Edgcomb Metals Co., One of the Williams Companies *and* Wilma Ursery. Case 25–CA–1174

March 5, 1981

DECISION AND ORDER

On September 9, 1980, Administrative Law Judge Almira Abbot Stevenson issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs; Respondent filed a brief in opposition to the General Counsel's exceptions; and the General Counsel filed a brief in support of part of the Administrative Law Judge's Decision.

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 conclusions of the Administrative Law Judge and to adopt her recommended Order, except as set forth below.

Respondent has excepted, *inter alia,* to the Administrative Law Judge's finding that General Manager Wood threatened Union President George Heineman with plant closure if the office employees selected the Union to represent them and thereby violated Section 8(a)(1) of the Act. We find merit in this exception.

Relyirg on Heineman's testimony that during a casual conversation Wood told him that if the Union successfully organized Respondent's office clericals there was a possibility the plant would close, the Administrative Law Judge concluded that Wood's alleged remark constituted a threat of reprisal should the employees elect union representation. The Administrative Law Judge was unpersuaded by Wood's denial of making such a threat, but did note that Heineman's testimony on this matter contained "certain weaknesses." In this regard Respondent asserts that Heineman repeatedly changed his recollection of what Wood said to him, admitted that his mind was a "little blank" about the incident, and was able to reconstruct the conversation with Wood only after being asked leading questions by counsel for the General Counsel. These leading questions were objected to by Respordent's counsel, but the objections were overruled by the Administrative Law Judge. Our review of the record establishes that Respondent's characterization of Heineman's testimony is correct. Heineman exhibited a faulty and weak recall of the conversation with Wood and had to be led through much of his testimony by counsel for the General Counsel. In sum, we find Heineman's testimony to be of doubtful value in establishing the particulars of the alleged conversation and hence insufficient to sustain a violation of the Act. Accordingly, we shall dismiss this allegation of the complaint.

The General Counsel has excepted, *inter alia,* to the failure of the Administrative Law Judge to find that Respondent's general manager, Wood, interrogated employee Ursery about her union activities in violation of Section 8(a)(1) of the Act. The Administrative Law Judge found that Wood met with employee Ursery on September 7 and 11, 1979, to discuss her union organizing activities at the plant. During these interviews Wood informed Ursery that he had heard she was organizing a union drive among the office clericals, asked her why she wanted a union and what her complaints were, and expressed disappointment that Ursery felt compelled to engage in such activities. The Administrative Law Judge concluded that Wood's questioning of Ursery interfered with, coerced, and restrained Respondent's employees in the exercise of their rights in violation of Section 8(a)(1) of the Act by creating the impression that Respondent had Ursery's union activities under surveillance. She further concluded that Wood's solicitation of Ursery's grievances and his implied promise to adjust her grievances were also in violation of Section 8(a)(1) of the Act.

The General Counsel contends, *inter alia,* that in light of her findings concerning Wood's questioning of Ursery on September 7 and 11, 1979, it was error for the Administrative Law Judge to fail to find that these interviews constituted unlawful interrogations in violation of Section 8(a)(1) of the Act as alleged in the complaint. The General Counsel further requests that the Board issue an appropriate Order and notice concerning such violation.

We find merit in the General Counsel's exception. We have held that an employer's inquiries into the union sentiments of its employees, even in the absence of a threat of reprisal or promise of benefit, or when the employee's union sympathies are well known, results in an unlawful interrogation in violation of Section 8(a)(1) of the Act. *PPG Industries, Inc., Lexington Plant, Fiber Glass Division,* 251 NLRB 1146 (1980). We find, therefore, that Wood's questioning of Ursery on September 7 and 11, 1979, concerning her union activities constituted unlawful interrogations in violation of Section 8(a)(1) of the Act, and we shall modify the recommended Order and notice accordingly.

[1] Respondent 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 YLRB 54 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings, except as noted below.

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, as modified below, and hereby orders that the Respondent, Edgcomb Metals Co., One of the Williams Companies, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Creating the impression that union activities of employees are under surveillance; soliciting grievances and promising to adjust them; instituting a job-posting procedure or granting other benefits; or interrogating employees about their union activities with the intent of interfering with employees' Section 7 rights."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT create the impression that the union activities of employees are under surveillance; WE WILL NOT solicit grievances and promise to adjust them, institute a job-posting procedure, grant other benefits, or interrogate employees about their union activities with the intent of interfering with employee rights under Section 7 of the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in their enjoyment of rights under Section 7 of the Act.

