

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

VT GRIFFIN SERVICES, INC.

and

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 351, AFL-CIO

Cases 17-CA-23731
17-CA-23754
17-RC-12467

Charles T. Hoskin, Jr., Esq., Tulsa, Oklahoma
for the General Counsel.

Randy Griffin, Business Manager
International Union of Operating Engineers,
Local 351, AFL-CIO, of Borger, Texas
for the Charging Party.

Paul R. Beshears, Esq.,
(*Nelson, Mullins, Riley & Scarborough, LLP*),
of Atlanta, Georgia for the Respondent.

DECISION

Statement of the Case

JOHN J. MCCARRICK, Administrative Law Judge: This case was tried in Lawton, Oklahoma on April 11 and 12, 2007. The charge was filed November 16, 2006¹ and the complaint was issued on February 27, 2007, based upon the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in cases 17-CA-23731 and 17-CA-23754. On February 28, 2007, the Regional Director for Region 17 issued an Order Consolidating Cases and Directing Hearing on Objections to Election in cases 17-RC-12467, 17-CA-23731 and 17-CA-23754. An amended consolidated complaint issued on March 19, 2007.

The complaint and amended consolidated complaint allege that VT Griffin Services, Inc., Respondent, violated Section 8(a)(1) and (3) of the Act by engaging in and creating the impression of surveillance of its employee' union activity, by promising benefits in order to discourage employees' union activities, and by granting wage increases in order to discourage employees' union activities. Respondent filed a timely answer to the complaint and amended consolidated complaint denying any wrongdoing.

¹ All dates are in 2006 unless otherwise indicated.

Following the filing of a petition on November 20, in case 17-RC-12467 by International Union of Operating Engineers, Local 351, AFL-CIO, Charging Party, an election was conducted on December 21, in the following unit:

5 All full-time and regular part-time carpenters, HVAC mechanics, plumbers,
 electricians, pipefitters, pest controllers, welders, locksmiths, sheet metal
 workers, electronics technicians, general maintenance workers, fire alarms
 systems mechanics, maintenance trades helpers, sign painters, boiler
 10 mechanics, boiler operators, and boiler tenders employed by the Employer at its
 facility located at Ft. Sill, Oklahoma, who were employed during the payroll
 period ending December 3, 2006; Excluding all other employees including
 engineering technicians, heavy equipment operators, tractor operators, grounds
 maintenance laborers, truck drivers, leads, office clerical, guards and supervisors
 as defined in the Act.

15 The Region served the Tally of Ballots upon the parties at the conclusion of the election
 which showed that there were approximately 66 eligible voters, 25 of whom cast ballots for the
 Petitioner and 36 who cast ballots against the Petitioner. There were no challenged ballots.

20 On December 22, the Petitioner filed four timely objections to the conduct affecting the
 results of the election, a copy of which was served on the Employer. On February 26, 2007, the
 Petitioner withdrew Objection Nos. 1 and 2 and the Regional Director approved the withdrawal
 of those objections. The remaining objections state:

- 25 3. On or about November 21, 2006, the Employer granted a pay increase to
 HVAC employees.
- 30 4. On or about November 29, 2006, the Employer gave employees the
 impression that their union activities were under surveillance by telling
 employees that the Employer’s corporate office had been provided employee
 Union authorization cards.

35 On the entire record, including my observation of the demeanor of the witnesses, and
 after considering the briefs filed by the General Counsel and Respondent, I make the following.

Findings of Fact

I. Jurisdiction

40 Respondent, a corporation, with facilities located at Ft. Sill, Oklahoma, is engaged in the
 business of providing building and grounds maintenance services to the United States Army
 valued in excess of one million dollars at the Ft. Sill Army base and purchased and received at
 its Ft. Sill facility goods valued in excess of \$5000 directly from sources located outside the
 45 State of Oklahoma.

