

Jack Holland & Son, Inc. and Edward Richardson.
Case 32-CA-244 (formerly 20-CA-1320)

August 4, 1978

DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On February 7, 1978, Administrative Law Judge Gerald A. Wacknov issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed limited 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 briefs and has decided to affirm the rulings, findings,¹ and conclusion of the Administrative Law Judge and to adopt his recommended Order, as modified herein.²

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, Jack Holland & Son, Inc., Hayward, California, 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(c):

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

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

¹ The Charging Party has excepted to the Administrative Law Judge's finding that Respondent's relocation of certain employees and equipment during the summer of 1977 was economically motivated. We find it unnecessary to pass on the Administrative Law Judge's finding. In this regard, counsel for the General Counsel stated at the hearing that the matter of Respondent's relocation was not alleged as a violation of the Act and was not at issue in this proceeding, and the matter is not fully litigated. Furthermore, the Administrative Law Judge's finding is unnecessary to the disposition of this case. Thus, even assuming, *arguendo*, that the relocation in fact was lawfully motivated, the threats made by Respondent's supervisors to the employees because of their protected concerted activity nevertheless constitute violations of Sec. 8(a)(1). See *Sinclair Glass Company, and Sinclair Glass Division, David B. Lilly Company, Inc.*, 188 NLRB 362 (1971).

² In par. 1(c) of his recommended Order, the Administrative Law Judge provided that Respondent shall cease and desist “in any other manner” from infringing on employee rights guaranteed in Sec. 7 of the Act, rather than providing the narrow injunctive language “in any like or related manner” customarily used by the Board in cases of this kind, involving threats in

violation of Sec. 8(a)(1). See, e.g., *Kansas City Power & Light Company*, 231 NLRB 204 (1977). Accordingly, we shall modify the Administrative Law Judge's recommended Order and notice.

Member Murphy notes that, in recommending a remedial order herein, the Administrative Law Judge cited, *inter alia*, *Carolina American Textiles, Inc.*, 219 NLRB 457 (1975). Although Member Murphy dissented in that case on grounds that the single isolated violation of Sec. 8(a)(1) of the Act found therein did not warrant issuance of a remedial Order, the instant case is clearly distinguishable inasmuch as Respondent's unfair labor practices are neither isolated nor *de minimis*.

APPENDIX

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

The National Labor Relations Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist unions
- To bargain collectively through representatives of their own choosing
- To engage in activities together for purposes of collective bargaining or other mutual aid or protection
- To refrain from any or all such activities except to the extent that the employees' bargaining representative and an employer have a collective-bargaining agreement which imposes a lawful requirement that employees become union members.

WE WILL NOT threaten employees with the possibility of loss of jobs or other reprisals for filing unfair labor practice charges against us with the National Labor Relations Board or for filing grievances under the collective-bargaining agreement.

WE WILL NOT make disparaging remarks to employees tending to inhibit them from filing such unfair labor practice charges and/or grievances.

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

JACK HOLLAND & SON, INC.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge: Pursuant to notice, a hearing with respect to this matter was held before me in Oakland, California, on January 5, 1978. The charge and amended charge were filed on June 20 and

September 15, 1977, respectively, by Edward Richardson, an individual. The complaint, issued on September 28, 1977, alleges violations by Jack Holland & Son, Inc. (herein called Respondent) of Section 8(a)(1) of the National Labor Relations Act, as amended (herein called the Act). Respondent's answer to the complaint, duly filed, denies the commission of any unfair labor practices.

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. The parties orally argued the matter at the close of the hearing; no briefs have been filed.

Upon the entire record, and based upon my observation of the witnesses and consideration of the oral argument presented at the hearing, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a California corporation with its principal office located in Hayward, California, and principal terminal in San Leandro, California, and is engaged in the retail and nonretail sale of fuel oil and petroleum products. In the course and conduct of its business operations, Respondent annually receives gross revenues in excess of \$500,000 and provides goods and services valued in excess of \$50,000 directly to customers located inside the State of California, each of which, in turn, annually purchases and receives goods valued in excess of \$50,000 directly from suppliers located outside the State of California. Respondent admits, and I find, that it is an Employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all times material herein, Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Issue*

The principal issue raised by the pleadings is whether Respondent violated Section 8(a)(1) of the Act by threatening employees with economic reprisals for engaging in protected concerted activity.