EDGCOMB METALS CO., ONE OF THE
WILLIAMS COMPANIES

DECISION

STATEMENT OF THE CASE

ALMIRA ABBOT STEVENSON, Administrative Law Judge: This case was heard at Indianapolis, Indiana, on July 14, 1980. The complaint was issued February 29, 1980, and thereafter amended. The Respondent duly filed ar answer to the amended complaint.

The issues are whether or not the Respondent violated Section 8(a)(1) of the National Labor Relations Act, by interrogating employees, soliciting employee complaints and promising to adjust them, creating an impression that employees' union activities are under surveillance, threatening plant closure if employees selected union representation, issuing verbal warnings to union activist Wilma Ursery, granting salary increases, and instituting a job bidding procedure for office employees. For the reasons fully set forth below, I conclude that the Respondent committed some, but not all, of the violations alleged.[1]

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the Respondent and the General Counsel, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. UNFAIR LABOR PRACTICES

A. *Background*

The Respondent acquired this Indianapolis, Indiana, steel products plant from Jones and Laughlin Steel Corporation on March 1, 1978. In late May or early June 1979, Robert Wood assumed control as general manager of the plant. Other admitted supervisors and agents include Raymond Robbins, comptroller, and David Jones, department manager. The approximately 108 production and maintenance employees of the plant are represented by Local 7349, USA.

On September 5 or 6, 1979, Wilma Ursery, a billing clerk, approached USA about organizing the Respondent's approximately 41 office employees. The Union gave her literature and authorization cards, and she contacted about 22 of the office employees in the plant parking lot and at their homes, and provided them with blank authorization cards. Ursery was the only office employee who engaged in organizational activity. She signed a card and mailed it to the Union September 12. One other office employee, Gary Garrett, thereafter signed and mailed a card on September 19, 1979. The Respondent admits it was aware of Ursery's union activity on September 7, 1979.

B. Violations of Section 8(a)(1) of the Act

(1) The complaint alleges in effect that on September 7, 1979, General Manager Robert Wood created the impression that employees' union activities were under surveillance; interrogated Wilma Ursery; and solicited Ursery's grievances and promised to adjust them, and later did adjust them. The Respondent admits that General Manager Wood met with Ursery on September 7, but denies that any unfair labor practices were committed.[2]

As soon as General Manager Wood learned from an assistant general manager and others that Ursery was the

[1] No issue is raised as to jurisdiction or labor organization status. Based on the allegations of the complaint and the admissions of the answer, I find that the employer is engaged in commerce within the meaning of Sec. 2(2), (6), and (7), and that Local 7349. United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Sec. 2(5) of the Act.

[2] The facts as to these allegations are based on an amalgamation of the testimony of Ursery. Wood, and Comptroller Robbins. To the extent that their accounts differ, I have been mindful of the strengths and weaknesses of each, and have considered the probabilities in light of the record as a whole.

leader in the union organization drive, he immediately called her into his office to discuss it. I find that the following pertinent remarks were made: Wood told Ursery he had heard she was the one organizing a union drive and asked her why she wanted a union and what her complainis were. Ursery responded that the reasons why she wanted the union were that there were no opportunities for promotion; she complained about her superior, Comptroller Robbins, moving the billing clerks upstairs which she felt was a "punishment"; and she complained about salaries. Wood asked what job Ursery would like to have and Ursery replied she did not know what job was available but she could do any job in accounting. Wood said he did not know anything about the billing clerk move but would check with Comptroller Robbins. Wood told Ursery that the Respondent did not give across-the-board pay increases but gave only merit increases and he pointed out that Ursery had recently received a $50 increase. Ursery responded that it was not enough and the Respondent was a year behind in pay raises. Wood expressed disappointment at the turn of events, protested that he had been in charge of the plant only 90 days, asked Ursery to give him some time, and promised to look into her complaints.

Early the next week, Wood discussed the billing clerk move with Robbins and the two of them then called Ursery to the office again. When she arrived, Wood reminded her he had promised to get back to her on the billing cle-k move. Robbins then explained the reason he had moved the jobs and stated he had no intention of moving them back.

