

AAR Technical Service Center and ZVI Harry Engel. Case 29-CA-6912

June 11, 1980

DECISION AND ORDER

**BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND TRUESDALE**

On March 12, 1980, Administrative Law Judge Judge Karl H. Buschmann issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in answer to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

¹ The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² We specifically affirm, for the reasons set out in his Decision, the Administrative Law Judge's conclusion that the Charging Party's letter to the Respondent did not constitute protected activity. Consequently, we find it unnecessary to rely or pass on the Administrative Law Judge's further conclusion that the letter did not constitute concerted activity.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge: This case arose upon a charge filed on January 5, 1979, by Zvi Harry Engel, an individual, and a resulting complaint issued February 28, 1979, by the National Labor Relations Board, alleging that AAR Technical Service Center, herein called Respondent or the Company, suspended its employees, Zvi Harry Engel, because he had engaged in protected concerted activity. Respondent's answer filed March 15, 1979, admitted all jurisdictional allegations in the complaint, and denied the commission of any unfair labor practices.

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A hearing was held on December 13, 1979, in Brooklyn, New York. Thereafter, Respondent filed a brief on February 4, 1980.

Upon the entire record in this case, including the transcript of the hearing, exhibits, and the brief, and from my observation of the witnesses, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

AAR Technical Service Center is a New York Corporation engaged in the repairing and servicing of jet aircraft components and related services. Among its customers are many commercial airlines in need of AAR's expertise in sophisticated electronic and hydraulic aviation equipment. Respondent is licensed by the Federal Aviation Administration to assure that the material certified by the Company is airworthy. Its principal office and place of business is at 25 Buena Vista Inc. in Lawrence, New York, and at Hanger 2, JFK Airport, Queens, New York. It is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act, as amended. The hierarchy of supervision at AAR includes Samuel Wershba as president, Jerome Marx as vice president, and Paul Salazar and Robert Kleiber as supervisors.

Harry Engel began to work for the Respondent on August 15, 1970, when it was still known as Airponents. As the senior hydraulics technician, his work consisted of repairing and overhauling the various hydraulic, electrical, and mechanical components on aircrafts, as well as testing and inspecting them. Hydraulic components which the Company would test, repair or overhaul could involve the landing gear, skid system, brake system, surface controls, and other vital parts of commercial jets, such as the DC-10 or the 747. In July 1978, Respondent offered to promote Engel, its most senior hydraulic technician, to hydraulic leadman. The leadman's position had become vacant when Ralph Votta was promoted from the hydraulic leadman's position to inspector. However, Engel refused to accept the leadman's position when he was informed by Wershba that he would not be eligible for a pay raise until after 6 months because he was already at the top of his pay scale. Nevertheless, Respondent's management, particularly Supervisor Robert Kleiber, repeatedly urged him to accept the leadman's position. In October 1978, he had a meeting with Sam Wershba, who, attempting to talk like a father to his son, again urged Engel to take the job. Engel agreed if he would get a raise of at least \$10 per week, but Respondent was unwilling to deviate from its established rates solely for Engel because of its effect on the leadman in other sections, such as the "avionics leads, electric leads, gyroleads in the instrument room."

On December 21, 1978, Kleiber informed Engel that the job was still open and that he would also get a raise. Engel accepted the job, effective January 1979, with the understanding that he would get a raise of \$10. The following week he received a notice with his pay envelope that his actual raise amounted to \$15. However, Engel discovered that other employees had received \$10 more in pay as a cost-of-living and longevity increase. During

a lunchroom meeting on the same day, Bob Kleiber informed him orally of the raise, and explained that other employees were getting \$5 as a cost-of-living increase and \$5 for longevity, and he told Engel, "You're getting \$10 for promotion and you're getting \$5 for your cost-of-living increase, but because of the pay structure, you're not entitled to the longevity pay. You haven't been at the top of your scale." Engel replied, "That's not what you said. You said I was going to get \$10 above what everybody else was going to get." Engel promptly turned down the job offer. Although he was apparently not entitled to a larger increase in pay under prevailing company policy, and even though he admitted that he was at the top of his present pay scale, Engel felt that he should have gotten a total increase of \$20 instead of the \$15 offered by the Company. In any case, Engel became very angry and "disgusted" over the promotion, particularly Respondent's refusal to pay the additional \$5 per week. He went home and drafted a letter addressed to the chairman of the board, Ira Eichner.