50 Based upon the above, Respondent is an employer engaged in commerce within the
 meaning of Section 2(2), (6), and (7) of the Act. Respondent admitted and I find that the
 International Union of Operating Engineers, Local 351, AFL-CIO, the Union, is a labor
 organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. The Background

5 Since about October 2005 Respondent has provided building maintenance and ground
 maintenance services pursuant to a service contract with the United States Army at Ft. Sill,
 Oklahoma, located near Lawton, Oklahoma. In dealing with Respondent, the Army is
 represented by Contracting Officer Patricia Wilkinson (Wilkinson) and her subordinate Andrew
 Bennett (Bennett). Since about October 2006, Respondent's Project Manager for its Ft. Sill
 10 facility has been Richard Castleberry (Castleberry). Respondent's Operations and Maintenance
 Manager was Bruce Robinette (Robinette) and its HVAC Supervisor was Lester Teeter (Teeter).
 Respondent's Corporate Manager, Labor and Employee Relations was David Grzybowski
 (Grzybowski). Respondent has admitted and I find that Castleberry, Robinette, Teeter and
 Grzybowski are supervisors and agents of Respondent within the meaning of the Act.

15 In about October 2006, the Union began organizing Respondent's employees at Ft. Sill,
 including HVAC employees. On about November 17, the Union filed a petition to represent,
inter alia, Respondent's HVAC and electrical employees at Ft. Sill, Oklahoma, in case 17-RC-
 12467.

20 The Department of Labor wage determination for HVAC positions in the Lawton,
 Oklahoma area was set in 2000 at \$16.77 per hour, the wage Respondent paid its HVAC
 employees prior to November 27, 2006. At no time has the Department of Labor increased its
 25 wage determination for HVAC employees in Lawton, Oklahoma above \$16.77 per hour.

 There is no dispute that Respondent was aware since late 2005 that the wages paid to
 HVAC employees were inadequate. While Castleberry was aware of low wages paid to HVAC
 employees as early as September, it was not until November that Respondent initiated steps to
 30 increase the pay of its HVAC employees.²

 Wilkinson, the Armies' contracting officer, testified credibly that Respondent sets its
 employees' wages, including HVAC employees, under the terms of its contract with the Army in
 conformance with wage determinations established by the Department of Labor. The
 35 Department of Labor wage determination establishes a minimum wage that Respondent is free
 to pay above without approval of the Army.³ As Wilkinson noted, if Respondent wanted to pay
 wages above the minimum as set by the wage determination, it would have to do so within its
 extant budget. Thus, Respondent's November 16, submission of the SF 1444⁴ to Wilkinson,
 40 requesting higher HVAC wages, was to not for the purpose of seeking Wilkinson's permission
 for a HVAC wage increase but to ensure a finding by Wilkinson that the increased HVAC wages
 were reasonable so that Respondent could seek future reimbursement for the wage increase
 from the Army.

45 ² While on August 24, Respondent's Director of Operations, Gary Monroe expressed a
 desire to increase HVAC wages, no action was taken.

³ Wilkinson testified that while the Army and Respondent, as a partnership, jointly agree on
 wages above the Department of Labor wage determination, as a practical matter, the Army
 never objects if the contractor wants to pay wages higher than the applicable wage
 50 determination.

⁴ GC Exh. 3.

In mid October, the Union organizers Larry Casey (Casey) and Art Cuellar (Cuellar) began organizing Respondent's employees at Ft. Sill. Casey and Cuellar spoke to Respondent's employees, including Gary Lambert (Lambert), in public areas on base about the benefits of Union representation. Lambert in turn spoke to 20 co-workers about the Union.

5

In mid to late October, Castleberry initiated a conversation with Army contracting officer Bennett concerning the inability to hire or retain qualified HVAC employees at Ft. Bliss due to low wages. No action was taken at this time to initiate a wage increase.

10

On October 30, Union Business Manager Victor Aguirre (Aguirre) contacted Respondent's Labor Relations Manager Grzybowski and advised that there was interest in forming a union among Respondent's Ft. Sill employees and that the Union would be talking to Respondent's employees about the Union. Grzybowski admitted that he called Castleberry on October 30 or 31, 2006, and told him the Union intended to organize Respondent's Ft. Sill employees.

