interest, undermining the paper's credibility. The admonition was not a disciplinary action.

According to Anderson, Voros continued the conversation by stating that he knew (from an article Anderson wrote for the Union newsletter) that Anderson did not believe that the parties' current mediation efforts would succeed. Anderson testified that Voros referenced the generous merit increase Ander-

son had received and asked if Anderson was happy working for Respondent.[5]

Both Voros and Stafforini testified that there was no discussion about the status of negotiations or mediation. Voros and Stafforini denied that either of them asked Anderson if he was happy working for Respondent. Voros and Stafforini recalled that Voros said he hoped Anderson was happy and that the raise had symbolically shown that Respondent believed Anderson was a valuable employee.

Credibility Resolution

For the reasons stated above, I credit Stafforini whenever there is a conflict in the testimony of the three participants in the meeting. Thus, I find that there was no discussion of mediation, Anderson's opinion about the Union, or the status of contract negotiations. Accordingly, the allegations that Respondent solicited a grievance by asking Anderson if he was happy working for Respondent and interrogated Anderson about his opinions of the Union and the status of contract negotiations, are dismissed.

Arguments

Counsel for the General Counsel argues that Respondent's admonition of Anderson reasonably tended to restrain, coerce, and interfere with protected union activities. Counsel notes that Anderson's appeal to the city council was protected because it was not "so disloyal, reckless, or maliciously untrue as to lose the Act's protection," citing *Emarco, Inc.,* 284 NLRB 832, 833 (1987), incorporating *NLRB v. Electrical Workers Local 1229 (Jefferson Standard),* 346 U.S. 464 (1953).

Further, counsel notes that application of *Peerless Publications,* 283 NLRB 334 (1987), by analogy, leads to the inescapable conclusion that Respondent's admonition of Anderson is not privileged by editorial integrity. Counsel asserts that Respondent's unwritten "rule" prohibiting reporters from speaking to the city council to request support for the Union is not narrowly tailored to meet Respondent's legitimate objectives and is vague and ambiguous. Counsel also argues that the rule is not limited in its applicability to affected employees to accomplish the necessarily limited objectives.

Indeed, Respondent does not argue that Anderson's appeal to the city council exceeded the bounds of protected speech. Rather, Respondent argues that its nondisciplinary admonishment of Anderson was necessary to preserve and protect Respondent's impartiality. In this regard, Respondent asserts that the Act may not be applied to a newspaper in a manner that would circumscribe the "full freedom and liberty" of its First Amendment rights. Thus, Respondent concludes, when editorial concerns are at issue, these concerns override the Act. Respondent relies upon *Associated Press v. NLRB,* 301 U. S. 103 (1937).

Further, Respondent notes that future prohibitions of its employees appearing before the city council does not silence the voice of the Union because the Union had other individuals available to address the city council. Finally, Respondent argues that if a violation is found, the remedy may not prohibit it from directing that its editorial employees not engage in activities that pose the potential appearance of a conflict of interest, including those that happen to be union related.

Analysis

In *Peerless Publications,* 283 NLRB 334 (1987), on remand *Newspaper Guild Local 10 (Peerless Publications) v. NLRB,* 636 F.2d 550, 562 (D.C. Cir. 1980), the Board noted that "editorial integrity of a newspaper lies at the core of publishing control." Pursuant to this philosophy, the Board held that a newspaper could unilaterally implement a code of ethics, including disciplinary provisions.

> In order to preserve such, a news publication is free to establish reasonable rules designed to prevent its employees from engaging in activity which would "directly compromise their standing as responsible journalists and that of the publication for which they work as a medium of integrity," without necessarily being required to bargain initially. It follows from this privilege—which is directly incident to a newspaper's integrity—that the newspaper will be similarly exempt from mandatory bargaining about disciplinary action for employee breach of the basic rule. It must be emphasized, however, that "[t]he degree of control which may be exercised by a publication in this regard is not open-ended, but must be narrowly tailored to the protection of the core purposes of the enterprise."

Id., at 335. *Peerless Publications* has been limited in its application outside the unique context of the newspaper industry. *King Soopers,* 340 NLRB 628, 628–629 (2003); *Edgar P. Benjamin Healthcare Center,* 322 NLRB 750, 752 (1996); *W-I Forest Products Co.,* 304 NLRB 957, 958–959 (1991).

The Board held in *Peerless Publications* that in order to escape a duty to bargain regarding a code of ethics, the provisions must address the "protection of the core purposes of the enterprise." Thus, the rule must be,

> (1) narrowly tailored in terms of substance, to meet with particularity only the employer's legitimate and necessary objectives, without being overly broad, vague, or ambiguous; and (2) appropriately limited in its applicability to affected employees to accomplish the necessarily limited objectives.

