

Westinghouse Electric Corporation and John M. Kropczynski, Case 6-CA-10629

August 15, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

On April 27, 1978, Administrative Law Judge Benjamin K. Blackburn 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, and conclusions¹ 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, Westinghouse Electric Corporation, Trafford, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ In its exceptions Respondent alleges, *inter alia*, that the Administrative Law Judge abused his discretion by interrupting Respondent's cross-examination of the Charging Party and showed bias and prejudice against Respondent. We have carefully considered the Administrative Law Judge's Decision and the record as a whole and we find no evidence that the Administrative Law Judge abused his discretion, prejudged any issues, or demonstrated any bias against Respondent in his analysis or discussion of the facts or law.

DECISION

STATEMENT OF THE CASE

BENJAMIN K. BLACKBURN, Administrative Law Judge: The charge was filed on October 4, 1977.¹ The complaint was issued on November 22 and amended at the hearing. The motion of International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 601 to intervene was granted by the Regional Director on January 23, 1978. The hearing was held on January 25, 1978, in

¹ Dates are 1977 unless otherwise indicated.

Pittsburgh, Pennsylvania. The issue litigated was whether an official of Respondent named James Cobern threatened the Charging Party with loss of his job for filing a grievance, thereby causing Respondent to violate Section 8(a)(1) of the National Labor Relations Act, as amended. For the reasons set forth below, I find that he did. During the hearing it developed that Cobern interrogated another employee about his part in the investigation of the charge. That, too, constituted a violation of Section 8(a)(1).

Upon the entire record, including especially my observation of the demeanor of the witnesses, and after due consideration of briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Pennsylvania corporation, is engaged in Pennsylvania as well as other States in the manufacture of electrical appliances and products. During the 12 months just prior to issuance of the complaint, it shipped products valued in excess of \$50,000 from its Pennsylvania plants to customers located outside the Commonwealth of Pennsylvania and received goods and materials valued in excess of \$50,000, which were shipped directly to its Pennsylvania plants by suppliers located outside the Commonwealth of Pennsylvania.

II. THE UNFAIR LABOR PRACTICES

A. Credibility and Background

Respondent's power circuit breaker division, a part of its East Pittsburgh, Pennsylvania, works, is located at Trafford, Pennsylvania, some 8 miles east of the main plant. John Kropczynski is one of two subdivision stewards for Local 601. James Cobern is the divisional personnel manager.

There is a no-strike clause in the contract between Respondent and the IUE. A work stoppage on May 25 (one of a series around this time) has given rise to a civil suit by Respondent against Local 601 and a number of its officials. Kropczynski is not named as a defendant. However, on August 3, Respondent took a deposition from him in connection with the suit. He was shown a photograph taken on May 25 in which he was identifiable and which Respondent contends demonstrates that he was among those who led the walkout. References to grounds for discharging Kropczynski in the conversations which are at issue in this case are to May 25 and that photograph. No employee has been disciplined by Respondent because of the May 25 walkout.

Cobern denies ever threatening to discharge Kropczynski in conversations with him on June 2, August 15, and September 2 or with Charles Welsh, the other subdivision steward, around June 8 and on October 25. Cobern does not dispute the fact that each of these conversations took place or that, generally, they arose in the context of a grievance filed by Kropczynski on May 3 that Respondent was using potentially toxic chemicals in a part of the Trafford plant known as the epoxy aisle, in violation of Occupation-

al Safety and Health Administration standards. I do not credit Cobern's denials for a number of reasons.

There is no dispute about the sequence of events surrounding the conversations. Cobern represents Respondent at the second step of the grievance procedure. The second-step meeting on Kropczynski's grievance was held on May 11. Cobern asked for more time to investigate. Kropczynski filed a formal complaint with OSHA on May 12. An OSHA inspector came to Trafford on June 22. Kropczynski accompanied him as he looked over the situation. Cobern received a card from OSHA on August 11 which indicated no violation had been found by the inspector. Cobern issued Respondent's written, second-step reply to Kropczynski's grievance on August 15. He relied on OSHA's clean bill of health denying it. (Kropczynski did not carry the grievance to the next step within the time limit specified in the contract.) Kropczynski showed Cobern a rough draft of a letter to OSHA on September 2 which Kropczynski subsequently mailed on September 8. In it Kropczynski asked for the results of the June 22 survey. On October 25, Cobern accompanied Welsh on an inspection of a safety and health situation which had caused Welsh to seek out Cobern.

Each conversation thus occurred in a timeframe which makes the nature of the remarks Kropczynski and Welsh attribute to Cobern inherently credible, given an indication Cobern thought Kropczynski was not justified in filing the grievance. In early June, the Union was still waiting for Cobern's second-step reply. On August 15, Kropczynski went to Cobern to take issue with the reply. On September 2, Kropczynski indicated to Cobern he was not yet prepared to let the matter drop. On October 25, Cobern did act in a cooperative manner with Welsh over a safety and health problem. It is quite possible that Welsh would still be unaware as of that date that Kropczynski had gone to the Labor Board.

