

Abex Corporation—Engineered Products Division¹ and Teamsters and Warehousemen Local No. 381, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Cases 31-CA-249 and 31-RC-152. December 21, 1966*

DECISION, ORDER, AND DIRECTION OF
SECOND ELECTION

On August 8, 1966, Trial Examiner Marion C. Ladwig issued his Decision 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 attached Trial Examiner's Decision. He also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint, and recommended that such allegations be dismissed. The Trial Examiner found, in addition, that the Respondent's unlawful conduct had interfered with a Board election held on January 13, 1966, and recommended that it be set aside and a new election held. Thereafter, the General Counsel and the Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs, and the Respondent also filed an answering 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 powers in connection with this proceeding to a three-member panel [Chairman McCulloch and Members Brown and Zagoria].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed.² The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in these cases, and finds merit in some of the General Counsel's exceptions. Accordingly, the Board adopts the Trial Examiner's findings, conclusions, and recommendations, as modified herein.

1. The Trial Examiner found, and we agree, that the Respondent made threats it would penalize its employees if they voted for the Union, in violation of Section 8(a) (1) of the Act.

2. The Trial Examiner found that the Respondent suggested to its employees that they form their own union. The Respondent has not excepted to this finding, and it is supported by the record. The

¹ The name of the Respondent appears as amended at the hearing.

² The Respondent's request for oral argument is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

General Counsel excepts to the failure of the Trial Examiner to find that this conduct further violated Section 8(a)(1) of the Act.³ We find merit in this exception as the Board holds such a suggestion to be unlawful interference with employees' Section 7 rights.⁴

3. The Trial Examiner found that Superintendent Smith interrogated employee Martinez as to who was trying to start the Union and, on another occasion, interrogated Martinez and employee Losada as to the identity of the union leader. The Trial Examiner stated in his Decision that, in the first instance, the questioning was done in a casual manner, and that, in the second, the employees who were interrogated merely laughed and did not reply to the questions, and he concluded that this interrogation was not coercive. The Board holds, however, that interrogation which seeks to place an employee in the position of acting as an informer regarding the union activity of his fellow-employees is coercive.⁵ The fact that such interrogation is made in a casual manner during a friendly conversation does not lessen its unlawful effect.⁶ Accordingly, we find that the Respondent thereby also violated Section 8(a)(1) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Abex Corporation—Engineered Products Division, Santa Maria, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from threatening to eliminate paid downtime or to penalize its employees in any way if they vote for union representation; coercively interrogating its employees as to the identity of union leaders; suggesting to its employees that they form their own union; or in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Teamsters and Warehousemen Local No. 381, affiliated with 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

³ The complaint does not allege a violation based upon this conduct, but the issue was fully litigated at the hearing. In fact, witnesses were interrogated about this matter by the Trial Examiner as well as by the General Counsel and the Respondent. See *Granada Mills, Inc.*, 143 NLRB 957, 958 (footnote 1); *Monroe Feed Store*, 112 NLRB 1336, 1337; *America Boiler Mfrs Assn v NLRB*, 366 F.2d 823 (C.A. 8).

⁴ *Donald Skellings, d/b/a Yankee Distributors*, 152 NLRB 1018, 1024.

⁵ See *The Richman Brothers Company and Richman Brothers Madison, Inc.*, 157 NLRB 1681; *Southern Coach & Body Co., Inc.*, 135 NLRB 1240.

⁶ *Arkansas Grain Corporation*, 160 NLRB 309; *Little Rock Hardboard Company*, 140 NLRB 264.

engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act, 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its plant at Santa Maria, California, copies of the attached notice marked "Appendix."⁷ Copies of said notice, to be furnished by the Regional Director for Region 31 shall, after being duly signed by the Company's representative, be posted by the Company 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 the Company to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 31, in writing, within 10 days from the date of this Decision, what steps have been taken to comply herewith.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

IT IS ALSO ORDERED that the election conducted at the Respondent's plant on January 13, 1966, be, and it hereby is, set aside.

[Text of Direction of Second Election omitted from publication.]