The letter, dated January 4, 1979, is a 3-1/2 page typed document which in broad generalities quarrels with upper management's conduct and attitude towards the employees. It begins with the statement (G.C. Exh. 2), "This letter is a last ditch effort by me to accomplish some positive change at AAR Technical Service Center," and then deals with the employees' feeling of being ignored and includes the following excerpts:

When an employee feels ignored by upper management, and knows that his supervisors have no power to rectify any situation, he has but two choices. He can either quit, or vent his frustrations by producing less and on some occasions engage in deliberate damage to equipment or sabotage. Neither one of his choices is beneficial to the company and the latter is dangerous to the rest of the employees.

This same behavior can be generated by many factors, such as plain and ordinary frustrations endured on the job, lack of motivating leadership, poor environment, and inequitable compensation.

* * * * *

If one were to take a look at the whole picture at AARTSC he would probably see a growing and prosperous enterprise. However, once you scratch the surface by asking individual questions, you would find that it is full of problems. It is like individual grains of gunpowder, just waiting for the right catalyst to fuse them together for a large explosion.

* * * * *

After 8 and 1/2 years at this facility, 3 years of which have been under present management, I regretfully admit that all my efforts to make this into a dynamic organization, with a relationship between the input one contributes and the compensation one receives in pay, benefits, and promotions, have failed.

I sincerely hope that something can be done with your help to rectify the situation as it now exists here at AAR Technical Service Center, before the backbone of the organization weakens further.

Engel sent this letter to Eichner and also put a copy of it into the mailbox of Sam Wershba. In the afternoon, Wershba called Engel into his office. Also present were Jerry Marx and Bob Kleiber. Wershba admitted to being "a bit shook up" and telling Engel of his being presumptuous and mentally unfit for continued employment. Wershba testified as follows about his reaction to the letter:

I was shook up at the letter itself and that someone who is as disgusted as Mr. Engel said before, upset and he says in the letter here, as an unsatisfied, embittered, agitated instigator, somebody who identifies himself as such, can think he was only two choices when he is working with a company he's unhappy with; one, is either to quit or commit deliberate sabotage.

* * * * *

We are dealing in a serious business here. You could kill hundreds of people if somebody should deliberately do any sabotage and Harry Engel is a good enough mechanic to, if he so desired—to do something like that, and cover it up so that it would reflect on the company, should something happen.

* * * * *

The biggest tragedy in American history—American Airlines in Chicago, if you recall, was caused not by the engine falling off, but the hydraulic system being ripped out as the engine came off, killing hundreds of people.

Engel was informed that he was furloughed, effective immediately, for mental reasons, and that he should leave the building and not go near the work areas or come into contact with any machinery. Wershba also suggested that he see a psychiatrist, and stated, "Well, when I'm satisfied that you're mentally capable of coming back to work, you'll come back to work." Engel insisted that the Company pay for the mental examination.

On February 8, 1979, Engel was briefly examined by Dr. Julius Buchwald, a psychiatrist whose name Engel had obtained from the Yellow Pages. His written report simply concluded that Engel did not seem to be dangerous to himself or others. Wershba, upon receiving this report and the bill, called the doctor because he had expected a more detailed analysis. Dr. Buchwald indicated that this matter was actually not within his field of expertise, and that Engel should be seen by an industrial psychologist.

The Company thereupon called Engel's home and left instructions with his wife to schedule an appointment with Dr. Ben Balinsky, an industrial psychologist. When Engel failed to respond to these instructions, Respondent repeated the message by letter dated March 13, 1979, and

also explained the reasons for the examination by an industrial psychologist.

Engel again refused to see Dr. Balinsky. He finally made an appointment with him, but then failed to keep it because the date conflicted with a job interview. By memorandum dated March 30, 1979, Engel tendered his resignation.