These facts clearly establish that General Manager Wood's purpose was to nip the union drive in the bud by using a combination of intimidation and implied promises to discourage the activities of its leader. Thus, promptly upon hearing about the organizing campaign and Ursery's leaclership role, within hours of her initial approach to the Union, Wood singled her out for a personal interview in his office where he informed her in so many words that he was aware of what she was up to. This was immediately followed by a solicitous inquiry into her complaints and grievances and implied promises to check into the complaints voiced. Shortly thereafter, Wood demonstrated the sincerity of his intentions by meeting with her again for further discussion of one of her grievances. And although the grievance was denied in this meeting, there was no specific disavowal or even mention of the other complaints which Wood had impliedly promised to "look into" if she would only give him some time to do so. On the contrary, as found below, one of the other complaints voiced was substantially adjus:ed by the posting of an office clerical job. In all these circumstances, I conclude that the Respondent interfered with, coerced, and restrained its employees by creating the impression that Ursery's union activities were under surveillance and by soliciting her grievances and impliedly promising to adjust them, in violation of Section 8(a)(1) of the Act.[3]

(2) The complaint alleges in effect, and the Respondent denies, that Supervisor David Jones on September 11, 1979, interrogated employee Mary Contreras and created the impression of surveillance.[4]

Jones called Contreras into his office on an afternoon in September or October and told her, among other things, that "As you undoubtedly know, someone is trying to form a union. And I just wanted to talk to you about that." He said there were good things and bad things about unions that she should look into before committing herself and "he knew that Wilma [Ursery] was the one that was organizing the union" and "Rumor has it that you're helping Wilma organize the union." Jones added that Contreras was free to do as she wished, "I just want you to know that we're aware of it."

I find that although Jones disclaimed any intent to intimidate Contreras the reasonable effect of this interview, when considered in the overall context of the Respondent's reactions to the attempt to organize its office employees and the unfair labor practices committed, was to create the impression that employees' union activities were under surveillance, and I conclude that the Respondent thereby interfered with, coerced, and restrained its employees in violation of Section 8(a)(1).[5]

(3) The complaint alleges that on October 3, 1979, the Respondent put into effect a job-bidding procedure for office employees. The Respondent admits posting a job on or about that date but denies any intent to interfere with employees' rights under the Act.

General Manager Wood explained that he approved a request by Comptroller Robbins that the job of accounts-payable clerk be posted. He said that although Jones and Laughlin Steel had no job-posting policy, it had been a Respondent policy for several years. This seemed an opportune time to institute such a program at this plant because the Respondent had placed the people it particularly wanted in jobs by that time, and as several people were interested in the accounts-payable clerkship, "this was the time to find out who's there."

I find Wood's explanation for the timing of the posting of this job, thereby instituting for the first time a bidding procedure for vacant office clerical positions in this plant, vague and unconvincing and I do not credit it. In my opinion, the timing is more plausibly accounted for by the recent appearance of the possibility of the office employees' becoming unionized and Wood's immediate implied promise to adjust the grievances solicited from the leading union advocate, Wilma Ursery, one of which specifically went to promotion opportunities. Viewed in this light, and in light of the other unfair labor practices committed, including Wood's subsequent conversation with Union President George Heineman discussed below revealing Wood's continuing hostility toward unionization of the office employees, I find that a preponderance of the credible evidence establishes that the Respondent

[3] *Pilgrim Foods, Inc.*, 234 NLRB 136, 144 (1978), enforcement denied in part 589 F.2d 232 (1st Cir.); *Merle Lindsay Chevrolet Inc.*, 231 NLRB 478. fn. 2 (1977); *Reliance Electric Company. Madison Plant Mechanical Drives Division,* 191 NLRB 44. 46 (1971), enfd. 457 F.2d 503 (6th Cir. 1972). Cf. *Sunnyland Packing Company,* 227 NLRB 590, 597 (1976), relied on by the Respondent, in which no promises were made or implied.

[4] The facts with respect to this allegation are based on the testimony of Contreras whose demeanor for truthfulness was more impressive than that of Jones whose denials were uncertain and unpersuasive.

[5] *Pilgrim Foods, Inc., supra.*

introduced a job bidding procedure for office clerical employees for the purpose of influencing employees against the Union, and I conclude that the Respondent thereby interfered with their rights under Section 7, and violated Section 8(a)(1) of the Act.

