

**Airpax Electronics, Inc. and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO. Case 5-CA-3610.**

May 8, 1967

**DECISION AND ORDER**

**By CHAIRMAN McCULLOCH AND MEMBERS BROWN AND JENKINS**

On February 1, 1967, Trial Examiner Owsley Vose issued his Decision in the above-entitled case, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision 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 powers in connection with this case to a three-member panel.

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 Trial Examiner's Decision, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

**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 Trial Examiner, and hereby orders that the Respondent, Airpax Electronics, Inc., Cambridge, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

**TRIAL EXAMINER'S DECISION**

**STATEMENT OF THE CASE**

OWSLEY VOSE, Trial Examiner: This case, heard before Trial Examiner Owsley Vose, at Cambridge, Maryland, on December 20, 1966, pursuant to a charge filed on September 19, 1966, and a complaint issued on November 14, 1966, presents two questions. The first is whether the Respondent engaged in surveillance of a union meeting in violation of Section 8(a)(1) of the National Labor Relations Act, as amended, and the second whether the Respondent further violated the same section by

maintaining an employee rule which unduly restricts employees in the right to engage in union solicitation and literature distribution on company premises.

Upon the entire record and my observation of the witnesses, and after due consideration of the brief filed by the Respondent, I make the following:

**FINDINGS AND CONCLUSIONS**

**I. THE BUSINESS OF THE RESPONDENT**

The Respondent, a Maryland corporation, maintains a plant at Cambridge, Maryland, where it is engaged in the manufacture of electronic equipment. In the year preceding the issuance of the complaint herein, the Respondent purchased and received from out-of-State sources, and shipped to out-of-State destinations, more than \$50,000 worth of materials and products. Upon these facts I find, as the Respondent admits, that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

**II. THE LABOR ORGANIZATION INVOLVED**

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO, hereinafter called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE UNFAIR LABOR PRACTICES**

**A. *The Surveillance of a Union Meeting***

The Union launched a campaign to organize the Respondent's employees during the summer of 1966. During the campaign the Union sent a letter to the Respondent notifying it of the names of the employees serving on the In-Plant Committee.

On August 30, 1966, the Respondent sent a letter to all of its employees concerning the union campaign. In the letter the Respondent cautioned the employees to think the matter over very carefully before deciding to sign a union card, stating that "Your action can change our business and your job pretty drastically." The letter stated in conclusion as follows:

I think you can trust us, and I am pretty sure a third party telling both of us what to do will only slow us down to a walk. And—we're *running* now. Let's keep it going and share the results.

The first meeting of employees interested in the Union was scheduled for 8 p.m. on September 7, 1966, in a room over the post office in the neighboring town of East New Market, Maryland. East New Market is a very small community located at the intersection of State Highways 14 and 16 (Main Street) about 10 miles east of Cambridge. The coming meeting was discussed among the employees during break and lunch periods shortly before the meeting.

Wanda Hurley, a setup operator at the plant, testified that she arrived early for the meeting in the car of Mr. and Mrs. Willey. Upon arriving in East New Market, Mr. Willey turned the car around and parked it on Main Street facing in the direction of Cambridge.

About 7:45 p.m., according to Hurley, she observed a white Oldsmobile slowly approaching on Main Street from the direction of Cambridge. In it were Lucy Grant, personnel manager at the Respondent's plant, who was

driving, her husband, maintenance supervisor at the plant, and a third person, who may have been a child. The Grants, who lived in Cambridge, were not driving their own car, but one belonging to Mrs. Collier, whose husband drove it to work at the plant. After passing the Willey car, the white Oldsmobile driven by Lucy Grant turned right on Highway 14 and disappeared.

Mrs. Willey testified that after the car driven by Mrs. Grant turned right on Highway 14, she saw Mrs. Grant glance up at the second story of the post office, which is located on Highway 14 just past the store on the corner.

Both Hurley and Mrs. Willey testified that a few minutes later they saw the car which Mrs. Grant was driving return on Highway 14 and go straight across the intersection with Main Street. About 8 p.m. Mrs. Grant again drove up Main Street past the car in which Hurley and the Willeys were sitting. (Highway 14 makes a loop and terminates in Main Street, about a mile west of East New Market.) At this time the cars of various employees were parked near the intersection. Both Hurley and Mrs. Willey testified that as Mrs. Grant approached she was looking both to the right and to the left. The car which Mrs. Grant was driving continued on out Main Street and was not seen again.

Thereafter, neither Mrs. Grant nor any other representative of management spoke to Hurley or Mrs. Willey about their attendance at this union meeting.

The Respondent did not call any witnesses to testify concerning the incident of surveillance alleged in the complaint. In view of the testimony of Hurley and Mrs. Willey, which I credit, and all of the circumstances of the case, I conclude that Mrs. Grant in thrice driving slowly past the area at which a union meeting of the Respondent's employees was scheduled to be held during the period the employees were arriving for the meeting was engaging in surveillance over these employees, and that the Respondent by virtue of Mrs. Grant's conduct has engaged in interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.

#### B. *The Respondent's Rule Regarding Solicitation and Literature Distribution on Company Property*

In 1964 the Respondent incorporated in its Employee Handbook the following rule:

##### SOLICITING ON COMPANY PREMISES

Soliciting or collecting contributions or distributing literature or written or printed matter of any description on Company property without specific approval of management is strictly prohibited.