Analysis

The General Counsel has argued that Respondent violated Section 8(a)(1) of the Act with its adverse actions against Engel because of his protected concerted activities. Respondent submits that Engel's letter did not constitute concerted activity, and was, in any case, not protected activity.

The record deals extensively with Engel's past conduct as a union activist. Yet there is not a scintilla of evidence to indicate that Respondent had ever discriminated against Engel because of his role as a union sympathizer. To the contrary, there is evidence that Engel was treated with fairness and generosity. For example, there was an incident in which Engel adamantly refused to work overtime in an emergency situation. Nevertheless, Respondent took no adverse action against him. In addition, Respondent accommodated Engel in adjusting his time schedule so that he was able to attend college. And, of course, Respondent offered him the promotion to the leadman's position. Despite Engel's antagonistic attitude about the pay, the record only shows that Respondent was not willing to deviate from an established pay scale. Accordingly, the sole concern under the factual circumstances presented here is whether Engel's conduct was protected concerted activity and whether Respondent unlawfully interfered with that activity.

The question whether Engel's letter to Respondent can be construed as concerted activity is a close one. To be sure, the letter itself deals with general complaints about Respondent's management; there is also testimony that Engel had drafted it or portions of it prior to his dispute about the pay. There is Engel's own testimony that he had talked to other employees about his letter and that they had voiced their approval. I do not believe that part of his testimony, for the letter does not deal with any concrete examples of employer misconduct, nor does it contain constructive criticism; rather it merely reflects in accusatory and threatening language an employee's malcontented attitude.

I am fully aware that an employee's letter to management may constitute concerted activity when it deals with matters of mutual concern, such as safety, working conditions, or an employer's compliance with Federal or state laws. However, the letter here merely reflects an employee's general dissatisfaction with management, and was admittedly sent to Respondent's management for only one reason; i.e. Engel's individual dispute over his own promotion. Even if Respondent had wanted to react favorably in response to Engel's letter, it contains no proposals or suggestions which the Company should adopt and which would ultimately inure to the benefit of the other employees. Because I regard this letter as an equivocal expression of one disgruntled employee con-

cerning his personal complaint, I cannot agree that it falls within the ambit of concerted action.

Assuming, *arguendo*, that the letter in question could be considered concerted activity, it certainly cannot be seriously considered as protected activity. It is axiomatic that concerted activities must have a lawful objective and must be carried on in a lawful manner. I find Engel's letter so indefensible as to warrant Respondent's discharging him. There is no dispute that Respondent's work, involving sophisticated and technical jet aircraft systems, is highly sensitive to sabotage. An aircraft's brakes, skid systems, landing gear, and surface controls are all vital elements in air safety. Engel admitted that routine inspection does not guarantee perfection, and Wershba opined, without contradiction, that a skilled technician like Engel could easily commit sabotage endangering the lives of hundreds of people. Even the threat of sabotage under such circumstances is totally indefensible.

Any suggestion that this letter did not amount to a serious threat of sabotage is without merit. Engel clearly indicated that this letter was his "last ditch effort," and that, if he did not get his way, he had no choice but to "quit, or vent his frustrations by producing less and on some occasions engage in deliberate damage to equipment or sabotage." As Wershba observed, Engel was obviously not quitting. Significantly, even if Respondent had yielded and paid Engel what he demanded, there was no assurance that this would have avoided any future threat of sabotage; for Engel, according to his letter, was already dissatisfied, so that any other problems he would encounter were in his mind "like individual grains of gunpowder, just waiting for the right catalyst to fuse them together for a large explosion."

Finally, I am convinced that Respondent acted with leniency in continuing to regard Engel as an employee and offering him the opportunity to return to work if he were able to get a "clean bill of health" from an industrial psychologist. Respondent's action cannot be regarded as an interference with an employee's protected concerted activity.

CONCLUSIONS OF LAW

1. AAR Technical Service Center is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The General Counsel has failed to show by a preponderance of the evidence that AAR Technical Service Center violated Section 8(a)(1) of the Act.

Upon the above findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹

The complaint is dismissed in its entirety.

¹In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.