

Abouris, Inc. and International Ladies' Garment Workers' Union, AFL-CIO. Cases 11-CA-7829 and 11-RC-4549

September 11, 1979

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On May 29, 1979, Administrative Law Judge Frank H. Itkin issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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 brief and has decided to affirm the rulings, findings,¹ and conclusions 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 Respondent, Abouris, Inc., Marion, South Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

FRANK H. ITKIN, Administrative Law Judge: The above consolidated cases were heard before me in Marion, South Carolina, on February 6, 1979. Upon the entire record in this proceeding, including my observation of the witnesses, and after due consideration of the briefs of counsel, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Introduction

It is undisputed and I find and conclude that the Company is an employer engaged in commerce within the

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 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.

In the absence of exceptions, we adopt, *pro forma*, the Administrative Law Judge's findings with respect to conversations involving Garth Holmes, Pauline Green, and Rebecca Faulk.

meaning of Section 2(6) and (7) of the Act. It is also undisputed and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act. On June 30, 1978, the Regional Director for the Board approved a stipulation executed by the Union and the Company for certification upon a consent election in Case 11-RC-4549. Thereafter, on August 11, a secret-ballot election was conducted among the agreed-upon unit of the Company's production and maintenance employees at its Marion facility. There were approximately 80 eligible voters; 28 cast ballots for the Union; 34 cast ballots against the participating labor organization; and 5 ballots were challenged. On August 16, the Union filed timely objections to conduct affecting the results of the election. On October 25, the Union withdrew four of its seven objections. The remaining objections state:

Objection 3. Employer and/or agents of the employer interrogated eligible voters regarding their union sentiments.

Objection 4. Employer and/or agents of the employer threatened to close down the plant and throw employees out of work as retaliation for a favorable union vote in order to influence the outcome of the election.

Objection 6. Employer and/or agents of the employer promised eligible voters benefits and improved conditions if the outcome of the election was favorable to the Company in order to influence the outcome of the election.

In the meantime, on August 28, 1978, the Union also filed unfair labor practice charges against the Company in Case 11-CA-7829. Thereafter, on October 19, the Regional Director issued an unfair labor practice complaint. On October 30, the Regional Director issued a report on the objections in Case 11-RC-4549 and an order consolidating the representation and unfair labor practices cases. The Regional Director determined that: (1) Objections 3, 4, and 6 raise material and substantial issues which can best be resolved by a hearing; (2) the evidence offered by the Union in support of its objections is identical to that offered in support of the unfair labor practice charges; and (3) consequently, the two cases should be consolidated for hearing and decision. The evidence adduced at the hearing is summarized below.

B. The Company's Conduct Prior to the Election

Pauline Green, formerly employed by the Company as a sewing machine operator for 5 months, testified that on or about August 10, 1978, Plant Manager Garth Holmes spoke to her and coworker Rebecca Faulk at work. Green recalled:

Well, Mr. Holmes came up to my sewing machine and he asked me did I have any questions about what was going on, and I told him I did not. So he went on to say, "Remember, Rosie and Bobby and myself are depending on you Friday."

Green claimed that "Rosie" referred to her "supervisor" and "Bobby" was the "plant superintendent." Green could not recall anything further. Green was then asked: "Did he

[Holmes] say anything about 'making it better' or 'making things better?' " Green responded: "He said he would try to make things better."

Rebecca Faulk, employed by the Company as a sewing machine operator, testified that about August 10, 1978, Plant Manager Holmes had the following conversation with her and coworker Green:

Mr. Garth Holmes came to Pauline Green's machine and he sat between both of us. He asked, "is [there] any questions," and she [Green] said "no, I don't have any." He said, "On Friday, I'm depending on you and I promise I'll make things better."

Faulk "did not hear any more of the conversation that went on. . . ."

Geraldine Blackman, employed by the Company as a sewing machine operator, testified that about August 11, 1978, Supervisor Brenda Christmas had the following conversation with her:

She [Christmas] came up to my machine and said, "Geraldine, I want you to help us." And, I told her that I'll do what I think is right. And Brenda Christmas went on to say that if the Union win[s] that she and Bobby couldn't help me anymore.

