

Aeon Precision Company, Inc., and International Association of Machinists and Aerospace Workers, District Lodge No. 86. Case 27-CA-5623

October 24, 1978

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On July 11, 1978, Administrative Law Judge James T. Rasbury issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief in support of the Administrative Law Judge.

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 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 Respondent, Aeon Precision Company, Inc., Aurora, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges unfair labor practices not found herein.

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 In adopting the Administrative Law Judge's recommendation dismissing the 8(a)(3) allegation of the complaint, we find it unnecessary to rely on *Coletti's Furniture, Inc. v. N.L.R.B.*, 550 F.2d 1292 (1st Cir. 1977), cited by the Administrative Law Judge in his Decision.

DECISION

STATEMENT OF THE CASE

JAMES T. RASBURY, Administrative Law Judge: This matter was heard by me in Denver, Colorado, on March 23,

1978. On December 21, 1977,¹ the Regional Director for Region 27 issued a complaint and notice of hearing, based upon an unfair labor practice charge filed on November 3, alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C., § 151, *et seq.* (herein called the Act).

All parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Based upon the entire record herein, including the briefs filed by the General Counsel and the Respondent, and upon my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material, Aeon Precision Company, Inc. (herein called Respondent), has been a corporation duly organized under and existing by virtue of the laws of the State of Colorado, maintaining its principal office and place of business in Aurora, Colorado, where it operates a machine shop. In the course and conduct of its business operations Respondent annually sells and ships goods and materials valued in excess of \$50,000 directly to points and places outside the State of Colorado. Respondent admits, and I herewith find, that at all times material Respondent has been an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all times material International Association of Machinists and Aerospace Workers, District Lodge No. 86 (herein Union), has been a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

1. Did Respondent on or about August 17 unlawfully interrogate an employee, create the impression of surveillance, and/or promise benefits to employees?

2. Did Respondent violate Section 8(a)(3) and (1) of the Act by terminating Peter King on October 21 because of his Union or other concerted activities protected by Section 7 of the Act?

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Union Activity

The parties stipulated that a petition was filed by the Union on August 31 seeking to represent employees in a unit consisting of "all production and maintenance em-

¹ Unless otherwise indicated, all dates hereinafter shall refer to the year 1977.

ployees, including janitors and leadmen; but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act." As a result of the election held on November 15, the Union was not certified as the collective-bargaining agent of the employees in the aforementioned unit. The results of the election were certified as final on November 23.

Peter King was employed by Respondent from April 1971 until the date of his discharge, October 21. King served his apprenticeship in England and was employed by Respondent as a lathe operator and at the time of his discharge was operating an N/C lathe, on which he had worked for the past 2 years. According to King's testimony, he first spoke to some of the employees about the desirability of having a union sometime during the month of June. This early June activity was unconfirmed, but James Moorehead confirmed that he and Peter King had gone to see Jim Dugan, an organizer for the Union, in late July. Thereafter Moorehead, Charles Adams, and Peter King actively solicited the employees to join the Union, obtained signed union authorization cards, and frequently wore union insignia on their clothing. (The parties stipulated that the union authorization cards which provided the basis for the Board-conducted election were dated August 16, 17, and 18.)

B. The 8(a)(1) Allegations

Charles Adams testified, "On the morning of August 17, Mr. Meanor had called me in to his office and asked me if I knew anything about union activities, cards, or anything else. At that time I told him I didn't know. He said, 'Do you know if persons by the name of Jim Moorehead or Bill Carpenter are involved?' and I told him also then I didn't know. It wasn't until later on that afternoon that I even found out about cards or signing my own then."²

On or about August 18, Joe Black, president of Respondent Company, met with the employees.

According to Peter King, Black told the employees "[h]e knew there was a union attempt. He asked us to hold off signing cards and that he was getting information and he would continue getting information on the Union and union activities." King was of the opinion that Black held a second meeting that day after he (Black) had talked to his attorney and at that meeting he told the employees he couldn't make any promises. King thought there were two other meetings a day or two later at which the same thing was repeated by Black.