That the conversations took place in this context does not, of course, prove Cobern's attitude toward Kropczynski's grievance without more. For that I rely on three specific parts of the record. Cobern admitted lecturing Kropczynski in early April, around the time Cobern came to Trafford as personnel manager, about carrying out his duties as a subdivision steward in a responsible manner. This conversation was precipitated by work stoppages in late March. Cobern ended by saying, "I don't want to see you get into any trouble up here." Cobern admitted referring both to this conversation and to the photographs which Respondent took on May 25 when he and Kropczynski talked on August 15. He quoted himself as saying, "I'm somewhat surprised to see that you didn't take my advice from the spring conversation we had. I see that you are in these photographs and there are several people who have made statements that they saw you at the main gate quite early in the morning. You were one of the first people there." (Respondent has taken statements from witnesses of the events of May 25.) Finally, Cobern, in effect, admitted the allegation which was added to the complaint at the hearing when he testified about asking Welsh in January 1978 why Kropczynski had filed the charge in this case. Taken together, I think, these portions of the record demonstrate an attitude toward Kropczynski which, along

with the context in which the conversations arose, makes Cobern's version inherently less credible than the testimony of Kropczynski and Welsh. The following findings of fact reflect, therefore, their version of what Cobern said on each occasion and not his.

B. Facts

1. June 2

On June 2, John Kropczynski went to James Cobern's office to find out what was happening on his grievance about potentially dangerous chemicals in the epoxy aisle. Cobern said he could not understand why Kropczynski would fill out such a grievance; he could understand Joel Pryts, the division steward, doing such a thing because he aspired to higher office in the Union, but what did Kropczynski have to gain? Cobern said, "Jack, I told you that you have your head in a wringer, and we have enough on you and Bill Gessinger [one of 20-odd section stewards at Trafford] to come out there and fire you anytime we want too."

2. Around June 8

About 2 weeks after May 25, Charles Welsh went to Cobern's office to discuss other problems in the epoxy aisle. They got onto the subject of the May 25 work stoppage. Cobern said the Union had contracted for a 40-hour workweek and did not have a right to cause work stoppages. He said Kropczynski and Gessinger had been out stopping cars that morning, his included, and had stopped other people from coming into the plant. He said he had enough evidence, photographs included, to fire such stewards as Kropczynski and Gessinger for what they had done that day.

3. August 15

On August 11, when Cobern received notification from OSHA that its inspector had found nothing to indicate Kropczynski's grievance had merit, he asked Kropczynski whether he had received a similar communication. Kropczynski had heard nothing from OSHA. When Kropczynski received Cobern's denial of his grievance on August 15, he went to Cobern's office to talk about it. In the course of the conversation, Cobern brought up the May 25 work stoppage and the photograph of Kropczynski which Kropczynski had seen for the first time on August 3. Cobern said he could not understand why Kropczynski was sticking his neck out over the grievance, because the work stoppage had been illegal and Respondent had enough evidence of his role in it to fire him anytime it wanted to.

4. September 2

Kropczynski never did hear directly from OSHA about his complaint. Consequently, he decided to write directly for information about what OSHA's survey of the plant had revealed. He went to Cobern's office on September 2

to show him a rough draft of his letter. Once again, Cobern indicated he thought Kropczynski was unwise to persist when OSHA had found nothing wrong. He again referred to the photograph and said Respondent could fire Kropczynski anytime it wanted to for his role in the May 25 work stoppage.

5. October 25

On October 25 Welsh asked Cobern to come with him to where welders were using argon gas in an unventilated area. Cobern did so. When they returned to Cobern's office, Cobern said Welsh had a valid complaint and he would show Welsh the consideration it deserved. However, he added, there were some stewards in the plant that he would not. Welsh asked who. Cobern said Kropczynski. Welsh asked why. Cobern said, "He has charges with the Labor Board on me. Didn't you hear?"

Welsh said, "No. I didn't know that." Cobern pulled an envelope from a file cabinet. Without showing its contents to Welsh, he said he had enough photographs and testimony from witnesses in the envelope to fire Kropczynski. He said he would be glad to sit down with the Labor Board and discuss these matters; after he got the Labor Board straightened out, Kropczynski would pay the consequences. Welsh said, "What are you going to do with Jack? Are you going to fire him?"

Cobern said, "I don't want to tell you at this time, but you'll find out."

6. January 1978

The following findings of fact are based on Cobern's testimony. His disagreements with Joel Pryts, the division steward, and Welsh about what transpired as the day of the hearing drew near are insignificant. To the extent that they exist, I have credited Cobern over Pryts and Welsh.