Blackman explained that "Bobby" was "the assistant manager." Furthermore, Blackman recalled that "Bobby . . . gave me a tie-rating" in the past "to help me make production on the operation I was doing."¹

Jacqueline Johnson, employed by the Company as a sewing machine operator, recalled the following conversation with Supervisor Christmas "about two weeks before the election in 1978:"

Brenda Christmas came up to my sewing machine. She asked me how I was going to vote. I didn't say anything. Then Brenda told me not to let [co-worker] Becky brainwash me, that I had a mind of my own and I could think for myself.

Johnson could recall nothing else about this conversation. She was then asked: "Was anything said about what would happen if the Union came in?" Johnson then responded: "Yes, Brenda told me that the plant would close if the Union came in."

Johnson next recalled that about August 3, 1978, she had "another conversation" with Supervisor Christmas, as follows:

Brenda asked me, well really told me, just because I signed one of those yellow cards, that that doesn't mean I had to vote for the Union. Then, Brenda asked me, if I could get the card back, would I want it, and I said no.

* * * * *

She told me if the Union came in the plant would close.

¹ On cross-examination, Blackman noted that August 11 was the day of the board-conducted election, and the above conversation was some 30 minutes to 1 hour "before I voted."

Johnson could not remember anything further about this conversation. She then was asked: "Was anything mentioned in that conversation about production?" Johnson responded: "Yes. She [Christmas] told me that I know they haven't been bothering me about making production."

Priscilla Foxworth, employed by the Company as a sewing machine operator, testified that about August 11, 1978, she had the following conversation with Supervisor Christmas:

Well, Ms. Christmas came to me and she said, Priscilla, . . . I would like to talk to you . . . like friend to friend, not as employee to employee. I said, yes. I was sewing and I stopped. she said that it . . . was almost time for us to vote. She said that if the Union came in that she couldn't stick her neck out for a lot of girls like she had been doing. She said because if the Union came in that they would have shop stewards and she couldn't do that anymore.

Foxworth gave the following example of how supervisor Christmas "stuck her neck out for" the employee:

Well, if I was on something that I couldn't make production on, she [Christmas] would change me to something that was more easier for me to do.

Supervisor Brenda Christmas denied that she "ever [had] any conversations with Geraldine Blackman on the subject of the Union." Christmas claimed that on election day, August 11,

We [the supervisors] went to Mr. Holmes' office, about 9 and spent the time [there] until after the election.

In addition, Christmas denied "ever" having a conversation "on the subject of the Union" with Priscilla Foxworth. However, Christmas admitted that she had discussed the Union with Jacqueline Johnson. Christmas explained:

At her [Johnson's] machine, I spoke to her about the card. I told her that just because she had signed the card, it didn't mean that she was a member of the Union, and that she could probably get it back if she wanted it, and that was the extent of it.

Johnson did not "respond."

² On cross-examination, Johnson acknowledged that she had accompanied the union representatives to Plant Manager Holmes' office when recognition was demanded and that this request for recognition was prior to the above conversations with Supervisor Christmas. She acknowledged that her "participation in union activities was no secret." Johnson placed her two conversations with Christmas on August 1 and 3, 1978. As for the August 1 conversation, Johnson recalled on cross-examination:

I was sitting there at my sewing machine working and Brenda Christmas just walked up to me and said, "You know the plant will close if the Union comes in."

As for the August 3 conversation, Johnson recalled on cross-examination:

I was at my sewing machine working, and Brenda Christmas came up to me and asked me how was I going to vote. I didn't say anything. I kept on working. Then, Brenda told me not to let Becky brainwash me, that I had a mind of my own and I could think for myself. . . .

Johnson acknowledged "that's all that was said. . . ."

³ On cross-examination, Christmas was asked: "And you admit talking to one of these employees about getting her Union card back. . . . How did you happen to single this one out to talk to her?" Christmas responded: "I like Jackie, and I just thought I would talk to her about it."

Plant Manager Garth Holmes acknowledged that "a conversation between Ms. Green and myself did take place" about August 10, 1978. Holmes recalled:

Well, I approached Ms. Green and either sat down at a bench or stopped between her machine and Ms. Faulk's machine, but I was talking primarily to Ms. Green at this particular time. And I told her, as I had told the other persons that I talked to on this subject, that we would like to count on them for their help and, in this conversation, I reiterated to her that we were continuing to try to make Abouris the best place in Marion in which to work.

Holmes denied using the word "promise"—he assertedly said that he was "trying to make it better."