Adams was quite sure there were three or four employee meetings around the 18th or 19th of August, and he quoted Black as having said that he was "getting information about the Union and would continue to do so." However, Adams did not give this information to the Board's investigator at the time he gave his investigative affidavit, which

² Respondent's brief points out that the name Bill Carpenter as it appears in the quote above was undoubtedly a reporter's error and the name should have been Bill Carter. This would appear to be an accurate observation inasmuch as the same witness testified on cross-examination that he was asked if he had heard anything about Jim Moorehead or Bill Carter being part of the lead.

was dated November 15 (the day of the election and only 1 month after King's discharge).

Moorehead's testimony regarding the meeting was much less definitive. He said he did not recall what was said too clearly because he was not that impressed and besides his mind was already made up about the Union. Moorehead did not relate anything to the field investigator regarding the employee meetings with Black.

Charles Curtis, who was called by Respondent, testified, "To me, it was not an eventful occasion. I can remember mainly that Mr. Black's thing was, he couldn't say anything, that he had consulted with his attorney, and that his mouth was closed." Curtis was uncertain of the number of meetings and confessed that he just could not recall too much about these meetings.

Joe Ray, currently an assistant foreman but a production control manager who was included within the bargaining unit at the relevant and significant time, testified that he recalled attending two meetings but could not be sure if they were on the same day. His recollection was vague. He testified that Black "said he knew—he told us that he knew about the union drive. He said that he could make no promises to us by law, that he had talked to his attorney and that is all that sticks in my mind at those meetings."

Donald Meanor, the shop foreman, was not questioned regarding the meetings.

Joe Black testified that he first talked to the employees about 12:30 p.m. on August 18. He told them he had "heard that there was some union activity going on and I would like them to not sign cards until I could see what I could do and I was going to talk to my lawyer. I also did not make any promises. I never threatened—. . . I said I'd have to wait until I got advice from my attorney and until then I wasn't going to say anything." Black was quite certain that there was only one other meeting, that it occurred on August 23 at 5:30 p.m., and that both shifts were present. At the second meeting, he testified, "I told them I was not allowed to say anything. I could not promise. I could not say anything and whatever they wanted to do, they had to do it on their own. They started it and they could finish it." Black testified that each meeting only lasted about 5 minutes, and this time estimate was not disputed by the other witnesses.

Black further testified that he first became aware of the Union's organization drive at Aeon about August 16 or 17, when he received a call from Chuck Curtis, who advised him that he was thinking about signing a union card. Curtis testified that he called Black, at which time he said, "Mr. Black, I'm about to sign a union card," to which Black replied, "Chuck, that is your business. I wouldn't try to stop you. You do what you think is right, but you know my feelings."

On cross-examination by the General Counsel, the following series of questions explain why Curtis called Black.

Q. Why did you call Mr. Black and tell him you were going to sign a card?

A. I consider Joe Black a friend of mine. I thought he should know.

Q. After talking to him, you decided to not—not to sign a card?

A. No, after talking to my wife. Mr. Black had no effect on my decision. I called him back to tell him I was not going to sign any card.

Q. You never did sign a card?

A. No ma'am I did not.

Curtis also testified that while he could not remember too clearly all that he had said to Black, it was probable that he had told him that union authorization cards were being passed out among the employees.

C. The Discharge of Peter King

Peter King was discharged on October 20, because—Respondent contends—he had received three warning slips within a period of 6 months regarding either faulty workmanship or a disregard of company safety and efficiency procedures. The General Counsel contends King was discriminatorily discharged because he was a union activist. Reaching what I believe to be the correct resolution of this conflict has not been done hastily or without some vacillation on my part. However, mere suspicion is not sufficient to sustain proof of a violation.³ And the burden is on the General Counsel to prove the violation by a preponderance of the evidence.⁴

Joe Black testified that King exhibited his temper some 2 years before his actual discharge, when there was a "threat" to remove him from his machine because of inability to set up the machine properly, but that the supervisor changed his decision "to keep him [King] from blowing his block." On that occasion the supervisor had recommended discharge, but Black had intervened.