15

On November 1, Castleberry began efforts to increase the HVAC employees' wages.⁵ Castleberry learned that HVAC employees in Lawton were the highest paid HVAC mechanics in Oklahoma. Castleberry decided that Respondent's HVAC employees should have their wages increased from \$16.77 to \$18.11 per hour.

20

In the first three days of November, Castleberry held a meeting in the electrical shop at Respondent's Ft. Sill facility. In response to an employee question about lack of sick leave benefits, Castleberry said he was looking into the matter. After the meeting employee Ali Rashaad (Rashaad) asked Castleberry to meet with HVAC employees. After HVAC employees said that they had not had a raise in six years, Castleberry said he was looking into it.

25

On November 15, the Union held a meeting for Respondent's employees at the Hampton Inn in Lawton, Oklahoma. Flyers announcing the meeting were distributed throughout Respondent's HVAC shop. About 12 to 13 employees attended the Union meeting on November 15 which began at 4:30 p.m. and lasted about an hour. Contracting Officer Wilkinson's notes of a November 15 meeting with Castleberry reflects that the Union was to hold a meeting that day at 4:30 p.m.

30

In its answer, Respondent, while admitting that its supervisors Teeter and Robinette engaged in surveillance of the November 15 union meeting, denied that it authorized the surveillance. The testimony amply established that both Teeter and Robinette engaged in surveillance of the November 15 meeting. Employees observed Robinette and Teeter both parked in the parking lot of the Hampton Inn and driving their vehicles around the Hampton Inn parking lot before and after the Union meeting.

35

40

On November 16, after learning that Teeter and Robinette had surveilled the Union meeting, Castleberry verbally admonished both but did not document the action nor did he discipline them. There is no probative evidence that Respondent disavowed Teeter and Robinette's conduct to employees.

45

⁵ According to Castleberry he began his research into increasing HVAC employees wages on November 1, because he learned that an HVAC employee was resigning effective November 14, for a higher paying job.

50

5 In early to mid November, Castleberry proposed a specific wage increase to \$18.11 for HVAC employees to Contracting officer Bennett. Bennett said the increase was reasonable. The wage increase was put into writing by Respondent with the submission of the form SF 1444 to Bennett on November 16, 2006. On November 20, the Union filed a petition to represent Respondent's employees, including HVAC employees, in case 17-RC-12467. In a November 21, e-mail, Wilkinson agreed with Respondent's decision to increase HVAC wages provided Respondent used their extant funding under its contract with the Army to cover the raise. Respondent increased its HVAC employees' wages to \$18.11 on November 27.

10 Not until February 8, 2007 was Respondent's November 16, 2006 form SF 1444 forwarded by Wilkinson to the Department of Labor. On February 28, 2007, the Department of Labor disagreed with Respondent's plan to raise HVAC wages. Nevertheless, the wage increase of November 27 has at all times remained in effect.

15 On November 29, Respondent's Labor Relations Manager Grzybowski held four meetings at Ft. Sill among Respondent's employees to discuss the Union. At each meeting Grzybowski showed a video entitled *Little Card, Big Trouble*. The video discussed authorization cards and mentioned that after a union obtains authorization cards it may choose to show the cards to the employer in order to gain recognition. Grzybowski testified that he told employees that union authorization cards were a legal document that gave the union authority to speak for the employee. Grzybowski denied telling employees that Respondent had seen or would see their authorization cards.⁶ During subsequent meetings with employees, Grzybowski described the NLRB election process including how a union uses authorization cards to obtain an election and how an *Excelsior* list is prepared.