B. *The Facts*

Frank Boyer, sometimes referred to as maintenance supervisor, is in charge of truck maintenance at Respondent's San Leandro terminal as well as at Respondent's facility in Bakersfield, California. He is salaried rather than hourly paid, as are the other maintenance employees, and directs the work of four truck mechanics and helpers, two of the said employees being located in San Leandro and two in Bakersfield. He has no authority to hire or discharge em-

ployees, but suggests the need for additional employees, participates in interviewing employees for maintenance positions, and makes recommendations regarding the hiring of the said employees, having possessed such authority at least since January 1977. It was stipulated at the hearing that at least from April 1977 to the present, Boyer has been the maintenance supervisor with the authority to recommend the hiring and firing of employees, and with the responsibility for directing the employees' daily work in the maintenance department. Boyer testified that in February 1977, the time of the unfair labor practices herein, he had the same duties and responsibilities as in April 1977, although apparently only one employee was working under his direction at that time, the said employee being engaged in the work of steam-cleaning trucks and parts and changing tires.

Joseph Conley was hired on May 6, 1976, and is no longer in the employ of Respondent. While employed by Respondent, he drove an oil tanker, customarily on a particular run from San Leandro to Bakersfield to Cupertino and back to San Leandro, commonly referred to as the "Kaiser" run.

Conley accompanied the Charging Party herein, Edward Richardson, to the NLRB office in San Francisco on or about February 2, 1977, at which time Richardson filed unfair labor practice charges against both Respondent and the Union; the charge against Respondent alleging that certain lower seniority employees, including Conley and Richardson, were receiving disparate treatment as a result of being paid less for the Kaiser run than more senior employees; and the charge against the Union apparently alleging that the Union was not properly processing the employees' grievances in this regard. Several days following the filing of the charges, Conley had a conversation with Boyer at the San Leandro yard.¹ Conley testified that Boyer, who appeared upset, asked why Conley had accompanied Richardson to the NLRB and why the charges had been filed, referring to the two employees as "shit disturbers." Conley replied that the charges were filed because all drivers were on the same seniority list and performing the same work, yet the senior drivers were paid on an hourly basis, with time-and-a-half after 8 hours while Conley, Richardson, and others were paid on a mileage basis, which resulted in considerably less money to them for the same Kaiser run. Boyer then remarked that if they stirred up the shit they, meaning the junior seniority drivers, would be without a job because Respondent would move its trucks to Bakersfield.

Louis Taylor was also employed by the Respondent as a driver during times material herein, and primarily drove the Kaiser run. In June 1977, Taylor and another driver had a conversation with Maxwell Davies, Respondent's dispatcher,² at a location in Bakersfield. Taylor, having heard rumors about the possible relocation of the trucks from San Leandro to Bakersfield, asked Davies about this matter. Davies replied that as far as he knew some trucks would be moved, but he did not know which trucks or

¹ Boyer has no direct supervisory authority over Conley.

² At the hearing it was stipulated that Davies has been, at all times material herein, a supervisor within the meaning of the Act.

employees would be affected. Davies also mentioned that he was highly irritated by the fact that Richardson had filed a "runaround" grievance,³ and went on to say that if there hadn't been any "union hassles" the relocation to Bakersfield might not have occurred, and that Conley and Richardson were shit disturbers.

Boyer testified that in February 1977, he had been very concerned about the possible move to Bakersfield, believing that he would also be required to relocate, and stating that because he was less than enchanted with the Bakersfield area he would have voluntarily terminated his employment rather than move. While Boyer denied threatening Conley, he does recall asking Conley what the employees' beef was and why they had filed the charges; and recollects telling Conley that they would all, including Boyer, be relocated to Bakersfield if the employees kept "disturbing the operations." Boyer testified that he was merely attempting to suggest to Conley that if there was unhappiness among the employees which created problems for Respondent, this would be yet another reason for Respondent to decide to relocate, as the operation, for purely economic reasons, would have been more profitable in Bakersfield.

Davies testified that he too, for personal reasons, was concerned that he would be moved to Bakersfield, and also testified that he would seek other employment rather than accept such a transfer. Davies does recall being questioned by Taylor about the contemplated move, and although unable to recall any details of the conversation, testified that he may have mentioned the names of Richardson and Conley.

Apparently during the summer of 1977, Respondent did open a facility in Bakersfield to which certain employees and equipment were subsequently transferred. The record indicates that the move was economically motivated in order to achieve greater utilization of equipment, inasmuch as 90 percent of Respondent's business originates in the greater Bakersfield area.⁴

C. Analysis and Conclusions

At the time of the Taylor-Davies conversation, Davies was admittedly a supervisor within the meaning of the Act. While Boyer, at the time of his conversation with Conley in February 1977, had only one employee assisting him in maintaining the trucks and equipment, I find that he, too, under all the circumstances herein, was a supervisor within the meaning of the Act. Thus, Boyer interviewed and responsibly directed the day-to-day activity of the maintenance employee, and was apparently the only individual to whom the employee reported for work assignments and directions. Further, there is direct record evidence that

³ This type of grievance involves dispatching a less senior employee for a run when a more senior driver, namely, Richardson, was available. The grievance was resolved in Richardson's favor.