In June, Joe Ray—a temporary foreman while Meanor was on vacation—saw King reclining on a stool with one foot on a bench in a position which he believed to be unsafe insofar as the operation of his machine was concerned and thereupon spoke to him. Ray said, "Pete, I'm tired of getting my ass chewed out about you not doing your work and please get up."⁵ King replied, "If they want me to get up, you tell those people to come down here and tell me." Ray reported this incident to the Blacks, and Randy Black immediately went to speak to King. The result was a first warning notice dated June 16 (G.C. Exh. 3). During this conversation King acknowledged that he told Black, "I'm your employee, not your slave." King acknowledged that he thought he had been fired over this incident when he was told to punch out, but upon specific inquiry he was told, "No, you can come back tomorrow."

King also acknowledged that in August Joe Black had spoken to him about being careless because he had scrapped two parts. This action was not written up as a warning notice.

In September King received a second written notice

³ "Mere suspicion cannot substitute for proof of an unfair labor practice." *Kings Terrace Nursing Home and Health Related Facility*, 229 NLRB 1180 (1977), citing *DSL Mfg., Inc.*, 202 NLRB 970 (1973).

⁴ *Falstaff Brewing Corp.*, 128 NLRB 294, 295, fn. 2 (1960), enf'd, as modified 301 F.2d 216 (8th Cir. 1962).

⁵ According to Ray, King had been wandering away from his machine talking to another operator during much of the week that Ray had served as a temporary foreman.

(G.C. Exh. 4), because he had run 18 parts that had to be reworked.

On October 20, King was responsible for running two different operations on each of 100 parts; he was to run the first operation on all 100 parts and then reset his machine to perform the second operation on those same 100 parts. In the late afternoon of October 20, Don Meanor had occasion to observe that those parts had an excessively sloppy fit in the "pot" for which they were designed. Meanor advised King that the parts were too sloppy and that the proper dimensions appeared on the printout which King was supposed to have been following. King's answer was, "I have always run it that way." It was necessary for Meanor to readjust the other machines down the line to accommodate the results of King's errors on the first operation. After King changed his machine to run the second operation, he took one of the parts to Jim Moorehead, who worked at quality control, to ascertain if it passed inspection. According to both Moorehead and King, the part passed inspection and, shortly thereafter, at 5:30 p.m. King left work for the day.

King was scheduled to work on Friday, October 21, at 7 a.m., but, without having made any effort to advise the Company that he would be late for work, he appeared at approximately 10 a.m.⁶

When King failed to report for work as scheduled, and because the parts were needed, a trainee, Bruce Miller, was assigned to run the second operation on the rest of the parts by using King's machine as he had left it set up the night before. After running only one part, Miller discovered that the machine was improperly set up and that the offsets needed to be changed. Don Meanor asked Moorehead to inspect the four parts on which King had run the second operation on the previous afternoon. Two of the four parts were correct and two were incorrect. Meanor then reported this incident to Randy Black, observing that he had spoken to King concerning the first operation on the previous day only to learn that King had set the second operation inaccurately, a fact which had been discovered by a trainee. Black prepared King's final notice (G.C. Exh. 2), and when King arrived at approximately 10 a.m., he was advised of his discharge. Some angry words were exchanged between Randy Black and Peter King.⁷ Shortly thereafter King received his final paycheck and a substantial check (\$10,000) from the profit-sharing plan, accumulated during his 6 years of employment.

Analysis

The testimony of Charles Adams concerning his interrogation by Don Meanor regarding his and/or other employees' union activity was straightforward and, I believe, honest and should be credited. Meanor did not deny the interrogation. The Board has long held that interrogation

⁶ Although it was not an emergency, King decided that it was necessary for him to assist his wife in taking their baby to the doctor to keep an appointment. While the reason for being late may have been justifiable, I can see no reason why he should not, or could not, have made some effort to advise the Company of his personal problem.