25 Respondent's employee Brian Ogletree testified that at an employee meeting on November 29, Grzybowski showed a film and told employees that Respondent's corporate office would see employee authorization cards. According to Ogletree, Grzybowski said the cards would be brought back to corporate and then taken care of. Respondent's employee Steve Teevebaugh testified that he attended a November 29 employee meeting at 10:30 a.m. where, Grzybowski showed a film and told employees that the "union cards would be sent from the Union straight to VT Griffin's corporate office." However, Teevebaugh had no recollection of the video discussing authorization cards, despite the video's title. Employee Harlan Smith observed a portion of one of the November 29 employee meetings at about 9:30 a.m. Smith heard Grzybowski say that Respondent would receive employee union authorization cards. Smith also said Grzybowski said the company would get the cards to create an *Excelsior* list. Employee Harold Buzbee attended one of the November 29 meetings and claims that Grzybowski said the corporation would get the signed authorization cards. However in Buzbee's affidavit he said he got the impression the corporation would get the authorization cards based on the fact that when employees signed the authorization cards they gave the Union the right to use the cards.

45
50 ⁶ Grzybowski's testimony was corroborated by Castleberry and Respondent's Human Resources Administrator Kariann Wayne as well as Respondent's employees Melborn Norrell, Robert Heaton, Gary Lambert and Charles Humberton.

B. The Alleged Violations of Section 8(a)(1).

1. The Promise of Increased Wages and Sick Leave Benefits.

5 In paragraph 5(a) of the Complaint, as amended, it is alleged that Respondent, through Castleberry promised its employees increased wages and sick leave benefits to discourage employees from supporting the Union.

10 At a meeting of HVAC employees in early November, after having been informed by Grzybowski that the Union was organizing his employees, Castleberry told the HVAC employees that he would look or check into wage increases and sick leave benefits.

15 Counsel for the General Counsel contends that Castleberry's statement to check into wage and sick leave benefit improvements was an unlawful promise of benefits made during Union organizing among Respondent's employees. Respondent argues that Castleberry made no promise, express or implied but if he did Respondent rebutted the inference that there was an implied promise since he had established a practice of holding employee meetings before the advent of the Union campaign and since the alleged promise was ambiguous and equivocal.

20 The Board has long held that granting or promising benefits during an organizing campaign are meant to improperly influence employees' choice in the selection of a representative. In order to validate the promise of benefits an employer must demonstrate a legitimate business reason for the timing of a promise or grant of benefits during an organizing campaign. *Pacific FM, Inc., d/b/a KOFY TV-20*, 332 NLRB 771 (2000). See also *McAllister Towing & Transp. Co.*, 341 NLRB No. 48, slip op. (2004).

25 Respondent cites *Radio Broadcasting Co.*, 277 NLRB 1112, 1113 (1985), for the proposition that Castleberry's statement regarding checking into improved wages and sick leave was not a promise of benefits. In *Radio Broadcasting* the employer, in response to an employee's question about improved health benefits, said he would "look into" increased health coverage. The Board found:

30 We do not consider Gross' statement that he would "look into" increased health coverage to be an unlawful promise especially where there is no other evidence that Gross promised or even discussed increased health care benefits. We do not find that evidence of additional health benefits given over 4 months after the election supports the judge's finding.⁷

35 However in *Pennsy Supply*, 295 NLRB 324 (1989), the Board distinguished *Radio Broadcasting Co.* and found a promise of benefits where the owner said he was looking into improving the health plan and was checking into a pension plan during the critical period. The Board noted:

40 Eshleman's statements about the health and retirement plans were not general and vague. They were not mere responses to employee suggestions that it was a good idea or that he would at some indefinite time look into it. Rather, his statements communicated to the assembled drivers that an improved health plan and a retirement plan were under active study or consideration by the owner.

50

⁷ Id. at 1113.

Radio Broadcasting Co., 277 NLRB 1112 (1985), relied on by the judge, is thus distinguishable.⁸

5 Here, Castleberry not only said that he was checking into improved wages and sick leave, but within six weeks of the statement he in fact increased the wages of HVAC employees as promised. I find that Castleberry’s early November 2006 statements regarding improved wages and benefits were a promise of increased benefits after Respondent had knowledge of union organizing activity.