⁷ 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 "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT threaten to eliminate paid downtime or to penalize you in any way if you vote for union representation; or coercively interrogate you as to the identity of union leaders; or suggest that you form your own union.

WE WILL NOT in any like or related manner interfere with,

restrain, or coerce you in your right to form labor unions, or to join or assist Teamsters and Warehousemen Local No. 381, or any other labor organization.

ABEX CORPORATION—ENGINEERED PRODUCTS DIVISION,
Employer.

Dated _____ By _____
 (Representative) (Title)

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.

Employees may communicate directly with the Board's Regional Office, 215 West Seventh Street, Los Angeles, California 90012, Telephone 688-5801, if they have any question concerning this notice or compliance with its provisions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

These cases involve unfair labor practice charges and objections to conduct affecting the results of a stipulated consent election held on January 13, 1966.¹ A consolidated proceeding was heard before Trial Examiner Marion C. Ladwig at Santa Maria, California, on June 30, pursuant to a complaint dated April 12, an order dated May 12 directing a hearing on the objections timely filed by the Union (Teamsters and Warehousemen Local No. 381), and an order of consolidation dated May 24. The primary issues are (a) whether the Respondent (also called the Company),² through a supervisor, threatened employees with the loss of benefits if the Union came in; (b) whether the Company, through its plant superintendent, coercively interrogated employees and threatened to move the plant; and (c) whether the election should be set aside.

Upon the entire record,³ including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Company, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY AND THE LABOR ORGANIZATION INVOLVED

The Company is a Delaware corporation with manufacturing plants in various States. It is engaged in the manufacture of tire molds in its Santa Maria, California, plant. Annually, it receives at its various plants directly from other States goods valued in excess of \$50,000, and ships from its various plants directly to other States goods valued in excess of \$50,000. The Company admits, and I find, that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Union is a labor organization within the meaning of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Threats of Supervisor Junod

During the first months of operation at its new plant in California, the Company experienced considerable downtime from lack of work. For 2 or 3 weeks in November and December, there was only 1 mold in production, instead of 24 molds needed

¹ All dates are in the period from October 1965 to June 1966.

² The name, American Brake Shoe Company, was changed to Abex Corporation at the hearing.

³ The record is corrected to change the words, "plant supervisor attendant," on page 109, lines 4-5, 15-16, and 20, to "plant superintendent."

for full production. Instead of laying off employees, the Company kept them busy painting lines on the floor, making handtools, cleaning up, painting tables, and training. All of them were kept on the job 40 hours a week.

In the meantime, the Union began an organizing drive, and filed a petition for an election on December 6. When the election date was set later in December, Supervisor Glen Junod called together about 8 or 10 employees, including finishing department employees David Martinez and Augustine Losada, to make an announcement about the election, set for January 13. Then, according to Martinez' undisputed testimony, Junod "told us that if the Union came in, that there would be a line drawn between us and him. If we wanted anything, like sandpaper, or anything, we would have to go see our union representative to get it, and not to come and ask him, because we would be like enemies." Thereafter, Junod reminded the employees that they had been kept on the job when there was no work. According to Martinez, Junod added that if the Union came in, "we would be sent home" when there was no work, and "when they needed us, they would call us back." Losada similarly testified that Junod said that "if the Teamsters did come in," there would be job classifications in the plant, and "If there was no work in your particular job, you would be sent home." When Supervisor Junod was called as a defense witness, he admitted talking about layoffs, but contended that he merely mentioned his personal experiences. He testified, "I told them the way that we had been working, there was a slow period of time, and everybody was kept working at the shop. There was no layoff. I said, I seen the times when there had been a union with a contract where the lowest man . . . would be laid off. It would be right on down the ladder, according to . . . the amount of work we had. Then when we got more work, to come in, they would be hired back in." On cross-examination, he seemed to have much difficulty recalling just what was said, commenting at one point that "that has been quite a while ago, and it is hard to remember of what goes on." In contrast, Martinez and Losada seemed to have a clearer recollection of the matter. Both of them appeared to be attempting to give accurate testimony, and I credit their version of what Junod told the group of employees.