283 NLRB at 335. Additionally, the Board noted a balancing test established by the court, on remand, as follows:

> Moreover, when there is a conflict between an employer's freedom to manage his business in areas involving the basic direction of the enterprise and the right of the employees to bargain on subjects which affect the terms and conditions of their employment, a balance must be struck, if possible, which will take [into] account [the] relative importance of the proposed actions to the two parties.

Newspaper Guild Local 10 (Peerless Publications) v. NLRB, supra, citing *Machinists Local 1304 (Fibreboard Corp.) v. NLRB*, 379 U.S. 203, 223 (1964), and *Chemical Workers v. Pittsburgh Plate Glass Co*., 404 U.S. 157, 179 (1971).

In *Cincinnati Suburban Press,* 289 NLRB 966 fn. 2 (1988), the Board applied *Peerless Publications* to an 8(a)(1) finding as follows:

[5] Anderson did not testify that he was interrogated about the Union or about the status of contract negotiations. Accordingly, this allegation is dismissed.

> We agree with the judge that the Respondent violated Sec. 8(a)(1) by maintaining rules 18 and 29. We make clear, however, that the Respondent may adopt rules in which the content of the rules is necessary to the credibility of the institution and/or the quality of its product, and the rules themselves are narrowly tailored, unambiguous, and designate the category of employees to whom the rules are applicable; provided, however, that such rules do not improperly impinge on the relevant rights of the affected employees. See *Peerless Publications,* 283 NLRB 334 (1987).

Thus, in *Cincinnati Suburban Press,* the Board apparently adopted the balancing test set forth in *Newspaper Guild Local 10 v. NLRB*, supra, 636 F.2d at 562, and extended application of *Peerless Publications* to 8(a)(1) analysis. Although the Board subsequently overruled *Cincinnati Suburban Press* to the extent that footnote 2 might be read as a finding that mere maintenance alone of the rules at issue therein was unlawful, the Board did not disavow its adoption of *Peerless Plywood* as a mode of analysis. See *Lafayette Park Hotel*, 326 NLRB 824, 827 fn. 13 (1998).

Guided by *Peerless Publications*, I find that Respondent's admonition of Anderson interfered with, restrained, and coerced exercise of Section 7 rights because the admonition was not narrowly tailored in terms of substance, to meet with particularity only the employer's legitimate and necessary objectives, without being overly broad, vague, or ambiguous. Nor was the admonition appropriately limited in its applicability to affected employees to accomplish the necessarily limited objectives.

Initially, it must be noted that Respondent does not maintain a written rule delineating appearance of a conflict of interest. Thus, the oral admonition stands alone. The oral admonition to Anderson was unclear with regard to limitation to particularly affected employees. Does it apply to Anderson alone? Does it apply to all employees in the bargaining unit? Moreover, the oral admonition was ambiguous and overly broad. In admonishing Anderson, Voros referenced the appearance of a conflict of interest arising from asking a favor of a news source. Such a description is not sufficiently tailored to meet Respondent's legitimate and necessary objectives. Due to the potentially broad coverage and the failure to unambiguously and narrowly tailor the admonition, it improperly impinged on employee Section 7 rights.

Were the facts of this case analyzed pursuant to traditional 8(a)(1) doctrine, I would similarly find that Voros' statement reasonably tended to interfere with the exercise of Section 7 rights. Examining the totality of the circumstances, Voros' statement implied that Anderson's communication with a third party about the ongoing labor dispute resulted in detriment to Anderson's reporting integrity as well as that of the newspaper. Voros made the statement in a private meeting, the purpose of which was concealed from Anderson, who was under the impression that he was called to Pleasanton to review a story. Neither Voros nor Stafforini suggested an alternative method of soliciting support from the city council in a manner which the Respondent would find did not create the appearance of a conflict of interest. Thus, Voros' statement reasonably tended to interfere with Anderson's exercise of Section 7 rights.

CONCLUSION OF LAW

By admonishing Anderson that he had created the appearance of a conflict of interest by speaking to the city council on behalf of the Union, Respondent interfered with, restrained, and coerced employees in the exercise of Section 7 rights because the admonition was not narrowly tailored in terms of substance, to meet with particularity only Respondent's legitimate and necessary objectives, without being overly broad, vague, or ambiguous and the admonition was not appropriately limited in its applicability to affected employees to accomplish the necessarily limited objectives. Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]