10 In this case Castleberry held a meeting with all employees on about October 16, shortly after he assumed his position at Ft. Sill. Castleberry told employees his expectations of them, that he had an open door policy, that if a supervisor could not fix a problem to bring it to his attention and that he would be making his way around the shop to meet with employees. At no time did Castleberry solicit grievances, promise to remedy them or in fact remedy employee
15 grievances.

20 Respondent cites *Airport 2000 Concessions, LLC*, 346 NLRB No. 86, slip op. (2006) and *MacDonald Machinery Co., Inc.*, 335 NLRB 319, 320 (2001), for the proposition that Respondent rebutted an inference of an implied promise of benefits.

25 In *Airport 2000*, supra, the employer told an employee, “that maybe the Respondent could provide better benefits later.” Later when an employee complained the employer about holidays off the employer said he would look into it but then told the employee that there would be no more holidays off. Under these circumstances the Board found not only that there were no promises made but also that the employer’s responses obfuscated or disclaimed any favorable action thus rebutting the presumption of an implied promise.

30 In *MacDonald*, supra, the employer had both solicited and remedied grievances before the advent of the union campaign, thus rebutting an inference that it was impliedly promising benefits. In *MacDonald* the Board further found that the employer’s statement that they needed more time to make the shop a better place was neither an express or implied promise of benefits.

35 I find that Respondent has not rebutted the presumption that there was a promise of benefits, express or implied. Unlike *Airport 2000* or *MacDonald*, here there was no equivocation about the promise of increased wages and benefits nor was there a past practice of soliciting or remedying employee grievances. Moreover for the reasons set forth below in Section C, I find
40 there was no legitimate business reason for Respondent’s promise of improved wages and benefits. Accordingly, I find that by promising employees increased wages and benefits after acquiring knowledge of the Union organizing campaign, Respondent violated Section 8(a)(1) of the Act.

45 2. The Surveillance of Employees’ Union Activity.

Paragraph 5(b) of the Complaint, as amended, alleges that Respondent, by Robinette and Teeter engaged in surveillance of employee’s union activities.

50 _____
⁸ Id. at 325.

In its Answer, Respondent admitted the allegations of paragraph 5(b) of the Complaint. Further, there is no evidence that Respondent disavowed the surveillance.

5 An employer engages in coercive surveillance in violation of Section 8(a)(1) of the Act when it actually watches their protected activities in a way that is out of the ordinary. *Aladdin Gaming, LLC*, 345 NLRB No. 41 at 1 (2005). Open employer observation of protected activity that is publicly conducted is not unlawful. However, when that observation becomes intrusive it becomes coercive. *Kenworth Truck Company, Inc.*, 327 NLRB 497, 501 (1999).

10 I find that the actions of Robinette and Teeter in cruising the parking lot of the Hampton Inn before, during and after the November 15 union meeting violated Section 8(a)(1) of the Act.

3. The Impression of Surveillance of Employees' Union Activity.

15 Paragraph 5(c) of the Complaint, as amended, alleges that Respondent, through Grzybowski, created an impression that employees' union activities were under surveillance.

20 In *Rogers Electric, Inc.*, 346 NLRB No. 53, slip op. at 1 (2006), the Board held that the, “. . . test for determining whether an employer has created an impression of surveillance is whether the employees would reasonably conclude from the statement in question that their protected activities were being monitored. *Mountaineer Steel, Inc.*, 326 NLRB 787 (1998).”

25 In the instant case there is conflicting testimony concerning what Grzybowski said about union authorization cards at the employee meetings he conducted on November 29, 2006.