(4) The complaint alleges in effect and the answer denies that in mid-November 1979 General Manager Wood threatened employee George Heineman with plant closure if the office employees selected the Union as their collective-bargaining representative.[6]

George Heineman, president of Steelworkers Local 7349, encountered General Manager Wood in the plant about 3 weeks after he first heard about the union campaign among the office employees in mid-October, and the following pertinent remarks were made: Wood asked Heineman what he knew about the union drive upstairs among the office employees; Heineman replied he was not directly involved but was friendly toward it. Wood then stated that he had taken it as a personal thing and that if the Union went in upstairs there was a possibility they would close the plant. I conclude that this remark constituted a threat to deprive employees of employment in reprisal for selecting union representation and that it constituted a violation of Section 8(a)(1).

'5) The complaint alleges that the Respondent granted wage increases throughout the following winter from September 1, 1979, until January 1, 1980. The Respondent contends that the increases were given pursuant to a plan conceived and implemented before the advent of the Union.

There is in evidence a chart listing the names of the office employees and their dates of hire and last pay increases, and showing the amount of salary increase given during each month from June through December 1979.[7] The chart does not have a cutoff date as of September 7, 1979, when the Respondent became aware of the union campaign. It does show, however, that 7 salary increases ranging from $50 to $150 were given during the 3 months of June through August; and that 27 salary increases within the same range were given during the 4 months September through December, 7 of them in September.

General Manager Wood and his secretary, Maxeen French, testified that French made up the basic chart, listing the names of the office employees and their hire and last-increase dates, at Wood's request when he took charge of the plant in early June 1979. Wood used the chart, he explained, to institute a policy of the Respondent under which salary increases would be given on anniversary date of hire. Wood made his final decisions in June and July on the dates and amounts of increases to be given, after considering the employees' anniversary dates, the recommendation of their supervisors, and the difftrences in pay scales between this plant and other plants of the Respondent.

I credit Wood's testimony relevant to this allegation as it was supported by Maxeen French, a generally credible witness, because the chart seems genuine on its face, and because this testimony is consistent with most if not all the other facts found. Accordingly, as the decisions to grant these wage increases were made for lawful business reasons before the advent of the Union, I recommend that this allegation be dismissed.

(6) The complaint alleges that Comptroller Raymond Robbins gave Wilma Ursery verbal warnings of tardiness on November 21, 1979, and January 8, 1980. The Respondent denies that the warnings constituted violations of the Act.

Wilma Ursery's working hours were from 8 a.m. until 4:45 p.m., with 45 minutes for lunch. Her pay is not docked for lateness. She conceded she had a problem with tardiness in October 1979.

Ursery was late to work on the morning of November 21, 1979, and Comptroller Robbins called her into the office.[8] Robbins testified he did so because Ursery had had a late problem for some time and a number of people, including General Manager Wood's secretary, Maxeen French (who corroborated Robbins), commented on it. He informed Ursery he had noticed her tardiness for some time, and that she had been 15 minutes late the day before and an hour late that day, and he did not want the situation "to go any further." Ursery responded she did not feel well during the night and overslept. Robbins put a summary of the conversation, with a note to the effect that he would "keep track of this in the future" in Ursery's personnel file. After that day he instructed Ursery's supervisor, Nancy Sheets, to keep a record of when Ursery came in late so he could determine whether her attendance was improving.

On January 2, 1980, Sheets gave Robbins a memo of Ursery's tardiness during November and December but Robbins took no action at that time.

On January 8, 1980, Ursery was half an hour late because her car froze up and Robbins sent for her and charged her with being late that morning. He showed her the record Sheets had made of her being late 5 minutes on November 26, 15 minutes extra lunch on November 27, 5 minutes on November 28, 25 minutes on December 3, and 8 minutes on December 8. Ursery disagreed with some of the dates in the Sheets' report, claimed she had made up the time when she was late, and said that Penny Green was also late that morning. Robbins told Ursery it was fine to make up time but the hours were 8 until 4:45 and he expected her to be in the office during that period. Ursery worked through lunch on January 8.

Robbins testified he expects employees who are late to make up the time but he also expects them to eat lunch. It has been his practice, he said, to be tolerant toward tardiness until others in his department begin noticing and then he talks to the employee affected. When asked what he did when employees failed to improve, he an-

[6] The facts are based on Heineman's account. Although there were certain weaknesses in Hetneman's testimony, he was overall more believable than Wood, whose account of this incident was uncertain, vacillating, and unpersuasive.

[7] The actual employee names were deleted from the chart by agreement of the parties.

[8] To the extent the accounts of Robbins' interviews of Ursery differ, I rely on Robbins'. Ursery's testimony was marred by vagueness, uncertainty, and a tendency to exaggerate.

swered that he did not know because he had never been confronted with such a situation.