A couple of weeks before the hearing Pryts spoke to Cobern in Cobern's office about this case. Pryts said, "Even your old pal, Charlie Welsh, is going to get you now." Cobern said, "What do you mean by that?" Pryts said, "Yeah, he screwed you. He filed an affidavit with the NLRB too. We're all going to get you." Cobern said, "I don't understand what is going on here. This is all beyond me." Pryts said, "You thought you had a friend with Charlie Welsh, but you were wrong. You don't have any friends in the IUE."

A day or two later Cobern spoke to Welsh. He said, "Mr. Pryts indicated to me the other night that you have filed an affidavit in the Kropczynski NLRB charge against me. I don't understand why Kropczynski filed a charge in the first place, and furthermore, I don't understand what your part is in it. I thought that we had a reasonable relationship and I don't understand—I can't think back on any problems that we ever had that would cause you to do this. Why did you do it?"

Welsh said, "Sometimes your bosses tell you to do things that you don't want to do, and sometimes my bosses tell me things that I don't want to do, but we do them."

Cobern said, "Is that all you have to say? It still doesn't really answer my question."

Around January 19, Cobern spoke to Pryts again. He pointed out that the NLRB hearing was almost upon them and said that he still did not understand what he was supposed to have done. He said he had never threatened to fire Kropczynski. Pryts gave him a noncommittal answer.

C. Analysis and Conclusions

Cobern's testimony about his January 1978 conversation with Welsh caused the General Counsel to amend the complaint at the hearing. It is obvious that Cobern did, on that occasion, question "an employee regarding his cooperation in a National Labor Relations Board investigation." The question Cobern put to Welsh was, by its very nature, coercive in the legal sense, since nothing in the circumstances under which the conversation took place justified it. I find, therefore, Respondent violated Section 8(a)(1) of the Act by interrogating an employee on that occasion.

The allegations about the 1977 conversations in the complaint as originally issued are couched in terms of threats—"to discharge Kropczynski in order to discourage the filing or process of grievances . . . to use photographs of strikers participating in a condoned wildcat strike in order to induce Kropczynski to refrain from filing or to withdraw grievances previously filed . . . to discharge² Kropczynski because he filed unfair labor practice charges under the Act." Once again, the words fairly describe the import of the points Cobern was making about Kropczynski, whether he spoke them to Kropczynski or to Welsh. Respondent defends on the ground that even Kropczynski's and Welsh's versions of what Cobern said to them "is not coercive within the meaning of Section 8(a)(1) of the Act simply because it intimidates the listener in some way [citing *N.L.R.B. v. Varo, Inc.*, 425 F.2d 293 (C.A. 5, 1970) and *System Council T-4, comprised of Local Unions 134, 165, 315, 336, and 399 of the IBEW [Illinois Bell Telephone Co.] v. N.L.R.B.*, 446 F.2d 815 (C.A. 7, 1971)]. . . . The reasonable object of the threat must be to 'coerce employees in the exercise of the rights guaranteed by Section 7 (of the Act).' Section 8(a)(1) of the Act. The General Counsel, in this instance, must as certainly link any threats to an unlawful purpose as he must surely prove the fact and character of the threats themselves." The short and simple answer to this argument is that the General Counsel has met his burden. Implicit in the words which Cobern spoke are the unlawful purposes of coercing Kropczynski in the exercise of his statutory right to file grievances and unfair labor practice charges. I find, therefore, Respondent also violated Section 8(a)(1) in the various conversations detailed above which occurred in 1977.

Upon the foregoing findings of fact, and upon the entire record in this proceeding, I make the following:

CONCLUSIONS OF LAW

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

² Apparently concerned by the ambiguity of Cobern's statements to Welsh on October 25, the General Counsel also amended the complaint to insert "or otherwise discriminate against" at this point.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 601 are labor organizations within the meaning of Section 2(5) of the Act.

3. By interrogating an employee about his cooperation in a National Labor Relations Board investigation and by threatening an employee for filing a grievance and an unfair labor practice charge, Respondent has violated Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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

ORDER³

The Respondent, Westinghouse Electric Corporation, Trafford, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees about their cooperation in National Labor Relations Board investigations.

(b) Threatening employees for filing grievances.

(c) Threatening employees for filing unfair labor practice charges.

(d) In any like or related manner interfering with or attempting to restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Post at its East Pittsburgh, Pennsylvania, works copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representative, 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 insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

³ 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.

⁴ 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

The National Labor Relations Board having found, after a hearing, that we violated Federal law by interrogating and threatening employees, we hereby notify you that:

The National Labor Relations Act gives all employees these rights:

To engage in self-organization

To form, join, or help unions

To bargain collectively through a representative of their own choosing

To act together for collective bargaining or other aid or protection

To refrain from any or all of these things.

WE WILL NOT interrogate you about your cooperation in National Labor Relations Board investigations.

WE WILL NOT threaten you for filing grievances.

WE WILL NOT threaten you for filing unfair labor practice charges.

WE WILL NOT in any like or related manner interfere with you or attempt to restrain or coerce you in the exercise of the above rights.

WESTINGHOUSE ELECTRIC CORPORATION