30 With the conflict in testimony, the context of the meetings becomes important to understand what the witnesses thought they heard. It is undisputed that the employees saw a video dealing with authorization cards that discussed voluntary recognition by the union showing an employer signed authorization cards. There was also testimony that an Excelsior list of eligible voters would be prepared. From the testimony of all the witnesses as a whole I am unable to conclude that Grzybowski, an experienced labor relations expert, told employees that their authorization cards would be shown to Respondent. In reaching this conclusion I find that the General Counsel's employee witnesses gave little specificity concerning the subject of Grzybowski's presentation other than the authorization card statement. There was internal inconsistency among the General Counsel's witnesses concerning what Grzybowski said regarding how Respondent would see the cards. Only Teevebaugh testified Grzybowski said the cards would be sent from the Union to Respondent. Teevebaugh had no recollection that the video dealt with authorization cards. Only Smith averred that Grzybowski said the cards would be given to Respondent to prepare an Excelsior list. Finally there was conflict among General Counsel's witnesses concerning Grzybowski's statement that Respondent would see the authorization cards. Thus, employee Lambert testified Grzybowski said nothing about authorization cards. On the other hand Respondent's six witnesses, including three employees testified consistently that Grzybowski never said Respondent would see signed authorization cards. Given these inconsistencies, as well as the information provided in the video concerning voluntary recognition via authorization cards and Grzybowski's discussion of Excelsior lists, it is easy to understand how witnesses could have been confused as to whether Grzybowski said Respondent would see employees' authorization cards. I find that Grzybowski did not tell employees at any time that Respondent would see signed authorization cards. I will dismiss this portion of the Complaint.

C. The Alleged Violations of Section 8(a)(1) and (3).

Paragraphs 6(a) and (b) of the Complaint, as amended, allege that on or about November 27, Respondent granted HVAC employees a wage increase because its employees formed, joined and assisted the Union and engaged in protected concerted activities and to discourage employees from engaging in these activities.

Counsel for the General Counsel contends that Respondent granted HVAC employees a wage increase on November 27 in order to discourage their union activity. Respondent argues that the wage increase was wholly unrelated to its employees' union activity, that it had no control over granting wage increases, and that the wage increase was granted for long recognized legitimate business considerations in order to retain HVAC mechanics.

The Board has held in *Desert Aggregates*, 340 NLRB 289, 290 (2003) that an employer in deciding to grant a benefit must act as if the union were not present. Granting a pay increase during a critical period is not per se unlawful if an employer can show that its actions were governed by legitimate business considerations. *Id.* at 298. If an employer grants a wage increase without a legitimate justification that action violates Section 8(a)(1) and (3) of the Act. *Waste Management of Palm Beach*, 329 NLRB 198 (1999).

Here there is evidence that Respondent was concerned about the low wages received by its HVAC employees as early as 2005. Castleberry's predecessor with Respondent, Guy, told contracting officer Bennett in 2005 that Respondent had trouble retaining HVAC employees who had not had a raise since 2000. Castleberry also had discussions with Bennett about the HVAC pay in October 2006. However, inexplicably neither Respondent nor its predecessors had taken any concrete action to move beyond casual discussions with the contracting officers to raise HVAC pay until after Respondent learned that the Union was engaged in organizing activity among its employees. Castleberry said that he began researching the HVAC pay issue on November 1, 2006 when he learned of an HVAC employee who was resigning for a more lucrative job. However, Respondent was aware of retention issues among its HVAC employees for over a year but until Castleberry learned of the Union's activity no action was taken. I am not persuaded that Castleberry sought and then granted HVAC wage increases because of his concern for retaining HVAC employees. Neither he nor his predecessors, aware of the HVAC wage and retention issue moved to seek increases prior to their knowledge of the Union organizing campaign. The more plausible explanation for Castleberry's precipitous action on November 1 was Gryzbowski's October 30 phone call advising that the Union was organizing his employees.

As noted above, Respondent's November 16 submission of the SF 1444⁹ to Wilkinson, requesting higher HVAC wages, was to not for the purpose of seeking Wilkinson's permission for a HVAC wage increase but to ensure a finding by Wilkinson that the increased HVAC wages were reasonable so that Respondent could seek future reimbursement for the wage increase from the Army. Thus, Respondent, at all times herein retained the ability to control the wages of its employees.