In the context of the large amount of paid downtime, Junod's statements about sending employees home when there was no work was clearly a threat of reprisal. Junod's remarks could not be considered an expression of his "view of the Union's probable policy on slack time in the event of a union victory," as in *Lockwood-Dutchess, Inc.*, 106 NLRB 1089, 1091, cited by the Company in its brief. Junod was not contending that the Union would insist that the employees be sent home without pay for downtime. Instead, he was threatening that the Company would eliminate paid downtime if the Union was certified.

Likewise, Junod's threat that if the Union came in, he and the employees would be "like enemies"; that they could not ask him for anything, "like sandpaper, or anything," but would have to go through the union representative—was no mere reference to a grievance procedure under a union contract, as contended by the Company. Instead, Junod was threatening a reprisal, of a harsher relationship between the Company and the employees, as contended by the General Counsel. Like the threat of eliminating paid downtime, this remark "was that employees . . . would be penalized if the Union won bargaining rights at the" Company's plant. *Scott's, Inc.*, 159 NLRB 1795. Both were violative of Section 8(a)(1) of the Act. I so find.

B. Alleged threats and interrogations by plant superintendent

Plant Superintendent Smith had a number of conversations with individuals and groups of employees. He opposed the Teamsters Union, and suggested that the employees select some union like the Machinists or Steelworkers, which would be familiar with the work in the plant, or form their own union. In one conversation, he stated that he did not think that the employees could get any higher wages since there was not any work to do. On one occasion, he asked employee Martinez at his work station (in apparently a very casual manner) if he knew who was trying to start the Union there. At another time, as Martinez and employees Losada were returning from a break, he asked them who was the union leader. They merely laughed, and said nothing. Under all the circumstances, I do not find any of these discussions or interrogations to be coercive.

In one conversation the latter part of December, Smith was talking to several employees, including Martinez and Losada. Although Martinez did not recall such a statement, Losada recalled Smith saying that "if the Union does come in, we could pack up and just leave the plant." Plant Superintendent Smith recalled that he said

that there was a possibility that "if the Union comes in, and management and the Union cannot get together, and there would be a long strike, that eventually the plant could leave." I find that Smith had a better recollection of this statement, and credit his version. In the absence of any other indication that the Company might move the plant, I find no threat of retaliation in these remarks.

III. OBJECTIONS TO THE ELECTION

On January 20, the Union filed timely objections to conduct affecting the results of the election alleging, *inter alia*, that the Company threatened employees if they voted for the Union. In ruling on these objections, I shall consider only conduct occurring between December 6, when the petition was filed, and January 13, when the election was conducted.

Having found that the Company engaged in violations of Section 8(a)(1) by the threats of retaliation if they voted for the Union, it follows, as the Board has consistently held, that such conduct *a fortiori* interfered with the exercise of a free and untrammelled choice in the election. I therefore find merit in the Union's election objections. I recommend that the representation election held herein be set aside and that a new election be held at an appropriate time to be fixed by the Regional Director.

CONCLUSIONS OF LAW

1. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, the Company has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

THE REMEDY

Having found that the Respondent has committed certain unfair labor practices (including the serious threat to eliminate paid downtime), I shall recommend that it be ordered to cease and desist from such conduct and from any like or related invasion of its employees' Section 7 rights, and to take certain affirmative action, which I find necessary to remedy and to remove the effect of the unfair labor practices and to effectuate the policies of the Act.

[Recommended Order omitted from publication.]

Apex Record Corporation and United Electrical, Radio and Machine Workers of America (UE), Local 1421, affiliated with United Electrical, Radio and Machine Workers of America (UE) and Allied Industrial Workers, Local 976, affiliated with International Union, Allied Industrial Workers of America, AFL-CIO (AIW). *Case 31-CA-13 (formerly Case 21-CA-5846).*
December 22, 1966

DECISION AND ORDER

On April 19, 1966, Trial Examiner E. Don Wilson issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief, and the Respondent filed an answering brief.