I credit the testimony of Geraldine Blackman, Jacqueline Johnson, and Priscilla Foxworth as summarized and quoted above. Blackman, Johnson, and Foxworth, presently employed by the Company, impressed me as trustworthy and reliable witnesses. In their testimony, they attribute to their supervisor, Brenda Christmas, a similar pattern of opposition to the Union's organizational effort. Insofar as Brenda Christmas has denied the statements and conduct attributed to her by Blackman, Johnson, and Foxworth, I credit the testimony of the latter as more complete and trustworthy. In making this credibility determination, I have taken into account the fact that, at times, the memory of each of these three employee witnesses was faulty and had to be refreshed. However, upon the entire record, including the demeanor of the witnesses, I am persuaded that Supervisor Christmas in fact made the statements and engaged in the conduct as detailed *supra*. In particular, I reject as incredible Christmas' assertion that she "went to Mr. Holmes' office about 9 a.m. and spent the time [there] until after the election" on August 11.

Rebecca Faulk testified that Plant Manager Garth Holmes stated to her and coworker Pauline Green: "I promise you I'll make things better." Green, however, could only recall that Holmes stated that he "would try to make things better." Green's version of this conversation is consistent with Holmes' acknowledgment that he stated that he was "trying to make it better." Under all the circumstances, including the demeanor of the witnesses, I am persuaded here that Green's recollection of this conversation is more accurate and reliable. In sum, I find that Holmes stated to the two employees that he was "trying to make it better" at the Employer's facility.

Discussion

The General Counsel alleges that Respondent Company violated Section 8(a)(1) of the Act as a consequence of Supervisor Christmas' interrogations, threats, and related coercive conduct prior to the Board-conducted representation election on August 11, 1978. The credible evidence of record, as recited *supra*, supports these allegations. Thus, employee Johnson credibly recalled that Supervisor Christmas approached the employee at work about 2 weeks before the election and questioned the employee "how I [Johnson] was going to vote." Christmas, at the same time, warned the employee, "not to let [co-worker] Becky brainwash me" and

"that the plant would close if the Union came in." Within a few days of this conversation, Christmas apprised Johnson at work, "just because I [Johnson] signed on of these yellow cards . . . doesn't mean I had to vote for the Union. . . ." Then Christmas pointedly asked the employee, "if I [Johnson] could get the card back would I want it. . . ." The employee replied "no." In this same conversation, Christmas reminded the employee that "they [management] haven't been bothering me [Johnson] about making production. . . ."

In a similar vein, Supervisor Christmas apprised employee Blackman at work shortly before the election that "if the Union win[s] . . . she [Christmas] and Bobby [also a member of management] couldn't help me [Blackman] anymore." Blackman understood that Christmas' statement was in reference to assisting the employee "to help . . . make production." Likewise, Christmas warned employee Foxworth at work shortly before the election "that if the Union came in . . . she [Christmas] wouldn't stick her neck out for a lot of girls like she had been doing." Foxworth also understood that Christmas' statement was in reference to assisting employees to meet their production requirements.

Section 7 of the Act guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities," as well as the right "to refrain from any or all such activities." Section 8(a)(1) of the act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees" in the exercise of their Section 7 rights. The "broad purpose of Section 8(a)(1) is to establish the right of employees to organize for mutual aid without employer interference"" *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405, 409-410 (1964). In assessing employer conduct under Section 8(a)(1), the Courts have noted that the "employee is sensitive and responsive to even the most subtle expression on the part of his employer, whose good will is so necessary" for continued employment. *N.L.R.B. v. The Griswold Manufacturing Company*, 106 F.2d 713, 722 (3d Cir. 1939); *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 618-620 (1969). And the "test" of interference, restraint, or coercion under Section 8(a)(1) is "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." See *Time-O-Matic, Inc. v. N.L.R.B.*, 264 F.2d 96, 99 (7th Cir. 1959).

I find and conclude that Supervisor Christmas coercively interrogated employee Johnson at work concerning the employee's sentiments for the Union. At the same time, Christmas threatened the employee "that the plant would close if the Union came in." Within a few days of this incident, Christmas again coercively interrogated this employee about her Union sentiments by asking the employee "if I [Johnson] could get the card back would I want it." The employee replied "no." Christmas, having unsuccessfully attempted to persuade this employee to withdraw her union card, warned the employee that in the past, management had not been "bothering [her] about making production." Such statements and conduct plainly tend to impinge upon employee Section 7 rights, in violation of Section 8(a)(1) of the Act. Indeed, Christmas similarly admonished employ-

ees Blackman and Foxworth that if the Union won the election, Christmas "couldn't help" the employees any further in meeting their production requirements--Christmas "wouldn't stick her neck out for a lot of girls like she had been doing." Such statements also tend to interfere with employee protected activities, in violation of Section 8(a)(1) of the Act.