I find that Respondent had no legitimate business reason for granting the November 27 wage increase to its HVAC mechanics.

⁹ GC Exh. 3.

I find that by granting wage increases to its HVAC employees on November 27, Respondent violated Section 8(a)(1) and (3) of the Act.

III. The Objections

5

Charging Party Union’s objections state:

10

3. On or about November 21, 2006, the Employer granted a pay increase to HVAC employees.
4. On or about November 29, 2006, the Employer gave employees the impression that their union activities were under surveillance by telling employees that the Employer’s corporate office had been provided employee Union authorization cards.

15

Having found that Respondent’s November 27 wage increase occurred during the critical period and violated Section 8(a)(1) and (3) of the Act, I conclude that this conduct was objectionable and warrants setting aside the December 21 election and conducting a new election. I reach this conclusion because the raise was a substantial increase from \$16.77 to \$18.11, the information of the HVAC employees wage increase was disseminated to Respondent’s employees other than HVAC mechanics by supervisor Teeter prior to the election, the wage increase was implemented a few weeks prior to the election and the Union lost the election by a fairly narrow vote of 25 cast for the Union and 36 votes cast against the Union. Thus six votes could have changed the results of the election. *B & D Plastics*, 302 NLRB 245 (1991).

20

25

Having found that the Respondent did not create the impression that their union activities were under surveillance by telling employees that their union authorization cards would be shown to Respondent, I recommend that this objection be overruled.

30

Conclusions of Law

On the basis of the above findings of fact and the record as a whole and Section 10(c) of the Act, I make the following conclusions of law.

35

1. Respondent has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

40

2. The Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by engaging in the following acts and conduct:

45

- a. Promising employees increased wages and benefits.
- b. Engaging in surveillance of employees’ union activities.

50

4. Respondent violated Section 8(a)(1) and (3) of the Act by granting a wage increase to its HVAC employees.

5. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

5 6. The Respondents did not otherwise violate the Act as alleged in the Complaint and the remaining complaint allegations will be dismissed.

10 7. In the manner described fully above, I recommend that the Petitioner’s Objection 3 be sustained, Objection 4 be overruled and that the election be set aside and a new election be conducted.¹⁰

Remedy

15 Having found that the Respondent violated the Act as set forth above, I shall order that it cease and desist there from and post remedial Board notices addressing the violations found.

Based upon the above findings of fact and conclusions of law, and on the basis of the entire record herein, I issue the following recommended Order.¹¹

ORDER

20 The Respondent VT Griffin Services Inc., its officers, agents, successors, and assigns, shall:

25 1. Cease and desist from:

a. Promising employees increased wages and benefits.

b. Engaging in surveillance of employees’ union activities.

30 c. Granting a wage increases to its HVAC employees in order to discourage employees from engaging in union activities.

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

35 a. Within 14 days after service by the Region, post at its Ft. Sill, Lawton, Oklahoma facility copies of the attached notice marked “Appendix.”¹² Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the

40 ¹⁰ Any party may, within fourteen (14) days from the date of issuance of this recommended Decision, file with the Board in Washington, DC, an original and eight (8) copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof on the other parties and shall file a copy with the Regional Director. If no party files exceptions thereto, the Board may adopt the recommendations set forth herein.

45 ¹¹ If no exceptions are filed as provided by Section 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

50 ¹² If 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.”

Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since November 1, 2006.

b. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the Complaint be dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., June 27, 2007.

John J. McCarrick
Administrative Law Judge

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 we violated Federal labor law and has ordered us to post in both English and Spanish and obey this Notice and to abide by its term.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT spy on your Union or other protected concerted activities.

WE WILL NOT promise to grant or grant increased wages or benefits in order to discourage employees' exercise of their rights granted under the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed to you by Section 7 of the National Labor Relations Act.

VT GRIFFIN SERVICES, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Phoenix, Arizona Regional office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

8600 Farley Street, Suite 100, Overland Park, Kansas 66212-4677
(913) 967-3000, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (913) 967-3005.