⁴ The initial charge herein alleged such a move to be discriminatorily motivated in retaliation against Richardson and other similarly situated employees for attempting to secure equality in pay with the more senior drivers; and further, in retaliation for Richardson's aforementioned filing of charges with the Board. These allegations were determined to be without merit, and the charge was amended accordingly.

Boyer's authority remained the same between February and April, 1977, at which latter time he admittedly possessed supervisory authority. See *Radiant Lamp Corp.*, 116 NLRB 40, 41-42 (1956); *Roadhome Construction Corp.*, 170 NLRB 668, 677 (1968); *Flexi-Van Service Center, A Division of Flexi-Van Corporation*, 228 NLRB 956 (1977).

I find that the conversation between employee Conley and Maintenance Supervisor Boyer, and the conversation between employee Taylor and Davies, Respondent's dispatcher, occurred as Conley and Taylor so testified. Both employees appeared to have a vivid recollection of the respective conversations, while Davies' rendition was exceedingly vague and Boyer's account, to the limited extent his testimony upon cross-examination differed with that of Conley's, was both inconsistent and unconvincing.

The statements made by Supervisors Boyer and Davies, quite similar in nature, were clearly violative of the Act, and constitute threats of adverse repercussions for the employees' having filed unfair labor practice charges with the Board and/or grievances pursuant to the applicable collective-bargaining agreement. *Precision Castings Company, et al.*, 233 NLRB 183 (1977). Thus, both supervisors indicated, in disparaging terminology, their strong dissatisfaction with the employees' protected concerted activities, and expressed what the employees could have reasonably believed to be management's thinking,⁵ namely, that such conduct was, at the least, a factor in causing Respondent to contemplate relocating and/or deciding to relocate a portion of its operations. I thus find that the remarks of Boyer and Davies constitute violations of Section 8(a)(1) of the Act as alleged, even though the supervisors may not have intended their remarks to convey a threat⁶ and even though the relocation to Bakersfield was, in fact, not prompted by the employees' protected concerted activity.⁷ Further, the accompanying disparaging remarks directed toward the employees, even absent a direct threat of adverse consequences, likewise have the reasonable effect of inhibiting the employees' exercise of rights guaranteed by Section 7 of the Act, and are, therefore, independently violative of Section 8(a)(1) of the Act. See *Ethyl Corporation*, 231 NLRB 431, 435 (1977); *A. Lasaponara & Son, Inc., a wholly owned Subsidiary of ERE Industries, Inc.*, 218 NLRB 1096, fn. 2 (1975), *enfd.*, 541 F.2d 992 (C.A. 2, 1976).

Under the circumstances, given the nature of the violations and the continuing coercive impact such statements would reasonably have on unit employees in the exercise of their Section 7 rights, I find that a remedial Order is warranted. See *Didde-Glaser, Inc.*, 233 NLRB 765 (1977); *Carolina American Textiles, Inc.*, 219 NLRB 457 (1975). Cf. *Northern Indiana Tool, Inc.*, 233 NLRB 917, (footnotes 1 and 2) (1977).

⁵ See *Pacific Southwest Airlines*, 201 NLRB 647, 650 (1973), *enfd.*, 550 F.2d 1148 (C.A. 9, 1977).

⁶ *Munro Enterprises, Inc.*, 210 NLRB 403 (1974); *American Lumber Sales, Inc.*, 229 NLRB 414 (1977).

⁷ *Sinclair Glass Company, and Sinclair Glass Division, David B. Lilly Company, Inc.*, 188 NLRB 362 (1971), *enfd.*, 465 F.2d 209 (C.A. 7, 1972).

CONCLUSIONS OF LAW

1. Jack Holland & Son, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent has violated Section 8(a)(1) of the Act by threatening employees with possible loss of jobs or other reprisals for having filed charges with the Board and/or grievances under the contract, and concomitantly, by making disparaging remarks, reasonably tending to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I recommend that it cease and desist therefrom, post an appropriate notice, and take certain other action 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 ⁸

Respondent, Jack Holland & Son, Inc., Hayward, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

⁸ 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.

(a) Threatening employees with the possibility of loss of jobs or other reprisals for having filed unfair labor practice charges with the Board and/or grievances under the applicable collective-bargaining agreement.

(b) Making disparaging remarks regarding employees' filing of unfair labor practice charges with the Board and/or grievances under the applicable collective-bargaining agreement.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

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

(a) Post at its San Leandro and Bakersfield, California, facilities copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 32, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent 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 32, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁹ 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."