As the Supreme Court stated in *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 616-620 (1969):

Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer's rights cannot outweigh the equal rights of the employees to associate freely. . . . And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more distinterested ear.

* * * * *

We therefore agree with the court below that "[c]onveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is most improbable, the eventuality of closing is capable of proof." 397 F.2d 157, 160. . . . [For,] an employer is free only to tell "what he reasonably believes will be the likely economic consequences of unionization that are outside his control," and not "threats of economic reprisal to be taken solely on his own volition." *N.L.R.B. v. River Togs, Inc.*, 382 F.2d 198, 202 (C.A. 2d Cir. 1967).

Supervisor Christmas' statements to these employees were "not carefully phrased on the basis of objective fact to convey an Employer's belief as to demonstrably probable consequences beyond [the Employer's] control. . . ." *Ibid.* They were, instead, proscribed threats.

In sum, I find and conclude that Respondent Company violated Section 8(a)(1) by the foregoing coercive statements and conduct.⁴ Furthermore, the foregoing coercive statements and conduct occurred after the filing of the representation petition and before the election and were, in my view, of such a nature so as to interfere with the free choice of Respondent's employees in the August 11 representation election. I would therefore sustain Objections 3 and 4, as recited above. I would dismiss objection 6 as not supported by the credible evidence of record.

CONCLUSIONS OF LAW

1. Respondent Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Charging Party Union is a labor organization within the meaning of Section 2(5) of the Act.

⁴ I am not persuaded on this record that Plant Manager Holmes' statement to employees Green and Faulk, as credited above, constituted unlawful promises of benefit, as is alleged. I would therefore dismiss this allegation.

3. Respondent Company violated Section 8(a)(1) of the Act by coercively interrogating an employee with regard to her union sentiments; by threatening an employee that the plant would close if the employees voted for union representation; by attempting to get an employee to withdraw her union membership card; and by threatening employees with more onerous working conditions if the Union wins in the Board-conducted representation election, affecting commerce as alleged.

4. Respondent Company has not committed other unfair labor practices as alleged in the complaint.

5. With respect to Objections 3 and 4 in the related representation proceeding, I would sustain the objections. I would, however, overrule Objection 6 as not supported by the credible evidence of record. Respondent, by engaging, in the coercive conduct found above, has interfered with the employees' exercise of a fair and free choice in the representation election conducted on August 11, 1978.

REMEDY

To remedy the foregoing unfair labor practices, Respondent will be directed to cease and desist from engaging in such conduct, and to post the attached notice.

ORDER⁵

The Respondent, Abouris, Inc., Marion, South Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their union sentiments.

(b) Threatening employees with a plant closing if the employees chose the International Ladies' Garment Workers' Union, AFL-CIO, or any other labor organization, as their collective-bargaining representative.

(c) Attempting to get employees to withdraw their union membership cards.

(d) Threatening employees with more onerous working conditions if the above Union, or any other labor organization, wins a representation election.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Board.

2. Take the following affirmative action:

(a) Post at its facility in Marion, South Carolina, copies of the notice attached hereto as "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondent, shall be

⁵ 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.

⁶ In the event that this Order is enforced by a Judgment of the 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."

posted immediately upon receipt thereof, in conspicuous places, and be maintained for 60 consecutive days. Reasonable steps shall be taken to insure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that allegations in the complaint not specifically found herein be dismissed.

IT IS FURTHER ORDERED that the Union's Objections 3 and 4 be, and they hereby are sustained and that the election conducted on August 11, 1978, in Case 11-RC-4549 be set aside.

APPENDIX

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

The National Labor Relations Board has found that Abouris, Inc., has violated the National Labor Relations Act and

has ordered us to post this notice. We therefore notify you that:

WE WILL NOT coercively interrogate our employees about their Union sentiments.

WE WILL NOT threaten our employees with a plant closing if they chose International Ladies' Garment Workers' Union, AFL-CIO, or any other labor organization, as their collective bargaining representative.

WE WILL NOT attempt to get our employees to withdraw their Union membership cards.

WE WILL NOT threaten our employees with more onerous working conditions if the above Union, or any other labor organization, wins a representative election.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

ABOURIS, INC.