

**Yellow Cab, Inc. and Steven H. Johnson. Case
27-CA-3959**

May 10, 1974

DECISION AND ORDERBY MEMBERS JENKINS, KENNEDY, AND
PENELLO

Upon a charge duly filed on October 23, 1973, by Steven H. Johnson, an individual, against Yellow Cab, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by its Regional Director for Region 27, on November 21, 1973, issued and served on the parties a complaint alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. In substance, the complaint alleges that Respondent promulgated and enforced a prohibition against distributing literature on its premises, which prohibition interfered with the exercise by its employees of their rights as guaranteed by Section 7 of the Act. Thereafter, Respondent filed a timely answer denying the commission of any unfair labor practices.

Between January 14 and January 17, 1974, each of the parties signed, and thereby entered into, a stipulation wherein they agreed that certain documents, including the charge, complaint, answer, and the "Stipulation of the Facts and of the Record," shall constitute the entire record herein, expressly waived all proceedings before an Administrative Law Judge, and submitted this case directly to the National Labor Relations Board.

By order dated January 24, 1974, the Board approved the stipulation, transferred the proceeding to itself, and set a date for the filing of briefs. Thereafter, briefs were filed by the General Counsel and by Respondent.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record herein and the briefs, and makes the following findings:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The complaint alleges and the answer admits that Respondent is a Colorado corporation engaged in

the business of providing taxicab customer service to the public, with its principal place of business in Denver, Colorado, and that it annually receives in excess of \$500,000 in the course and conduct of its taxicab service, and annually receives goods and materials in the course and conduct of its business valued in excess of \$50,000 directly or indirectly from points outside the State of Colorado. The complaint alleges, the answer admits, and we find that Respondent is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and we find that Independent Drivers Association, herein called the Union, is, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Stipulated Facts*

Respondent and the Union are parties to a collective-bargaining agreement in effect from June 1, 1973, to May 31, 1976. Article 25 of the contract is entitled "Posting and Bulletin Boards," and provides in pertinent part that the Union may post certain notices on a bulletin board in the drivers' room¹ but that:

There shall be no other general distribution or postings by drivers of pamphlets, advertising, or political matter, notices of [sic] any kind of literature upon Company property without authorization from the Company. Enforcement will be the Company's responsibility.

On October 23, 1973, from about 1 to 3 p.m., employee Steven H. Johnson, on his own time, passed out a leaflet to other drivers in the drivers' room. The leaflet, entitled "Unite to Fight Union-Busting," is reproduced and attached hereto as "Appendix A." The drivers' room is used by the drivers both for filling in trip sheets and for relaxing, drinking cokes, eating candy, and chatting.

About 3 p.m., Respondent's general manager, a supervisor, came in and told Johnson that the Union's business agent had informed him that the maternal Johnson was distributing was not union literature, and therefore Johnson would have to stop distributing it. Johnson stated that he had a right

¹ The "Stipulation of the Facts and of the Record" omits the fact that the Union has posting rights, an omission which makes it difficult to ascertain the meaning of the phrase "other general distribution or postings" in the quoted excerpt which follows in the text. However, the General

Counsel quoted the entire art. 25 in his brief and Respondent's brief states that the General Counsel's statement of facts is substantially correct. We accept these representations as part of the record.

under a Board Decision to pass out the literature in nonworking areas during nonworking time. The supervisor said that all areas were working areas and that under the contract Johnson could not distribute the material. He ordered Johnson to stop. It being clear that if Johnson persisted he would be disciplined, he stopped and filed the instant charge.

B. Discussion and Conclusions

Respondent's no-distribution rule contained in the collective-bargaining agreement, not being confined either to working time or working areas, is invalidly broad on its face.² And the general right of employees under Section 7 of the Act to distribute literature in support of collective bargaining or other mutual aid or protection was not within the power of the Union and Respondent to take away by virtue of their agreement that, while the Union may post notices, drivers may neither post nor distribute literature.³

The record does not tell us when the rule in question was first promulgated, but it was, at the least, renewed as of June 1, 1973, within 6 months prior to the filing of the instant charge, and has been maintained since then. We find that the promulgation and maintenance of the no-distribution rule violates Section 8(a)(1) of the Act.

