

**Technical Tape Corporation, and W. Ralston and Co., Inc. and Milk Drivers and Dairy Employees Union Local No. 338, Westchester County and Vicinity, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** *Case No. 22-CA-957. January 4, 1962*

### DECISION AND ORDER

On October 26, 1961, Trial Examiner Thomas A. Ricci issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report together with a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of **the Trial Examiner.**

### ORDER

The Board adopts the Recommended Order of the Trial Examiner with the modifications that provisions 2(a) and 2(b) read in accord with footnotes 2 and 3 of said Recommended Order.

### INTERMEDIATE REPORT AND RECOMMENDED ORDER

#### STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before the duly designated Trial Examiner in Newark, New Jersey, on September 28 and 29 and October 5, 1961, on complaint of the General Counsel and answer by Technical Tape Corporation, and W. Ralston and Co., Inc., herein called the Company or the Respondent. The sole issue litigated was whether the Respondent had violated Section 8(a)(1) of the Act.

Upon the entire record, and from my observation of the witnesses, I make the following:

#### FINDINGS AND CONCLUSIONS

##### I. THE BUSINESS OF THE RESPONDENT

The Respondent consists of corporations organized under the laws of the State of New York and operates plants in New Rochelle and Beacon, New York, and Old Bridge, New Jersey, where it is engaged in the manufacture, sale, and distribution of industrial adhesive tapes and related products. During the past year the Respondent has caused, in the operation of its business, to be manufactured, sold, and distributed

at said plants products valued at in excess of \$500,000, of which products valued in excess of \$50,000, were shipped in interstate commerce directly from the States of New York and New Jersey to other States of the United States. I find that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the statute and that it will effectuate the policies of the Act to exercise jurisdiction herein.

## II. THE LABOR ORGANIZATION INVOLVED

Milk Drivers and Dairy Employees Union Local No. 338, Westchester County and Vicinity, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

The Union started an organizational campaign among the employees of the Respondent's plant in Old Bridge, New Jersey, in late April or early May 1961. It filed a petition seeking an election and on June 28, 1961, a direction of election based thereon was issued by the Regional Director. The election was held the following month and the Union lost, with 7 votes in favor of the Union and 44 against.

The complaint alleges that during the month of May, Alex Pacyna, the plant manager, illegally interrogated the employees concerning their union activities and threatened them with discrimination in their employment in retaliation. On behalf of the General Counsel five witnesses testified in support of the complaint, all employed during the month of May and three still at work. Each of them quoted the plant manager as having made illegal and coercive statements to them. The plant manager, in defense, denied from the witness stand the direct testimony of the employees. If the testimony of the employee witnesses is to be believed, there is no question but that the plant manager's statements constituted illegal interference and coercion in the self-organizational rights of employees guaranteed by Section 7 of the statute. Thus the only question to be resolved on this record is one of credibility, whether Pacyna's denials outweigh the testimony of the employees.

David Newbold worked for the Respondent as an operator for 3 years and was released on May 19, 1961. He testified that on May 18 he asked the plant manager whether it was true another employee had accused Newbold of coercing signatures to union cards and that Pacyna replied, "No." He went on to say Pacyna added ". . . if he finds the names of the guys that are signing the union card he is going to have to let them go. . . ." Newbold said he would go to the Labor Board if that happened and Pacyna then continued ". . . well, the hell with the Labor Board, he said, he will take care of them." Newbold continued to testify that the next day Pacyna asked him had he signed a union card. Newbold refused to reply, and, as his testimony continued, ". . . he [Pacyna] pulls a sheet of paper out of his pocket and said 'I have a list of all the people that had signed a card.' I said to him, 'Pat, that is confidential material. You or no one else could obtain it.' He said, 'well, I have a pretty good gestapo around here.' So I said—he said, 'you guys on the list I will have to let go.' I said, 'well, if—I said it to him again, 'if I am let go for such a reason, I will go to the Labor Board.' He said, 'the hell with the Labor Board, they are a bunch of idiots.' He asked me if I knew any other employees that had signed the card. I told him again that it is my business and none of the Company's and I would rather drop this type of conversation, so we dropped it."

Stanley Murasko, 3 or 4 years in the Company's employ and still at work, testified that early in May the plant manager spoke to him on two occasions at his machine. He testified that the first time ". . . he [Pacyna] told me that he heard from someone that I was passing out union cards in the plant, that he was surprised to hear this. Then he told me that I have a mind of my own, to do what I wish, 'but I would like to give you a friendly word of advice. Keep your nose clean and stay out of trouble.'" A few days later, still according to Murasko, Pacyna discussed with him what the Union had to offer and then added: "He said that he would bet that if the Union got in, win, that they, the Company, would close the plant up and move out."

Raymond Smigocki, 3 years an employee and still at work, testified that one day in May he, together with other employees and friends, was working on a boat with the plant manager. He said Pacyna approached him and asked if he had signed a union card and that he replied he had but was not going to vote for the Union. Smigocki continued to testify that the next day at work the plant manager went to him and said he knew the employee had signed a card but was going to vote against the Union, but that "after this keep your nose clean."