⁷ While this conversation tends to reflect King's undisciplined character, I can find nothing in this area of the testimony tending to prove or disprove any allegations of the complaint.

of employees by a supervisor concerning union or other protected concerted activity directly interferes with the Section 7 rights of employees and thus violates Section 8(a)(1) of the Act. *Answering, Inc.*, 215 NLRB 688 (1974).

Although King testified that he talked to a few employees in June concerning possible interest in a union, based on his own testimony I conclude that this activity—if any—was minimal and remained unknown to Respondent as well as to one of his close friends and later coactivist, Chuck Adams. Both King and Moorehead testified they first contacted the Union in late July; the authorization cards were all dated in mid-August. Charles Curtis testified that he informed Joe Black about the Union in mid-August; this timing coincides with Meanor's wrongful questioning of Charles Adams. Based upon the cumulative evidence it seems both logical and reasonable to conclude that Respondent had no knowledge of union activity until mid-August. Moreover, the testimony of Joe Ray as to the June incident leading to the first warning notice was convincing; King made light of the event and sought to explain his comment to Ray by indicating they frequently kidded around.

It is difficult to determine just what Joe Black said at the brief employee meetings. The three activists—King, Moorehead, and Adams—all testified they made no attempt to hide their activities; they, along with others, wore union insignia at work. Under such circumstances it would not seem unusual to begin one's comments to the employees with a phrase such as "I'm aware that the Union is active" or "I'm informed that the Union is seeking to have you sign cards." Such comments are not necessarily coercive; this is particularly true in an environment where the union activists are operating openly and without apparent fear of retaliation.⁸ I am concerned that neither Adams nor Moorehead was sufficiently impressed, concerned, or coerced to remember any part of the speech at the time they gave their pretrial affidavits to the Board investigator.

Moreover, Joe Black was an impressive witness, whom I believe to have been completely candid and honest in his testimony. Even when viewed in the most favorable light (from General Counsel's viewpoint), the alleged remarks attributed to Joe Black are subject to dual interpretation, and I have grave doubt that it was employer conduct which might reasonably be said to have tended to interfere with the exercise of employee rights under the Act. The testimony does not establish a strong pattern of conduct hostile to unionism. Not only did King, Moorehead, and Adams openly solicit union authorization cards, but a number of employees openly displayed the union insignia without adverse consequences. I find it impossible to conclude from the evidence in this record that Black's casual remarks ever created the impression of surveillance, and certainly he made no promises but, to the contrary, stated that he could not make any promises.

The testimony establishes that Respondent had an unpublished, but generally well-known, rule that three warnings within a 6-month period would result in discharge.⁹

⁸ Neither the management nor the employees were strangers to an organizational campaign. A union had unsuccessfully sought to organize the employees in 1972.

King received three such warnings and, in accordance with the policy, was discharged for that reason. The incidents which precipitated the warning notices are not denied. The General Counsel—through the testimony of Peter King—merely seeks to minimize their importance, or significance, thereby seeking to enhance the possibility of inferring an unlawful motive. The issue, then, as in nearly every Section 8(a)(3) termination case, is "the 'true purpose' or 'real motive' " for the discharge.¹⁰ If Peter King was in fact discharged because of his union activities, it makes no difference that there may also have been a legitimate reason for firing him.¹¹ Conversely, if his discharge was not discriminatorily motivated, it is immaterial whether the discharge was arbitrary, unreasonable, or unfair. The Act does not "give the Board any control whatsoever over an employer's policies, including his policies concerning tenure of employment. . . . [A]n employer may hire and fire at will for any reason whatsoever, or for no reason, so long as the motivation is not violative of the Act."¹²

As suggested earlier herein, I am unable to conclude that Respondent was illegally motivated in the discharge of Peter King. I reached that conclusion for the following reasons.