Respondent's enforcement of the rule against Johnson also violates Section 8(a)(1). Johnson was peacefully seeking to enlist the aid of his fellow employees to support employees of other employers who were on strike and to oppose an alleged antilabor combination. This is a protected concerted activity for mutual aid and protection under Section 7.⁴ And, while the drivers' room where Johnson was distributing is arguably a "working area," a point which we need not decide,⁵ the explanation he was given for the order to desist convinces us that it was the invalid no-distribution rule, not a decision by management that this distribution was interfering with legitimate business or property interests, that was being enforced. Therefore a *prima facie* case of further interference with employee rights in the enforcement of the rule has been made out.⁶

Respondent asserts a right under article 25 of the collective-bargaining agreement to enforce the prohibition against the distribution of Johnson's leaflets. But, just as the Union was powerless to waive the employees' Section 7 rights in general, it was

powerless to waive their Section 7 right to participate in the promotion of a demonstration not sponsored by the Union and in no sense limited to the Union's institutional interests.⁷

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth 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 of commerce.

CONCLUSIONS OF LAW

Upon the basis of the foregoing facts and upon the entire record in this case, we make the following conclusions of law:

1. Respondent is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. By promulgating, maintaining, and enforcing a rule which prohibits employees from distributing literature on nonworking time in nonworking areas, Respondent has violated Section 8(a)(1) of the Act.
3. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies 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 Respondent, Yellow Cab, Inc., Denver, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from promulgating, maintaining, giving effect to, or enforcing any rule which prohibits employees from distributing literature in nonworking areas on nonworking time pertaining to

² *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615, 619-621

³ *N.L.R.B. v. Magnavox Company of Tennessee*, 415 U.S. 322 (1974), *Samsonite Corporation*, 206 NLRB No. 91, at ALJD sec. III, B, 2(c).

⁴ *Washington State Service Employees State Council No. 18 and Local 6, Service Employees Union*, 188 NLRB 957

⁵ Indeed, the instant record does not provide an adequate basis for deciding this.

⁶ See *Daylin Inc., Discount Division d/b/a Miller's Discount Dept. Stores*, 198 NLRB No. 40; *Stoddard-Quirk Manufacturing Co.*, *supra*, at fn. 8. Member Kennedy dissented in part in *Miller's Discount Dept. Stores, supra*, because he found in that case that the employees involved were neglecting their own work and interfering with the work of other employees.

⁷ *N.L.R.B. v. Magnavox, supra, Samsonite Corp., supra*

matters related to the exercise by employees of their Section 7 rights.

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

(a) Post at its place of business in Denver, Colorado, copies of the attached notice marked "Appendix B."⁸ Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

⁸ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

APPENDIX A

March and Rally

UNITE TO FIGHT UNION-BUSTING

This Saturday, October 27, at 1 p.m. hundreds of workers from the Denver-Boulder area will be conducting a unity march and rally against union-busting.

This demonstration, organized by the Denver-Boulder Strike Support Committee, will be a peaceful show of support for the Brewery Workers on strike at Jeffco, the United Farm Workers organizing drives in Colorado and California, and the Clothing Workers strike at Farah Pants in El Paso.

It will also be a march in opposition to an anti-labor combination which has hurt workers at one company after another in recent months. Working people in this region are being hurt constantly by the combined attacks of court injunctions, pro-employer labor laws, the Mountain States Employers Council, and anti-union lawyers.

As cab drivers, we recently had a bitter taste of this combination ourselves when we were socked with a court injunction ending our radio boycott, in spite of the fact our contract doesn't say we have to use the radio.

"Unite To Fight Union-Busting" is the slogan of the march and rally because it is in the interest of all workers, cab drivers, brewery workers, farm workers, everyone, to fight back against this dangerous combination.

THE UNITY MARCH AGAINST UNION-BUSTING BEGINS AT 1 P.M. THIS SATURDAY, 13TH AND MARIPOSA. BE THERE AND STICK UP FOR YOUR BROTHERS AND SISTERS.

This march and rally has been endorsed by the brewery workers, clothing workers, OCAW, and many other groups.

Steve Johnson

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT promulgate, maintain, give effect to, or enforce any rule which prohibits our employees from distributing literature in non-working areas on nonworking time, pertaining to matters related to the exercise by employees of the rights guaranteed to them by the National Labor Relations Act, as amended. These include the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection, or to refrain from any or all of such activities except to the extent that such right 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.

YELLOW CAB, INC.
(Employer)

Dated _____ By _____ (Title)
(Representative)

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 Board's Office, U.S. Custom House, Room 260, 721 19th Street, Denver, Colorado 80202, Telephone 303-837-3551.