Ursery testified that Penny Green, assistant supervisor in the accounting department, was late "Quite an awful lot" in September, October, and November. The Respondent presented evidence to the effect that Green started taking extra time on lunch breaks in December and Sheets began keeping a record of her lateness at that time. On January 2, 1980, Sheets gave Robbins a memo reporting that Green was 1-1/2 hours late on December 20; and 45 minutes late in the morning and 20 minutes late on lunch break December 26. Maxeen French also reported seeing Green 10–20 minutes late on occasion. Robbins called Green into his office on January 8, the same day he called Ursery in, and confronted Green with being 1 hour late that morning. She said she overslept. He pointed out this was her third lateness since December 20, and although he did not want to make a big deal out of it, he also did not want it to become an every day occurrence. Green promised to make up the time.

Robbins testified there were no tardiness problems with the other employees he supervised.[9]

In my opinion the General Counsel has failed to establish that Robbins' warnings were given to Ursery because of her union activity. Thus, she admitted having a lateness problem at the time of the union campaign, and Robbins credibly testified, with corroboration by French, that the problem continued into November, and it is undisputed that she was an hour late on November 21. Moreover, it seems likely that Sheets' record of her tardiness in November and December was accurate; even though Ursery disagreed with some of Sheets' dates, she did not disagree that she had been tardy. Ursery admitted she was 25 minutes late on January 8, 1980. I can see no significance in the fact that Ursery had been given no prior warnings as there is no showing that the Respondent had tolerated similar conduct by her before her union activity. Nor are written policy or employee meetings necessary to establish what every working person knows that they are expected to be on time. Moreover, that Ursery habitually called in when she expected to be more than 5 minutes late and made up the time, and had what she considered legitimate excuses for her lateness on November 21 and January 8, do not deprive her employer of the right to issue warnings absent evidence that it treated her differently from others who engaged in the same conduct, and the evidence fails to show that it did. As opposed to Ursery's vague testimony about Green's tardiness in the fall of 1979, the Respondent's evidence was precise that as soon as Green developed a tendency to abuse the working hours, it started keeping a record and it reprimanded her also when her conduct was comparable to Ursery's.

In view therefore of the business reasons advanced for the reprimands given to Ursery, the restraint shown when Robbins declined to act on the evidence received from Sheets on January 2, 1980, and the absence of convincing evidence of disparate treatment, I conclude that this allegation is not supported by a preponderance of the credible evidence, and I recommend that it be dismissed.[10]

II. THE REMEDY

In order to effectuate the policies of the Act, I recommend that the Respondent be ordered to cease and desist from the unfair labor practices found, and from infringing in any like or related manner on its employees' rights guaranteed by the Act. Nothing herein shall be taken as justification for depriving employees of benefits they now enjoy.

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

ORDER[11]

The Respondent, Edgcomb Metals Co., One of the Williams Companies, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Creating the impression that union activities of employees are under surveillance; soliciting grievances and promising to adjust them; instituting a job-posting procedure or granting other benefits with the intent of interfering with employees' Section 7 rights; or threatening plant closure if employees select union representation.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights under Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its plant in Indianapolis, Indiana, copies of the attached notice marked "Appendix."[12] Copies of the notice on forms provided by the Regional Director for Region 25, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken

[9] Ursery testified about the alleged tardiness of other employees. Ruth Wolfe: Ursery said she was half an hour late several times but Ursery did not know whether Wolfe received any warnings: Maxeen French testified Wolfe is assigned to the sales department and her regular working hours are 8:15 a.m. to 5 p.m. Josie Dillon: Ursery said she was frequently 10 minutes but conceded that Dillon's supervisor. Sales Manager David Jones, issued a warning: Jones testified, and the record shows, he gave Dillon an oral warning on August 5, 1979. David Linn: Ursery said Linn was also late but she had no knowledge of any warning; Linn worked in sales. Barbara Cole: Cole is in the accounting department, but Ursery conceded she did not know how late Cole came to work because she was on a different floor. I find that this evidence does not indicate disparate treatment of Ursery.

[10] I find that the evidence fails to support the allegations of interrogation, or creation of impression of surveillance by Raymond Robbins, and I recommend that these allegations be dismissed.

[11] In 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.

[12] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

by the Respondent to insure that the notices are not altered defaced, or covered by any other material.

(b) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that all allegations not specifically found herein be dismissed.