John Lohman, 13 years a helper at the plant and still working there, testified that one day in May, as he was cleaning the office, the plant manager ". . . asked me if

I signed the union card and I said, 'no.' He said, 'John, keep your nose clean.' He said, 'you know what happened to you once before.'

Carl Sylvester, who was also laid off on May 19, 1961, said that Pacyna spoke of the Union with him on four occasions during the month of May. He said the first time the plant manager said the Union was organizing incorrectly, that it should do so secretly. A few days later, as Sylvester recalled, Pacyna said to him "the fellows that did sign for a union would be without a job if the Union didn't get in. If they did get in, the plant would be shut down." Sylvester continued that a week or so later Pacyna asked him whether he had signed a union card, and that a few days after that Pacyna again inquired and this time Sylvester said "yes." At this point Pacyna said, still according to Sylvester ". . . well, I better, as far as the Union goes, I better think some other way because the fellows that signed the card would be out of a job. They didn't want a union in the plant."

To assist in his cross-examination of each of these five employees counsel for the Respondent used their earlier affidavits given to Board investigators. No serious inconsistencies developed between the oral testimony and the written statements. From the witness stand Murasko placed the two conversations he had with Pacyna 3 days apart; in his affidavit they appeared as on successive days. He also testified he had signed a union card "early in May," whereas in the affidavit he said he had done so "three weeks ago"—the affidavit dated June 26. On direct examination Sylvester recalled four separate conversations with Pacyna and told what he remembered having been said at each of them. On cross-examination he varied somewhat the number of days that may have elapsed between conversations, and placed certain statements of the plant manager in talks other than the ones as enumerated on direct. He did not claim, at any point, ability to recall the precise dates of any of the conversations; they occurred while he was at work in the normal course of the plant manager's routine walks to check operations throughout the plant. The substance of the employees' testimony was in no way shaken on cross-examination. Two of the witnesses, Newbold and Sylvester, were shown to have criminal records. I deem this fact of minor significance here, in view of their demeanor as witnesses, the candid and straightforward testimony they gave, its pattern consistency with the like testimony of the three other witnesses who are still in the Respondent's employ, and the admissions contained in the testimony of the plant manager himself.

In contrast, Pacyna's testimony, viewed in its entirety, together with his demeanor on the stand, impressed me unfavorably. On direct examination he denied having asked any employees whether they had signed union cards, having voiced any threat of discharge or to close the plant in consequence of union activities, or, indeed, of ever having discussed the Union with any of the employees. His denials were precise and pinpointed to the various statements attributed to him by the employee witnesses. Despite his repeated assertion he never "talked" about the Union with anyone, he did admit having told Lohman: "I just said to him, somebody says he signed a card. That was it." He even added he reminded Lohman of a strike that had occurred in 1952 when "the operations were closed and every employee was discharged."

Pacyna said he knew of the organizational activities when they started early in May. The clear burden of his story, repeated again and again, was that individual employees came to him, singly, simply to tell him that they had signed union cards. He mentioned five or six who did so, including some who testified here; he insisted all this was unsolicited, that not one of the employees told him why he brought such information to the plant manager, and that he, Pacyna, made no inquiry at all. Pacyna also repeated several times in his direct testimony that whenever an employee came to him with such information his rejoinder was that he did not care about the subject, that they could do as they wished, and that he was not interested. Indeed, he created the impression that the entire subject made him impatient with the workmen.

On cross-examination the plant manager's denials began to take on a different color. Had he spoken to Murasko about a union card? "I didn't have a conversation with him. I just asked Stanley, I said I heard from a certain party here that you signed a union card, and Stanley said they are a goddam liar, nobody did." A curious conversation started by a manager who was impatient with and had no interest in the employees' union activities.

Had he spoken to Lohman about the Union? "I did not." You never spoke to John Lohman about the union card? "I spoke to John Lohman maybe two or three—maybe—I heard he signed a union card . . . I didn't care." Did he tell Newbold that he, Pacyna, had a list of employees? "I definitely did not. . . . I never told him I had the list. I told them I have a piece of paper, of the guys that might have signed union cards. . . . I said I might have had a piece of paper and told them that there was nothing on the piece of paper."

As the cross-examination proceeded: "You told employees that you had a list of names of employees who had signed cards because these employees had told you so?" "That's correct." "Did you not pull a piece of paper out of your pocket?" "I did not pull any paper out. . . . I am sure of that. I did not. If I pulled anything out, I pulled out a pay check." "Did you ever pull a piece of paper out of your pocket and say to Raymond Smigocki, Emil Jaison, or John Dzep . . . 'look, . . . I know who signed union cards?'" "I do not."

At this point Pacyna was confronted with his earlier affidavit, which he admitted having signed and understood. Among other things his affidavit contains the following statement: ". . . to Raymond Smigocki, Emil Jaison, John Dzep, after May 19, 1961, I said, taking a piece of paper out of my pocket, 'look, I know who signed cards'"

Pacyna was then asked had he ever told employees he thought he knew who had signed cards. His answer was clear "I did not." Again, in contradiction, his affidavit contains the following statement: "I told my foreman and John Dzep during the course of a general conversation that I thought I knew who signed the cards for the Union."