Certain established charities have been recognized by the Company and its employees. Solicitations for such groups may be made with prior approval of management when they will not interfere with our normal operations.

The Respondent continues to include the above-quoted rule in its current Employee Handbook which is given to new employees when they are hired.

In *Walton Manufacturing Company*, 126 NLRB 697, the Board after reviewing various Supreme Court decisions

dealing with no-solicitation or no-distribution rules, stated its conclusions regarding the applicable rules of law. In part the Board stated as follows:

1. No-solicitation or no-distribution rules which prohibit union solicitation or distribution of union literature on company property by employees during their nonworking time are presumptively an unreasonable impediment to self-organization, and are therefore presumptively invalid both as to their promulgation and enforcement; however, such rules may be validated by evidence that special circumstances make the rule necessary in order to maintain production or discipline.

The Court of Appeals for the Fifth Circuit, reviewing the Board's Decision in the *Walton* case, held the rule involved in that case, which similarly prohibited solicitation and distribution of literature "on company property without the Company's permission," to be "unlawful on its face," and accordingly sustained the Board's finding of a violation of Section 8(a)(1) of the Act (289 F.2d 177, 180-181).

The Respondent, while not specifically contending that its rule was necessary to maintain production or discipline, urges in defense that the rule was not aimed at organizational activities in the first place<sup>1</sup> and that it has never been enforced so as to place restrictions on the organizing activities of employees. The Respondent also points to the testimony of Manager Coughlin regarding a meeting which he had with the members of the Union's In-Plant Committee, in which he told them that they had a right "to organize on their time, but not on company working hours." The Respondent contends that in these circumstances the broad scope of its prohibition against solicitation and literature distribution on company property should be disregarded, and no violation of the Act should be found.

The General Counsel contends that the continued publication of the Respondent's broad rule against solicitation and literature distribution on company property without the Respondent's permission unduly restricts employees' freedom to engage in organizational activities on company property during nonworking time. While the Respondent may never have disciplined employees for engaging in union solicitation or literature distribution during nonworking time, this does not mean that employees, unaware of the Respondent's asserted relaxation of the rule, may not have been deterred by the formally promulgated rule from engaging in proper organizing activities on Respondent's property.

The action of Manager Coughlin in informing the members of the Union's In-Plant Committee that they had a right to organize on their own time, but not on company working hours, in my opinion, is not sufficient to overcome the inhibiting effect upon the employees as a whole of the Respondent's continued inclusion in its formal rules of its broad no-solicitation and no-distribution rule. Manager Coughlin did not mention the Respondent's rule in the course of his talk with the union committee members. Nor did he make it clear that he was talking about conduct on company property. The Respondent did nothing to apprise the employees as a whole that its no-solicitation, no-distribution rule was not intended to apply to organizing activities during nonworking time and in nonwork areas.

<sup>1</sup> According to the testimony of Thomas Coughlin, manager of the Cambridge division of the Respondent, the rule was put into effect because of abuses by employees in soliciting donations for

various benefits from employees in departments other than their own

Under all the circumstances, I find that Manager Coughlin's ambiguous comments to a small group of its employees do not relieve the Respondent of the consequences of its failure to rescind its published employee rule which on its face imposes restrictions on organizing activity on company property in excess of those permitted by the Act. In conclusion, I find that the Respondent by maintaining in effect its no-solicitation and no-distribution rule has engaged in interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.<sup>2</sup>

#### CONCLUSIONS OF LAW

1. By engaging in surveillance over employees attending a union meeting and by maintaining a rule prohibiting employees from engaging in union solicitation and the distribution of union literature on its property without permission during nonworking time and in nonwork areas, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging 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 engaged in unfair labor practices by engaging in surveillance over employees attending a union meeting and by maintaining an invalid no-solicitation, no-distribution rule, my Recommended Order will direct the Respondent to cease and desist from such unfair labor practices and to take certain affirmative action to effectuate the policies of the Act.

Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

#### RECOMMENDED ORDER

The Respondent, Airpax Electronics, Inc., Cambridge, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in surveillance over employees while attending union meetings or engaging in other union activities.

(b) Maintaining a rule prohibiting employees from engaging in union solicitation or the distribution of union literature on its property during nonworking time or in nonwork areas.

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

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post at its Cambridge, Maryland, plant, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for Region 5, after being duly signed by Respondent's representative, shall be posted by it 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 5, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.<sup>4</sup>

<sup>2</sup> Unlike *Ferguson-Lander Box Co.*, 151 NLRB 1615, relied on by the Respondent, the record in this case does not establish that the employees as a whole understood that the rule against solicitation was not intended to apply to union solicitation.

<sup>3</sup> In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

<sup>4</sup> In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 5, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

#### APPENDIX

##### NOTICE TO ALL EMPLOYEES

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

WE WILL NOT spy on our employees' union activities.

WE WILL NOT maintain a rule prohibiting employees from engaging in union solicitation or the distribution of union literature on our property during nonworking time or in nonwork areas.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the right to join or not to join a union and to engage in union or concerted activities.

AIRPAX ELECTRONICS, INC.  
(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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Sixth Floor, 707 North Calvert Street, Baltimore, Maryland 21202, Telephone 752-8460, Extension 2100.