1. While I believe King was reasonably accurate in most of his testimony, nevertheless his demeanor reflected a definite "cockiness" or arrogance that was distasteful. The illustration that King testified about when Randy Black told him he (King) had stretched the rubber band too far was undoubtedly appropriate. King's complete failure to make any effort to notify his employer on the morning of October 21 that he would be coming in to work at a late hour under nonemergency conditions further illustrates his total lack of concern or an improper attitude.

2. I credit Joe Black's testimony, particularly when he stated he did not learn that Peter King was a leader among the union activists until December 28, 2 months after King's discharge.

3. The decision to discharge King was not hastily made. Not only did Randy Black and Don Meanor participate in the decision, but Joe Black testified that the final decision was his. The testimony of all the witnesses—with the possible exception of King—indicates that the senior Black is a fair-minded, highly respected employer whom the employees liked and trusted.

4. None of the other union activists or known union supporters have suffered any retribution. To the contrary, all have received raises along with the other employees, and one known union supporter has been the recipient of two postelection wage increases. The testimony is convincing that Respondent was of the opinion that Moorehead

⁹ See the testimony of Randy Black, Donald Meanor, and Joe Black. That the policy was generally known to the employees was in no way refuted or questioned by the General Counsel.

¹⁰ *Local 357, United Brotherhood of Teamsters, etc. [Los Angeles-Seattle Motor Express] v. N.L.R.B.*, 365 U.S. 667, 675 (1961); *Radio Officers' Union of the Commercial Telegraphers Union, AFL [A. H. Bull Steamship Company] v. N.L.R.B.*, 347 U.S. 17, 43 (1954).

¹¹ *Local 152, United Brotherhood of Teamsters, etc. [American Compressed Steel] v. N.L.R.B.*, 343 F.2d 307, 309 (D.C. Cir. 1965).

¹² *N.L.R.B. v. Ace Comb Co., etc.*, 342 F.2d 841, 847 (8th Cir. 1965); also *N.L.R.B. v. McGahey, J. A. Sr., et al. d/b/a Columbus Marble Works*, 233 F.2d 406, 413 (5th Cir. 1956), and cases there cited.

and Adams and possibly Carter were the ringleaders of the union activity and not Peter King.

The Company has not been shown to harbor the type of animosity against union activity that would give it a motive to discharge Peter King because of that activity, and the Company has established by credible evidence that it had legitimate business reasons for the discharge. I herewith find that the General Counsel has failed to establish by a preponderance of the credible evidence that there was causal connection between Peter King's union or other protected activity and his discharge.¹³

CONCLUSIONS OF LAW

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

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

3. Respondent violated Section 8(a)(1) of the Act when, on or about August 18, Supervisor Donald Meanor engaged in interrogating Charles Adams concerning his and/or other employees' union activity.

4. The discharge of Peter King was not discriminatorily motivated.

5. Respondent did not illegally make promises to the employees or create the impression of surveillance as alleged in the complaint.

THE REMEDY

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

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

ORDER ¹⁴

The Respondent, Aeon Precision Company, Inc., Aurora, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their or their fellow employees' union activities or other protected concerted activities.

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

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

(a) Post at its plant in Aurora, Colorado, copies of the attached notice marked "Appendix."¹⁵ Copies of the no-

tice, on forms provided by the Regional Director for Region 27, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹³ *Coletti's Furniture, Inc. v. N.L.R.B.*, 550 F.2d 1292, 1293 (1st Cir. 1977).

¹⁴ 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.

¹⁵ 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."

APPENDIX

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

After a hearing at which all parties had an opportunity to present evidence and cross-examine witnesses, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice and to comply with its intent.

The National Labor Relations Act gives all employees these rights:

- To engage in self-organization
- To form, join, or engage in union activities
- To bargain collectively through representatives of their own choosing
- To act together for collective bargaining or other mutual aid or protection
- To refrain from any or all of these activities.

WE WILL NOT interrogate our employees concerning their, or other employees', union and/or protected concerted activities.

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

AEON PRECISION COMPANY, INC.