Whenever Pacyna's testimony conflicts with that of the employee witnesses I credit the employees. His story that a number of individual employees approached him merely to advise him they had signed union cards with nothing more I find highly implausible. Pacyna's testimony is not only vague and evasive at many points, but also contains the most patent inconsistencies. It is impossible to reconcile his repeated assertions that he kept telling the employees he was not interested in their union activities with his admitted conduct of flashing a purported list of those who had signed in their faces. He kept saying he never talked about the Union with any employees, and yet admitted that a number of times he himself raised the subject by telling them he knew they had signed cards.

Pacyna's final position respecting the "paper" he waved at the employees was that nothing was written on it at all, but that the employees did not know this. He came forth with no explanation of why he went around impressing the employees with his knowledge as to the identity of the proumion workmen. This fact, coupled with the means that were required finally to extract the truth from him as to what he did say and do convinces me that his purpose necessarily was to intimidate in one way or another. In these circumstances the testimony of the employees that he said he would fire the culprits gains persuasion.

On the basis of the credited testimony of the employee witnesses, I find that by the following statements of Plant Manager Pacyna the Respondent violated Section 8(a)(1) of the statute: (1) interrogation of employees as to whether they had signed union cards;<sup>1</sup> (2) statements to employees that those who signed the union cards would be released; and (3) statements to employees that the plant would be closed if the Union prevailed.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof

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

#### CONCLUSIONS OF LAW

1. Technical Tape Corporation, and W. Ralston and Co, Inc., is an employer within the meaning of Section 2(2) of the Act.

2. By interrogating employees as to whether they had signed union cards, by telling employees that those who signed union cards would be released, and by telling employees that the plant would be closed if the Union prevailed, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act and has thereby committed unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

<sup>1</sup> *Blue Flash Express, Inc*, 109 NLRB 591

## RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, the Trial Examiner recommends that Technical Tape Corporation, and W. Ralston and Co., Inc., Old Bridge, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from interrogating employees as to whether they had signed union cards, telling employees that those who signed union cards would be released, telling employees that the plant would be closed if the Union prevailed, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act.

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

(a) Post at its plant in Old Bridge, New Jersey, copies of the notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, upon being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Twenty-second Region, in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.<sup>3</sup>

It is further recommended that unless within 20 days from the date of the service of this Intermediate Report and Recommended Order the Respondent notifies said Regional Director that it will comply with the foregoing recommendations, the Board issue an order requiring the Respondent to take the aforesaid action.

<sup>2</sup> In the event that these recommendations be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

<sup>3</sup> In the event that these Recommendations be adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Twenty-second Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith"

## APPENDIX

## NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

**WE WILL NOT** tell our employees that those who sign union cards will be released, or tell our employees that the plant will be closed if the union prevails.

**WE WILL NOT** coercively or unlawfully interrogate our employees regarding their union membership or activities.

**WE WILL NOT** in any like manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Milk Drivers and Dairy Employees Union Local No 338, Westchester County and Vicinity, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities.

All our employees are free to become or to refrain from becoming or remaining members of Milk Drivers and Dairy Employees Union Local No 338, Westchester County and Vicinity, International Brotherhood of Teamsters, Chauffeurs, Ware-

housemen and Helpers of America, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8(a)(3) of the Act.

TECHNICAL TAPE CORPORATION, AND  
W. RALSTON AND CO., INC.,

Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

**Laborers and Hod Carriers Union, Local 652, AFL-CIO and Jimmie I. Davis and Hood-River-Neill, a Joint Venture and International Hod Carriers' Building and Common Laborers' Union of America, Parties to the Contract. Case No. 21-CB-1544. January 5, 1962**

### DECISION AND ORDER

On February 14, 1961, Trial Examiner Eugene K. Kennedy issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report, together with a supporting brief, while the General Counsel filed a brief in support of his position.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board<sup>1</sup> has considered the Intermediate Report, the exceptions<sup>2</sup> and briefs, and the entire record in this case, and hereby concludes, for reasons hereinafter stated, that the complaint should be dismissed in its entirety, contrary to the recommendations of the Trial Examiner.

<sup>1</sup> The Respondent's request for oral argument is denied as the record, including the exceptions and briefs, adequately presents the issues and positions of the parties.

<sup>2</sup> We find no merit in the Respondent's exception to the Trial Examiner's finding that the Employer is engaged in commerce within the meaning of the Act. The record shows that the Employer, a joint venture, was organized to install a pipeline in California for the Southern California Gas Company and Southern Counties Gas Company, for which it received in excess of \$1 million. The record further shows that each of these gas companies purchase goods and materials in excess of \$50,000 annually from out-of-State sources, and that each has an annual gross business volume in excess of \$250,000. Accordingly, we find that the Employer is engaged in commerce, and that it will effectuate the policies of the Act to assert jurisdiction herein. *Siemens Mailing Service*, 122 NLRB 81.