

West Shore Publishing, Inc. and International Printing Pressmen Assistants & Offset Workers Union of North America, Local 183, AFL-CIO. Cases 22-CA-6223 and 22-CA-6261

November 13, 1975

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
PENELLO

On September 16, 1975, Administrative Law Judge Thomas A. Ricci issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in response to Respondent's exceptions.

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 record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,¹ findings,² and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 Administrative Law Judge and hereby orders that Respondent West Shore Publishing, Inc., Bogota, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544. (1950), enf'd 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings. We also find no merit in Respondent's contentions that the Administrative Law Judge failed to objectively consider the evidence presented; improperly shifted the burden of proof to Respondent; and engaged in improper and hostile questioning of Respondent's witnesses.

² We also note that the Administrative Law Judge inadvertently found that discriminates Horace Belgrave, and Ronald Berridge were born in Jamaica, whereas the record reveals they were born in Trinidad.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge: A hearing in this proceeding was held on July 14 and 15, 1974, at Newark, New Jersey, on a consolidated complaint of the General Counsel against West Shore Publishing, Inc., here called the Respondent or the Company. The complaint issued on April 28, 1975, and rests upon a charge filed on 221 NLRB No. 92

January 23, 1975 (Case 22-CA-6223), and another filed on March 3, 1975 (Case 22-CA-6261), by International Printing Pressmen Assistants and Offset Workers Union of North America, Local 183, AFL-CIO, here called the Union or Local 183. In the course of the hearing, the issues presented by the first charge were resolved informally, as will be explained below. The remaining issues are whether the Respondent unlawfully discharged two employees in violation of Section 8(a)(3) of the Act, and whether it also otherwise coerced employees in violation of Section 8(a)(1). Briefs were filed by the General Counsel and the Respondent.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

West Shore Publishing, Inc., a New York State corporation, is engaged in the manufacture, sale, and distribution of mats and graphic materials and related products, with its principal place of business in Bogota, New Jersey. During the calendar year 1974, a representative period, it manufactured, sold, and distributed from the plant products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped out of the State in interstate commerce. I find that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that International Printing Pressmen Assistants and Offset Workers Union of North America, Local 183, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *A Picture of the Case*

Local 183 was certified by the Board in May 1974 as bargaining agent for the employees in the Respondent's camera and printing departments in a single unit, including, at the time, about six or seven employees. The parties bargained and signed a collective-bargaining agreement in November 1974. Horace Belgrave and Ronald Berridge were cameramen and dues-paying members of the Union in February 1975. They were discharged that month, and the complaint alleges the reason for their dismissal was because they refused the Respondent's request that they abandon their adherence to the Union. Denying the commission of any unfair labor practices, in defense the Respondent asserts the two men were dismissed because, contrary to instructions, they left work for 2 weeks without permission.

The whole case turns on a question of credibility. If the testimony of Belgrave and Berridge, supported by that of Ivan Balfour, a third cameraman, and Edward Treacy, agent of Local 183, is believed, there remains absolutely no doubt that they were discharged illegally. If instead Fred Gilbert, the plant production manager, supported by Thomas Redmond, Jr., vice president of the Company, is

credited, all evidence of unlawful motivation disappears and the complaint must be dismissed.

B. *The Conflicting Testimony*

Berridge started with the Respondent in June 1973, and Belgrave in November of that year. They are natives of Jamaica and sometime during 1974 were invited to participate in a musical festival to be held in Trinidad during February 1975. Belgrave testified he first mentioned the subject to Gilbert in a November talk and asked for a vacation "in early February," and that Gilbert told him "there would be no problem, I would have a vacation . . ." Belgrave continued to testify that, in order to feel sure in implementing his plans, early in January he reminded Gilbert of the vacation request, and again the manager literally gave him his approval.

It was about this time in mid-January that Berridge also asked Gilbert if he could have his vacation in February. Berridge's testimony is that Gilbert told him that, what with Belgrave already having been given approval, "maybe" Berridge should talk to Redmond, the vice president. Berridge did that and, still as he testified, Redmond sent him back to Gilbert "because he knows more about what goes on in the plant than anyone else." When Berridge did return to him, Gilbert said "he would try to arrange something."

It is the testimony of both Belgrave and Berridge that at about this point — a week or two before February 3, the day they wanted to leave — Gilbert started to tell each of them that if he agreed to abandon the Union, all "problems" in connection with his vacation desires would disappear.

Belgrave: ". . . Mr. Gilbert came to me one night and told me that . . . if I would write a statement that I no longer want Local 183, there would be no problem. I then told him that I thought my vacation was approved . . . He just continued with, if you sign this statement, you know, everything will be okay." "Nearly every night after that I worked there, he came out with that suggestion to me. He also mentioned to me that I should try to convince my other colleagues in the department to do the same." "He told me that if I write a statement stating that I no longer want Local 183, there won't be any problems."

Berridge: "About ten days before I was supposed to go on my vacation, approximately ten days, he [Gilbert] came to me and asked me about signing a petition saying that we don't want the union in there and he told me that it would be easy for me to go on my vacation. . . . He said that Mr. Redmond was annoyed that the shop steward has issued a card to a member of our department."

Q. Is this the last conversation that you had with Mr. Gilbert about your vacation?

A. Well, he just kept repeating the same statement about signing the paper until the last day that I was there. . . .

JUDGE RICCI: Not what it meant, did he say that the paper had anything to do with the vacation?

THE WITNESS: He said, your vacation would become easy.

Balfour also worked in the camera department; he did the same kind of work as Berridge and Belgrave and was the chapel chairman, or union steward. Balfour's testimony is that when Belgrave told him of Gilbert's demand for an antiunion statement he, Balfour, spoke of that matter to Gilbert. ". . . I told Mr. Gilbert that I had a conversation with someone prior to that and what this was all about, about signing some statement that they don't want the union in. . . . And Fred Gilbert said, 'Well, things are not going right with the union,' and if I sign a union — if I sign a letter stating that I don't want the union too, maybe he can get me as a supervisor with at least twice the money."

At the hearing Gilbert said that he never gave either man permission to leave. His testimony is that when the men asked about vacation leave he told them he, Gilbert, must first consult Redmond, and that when he did Redmond said "in no way would either man be allowed to go on vacation. . . . He just said that we would be getting a lot more work in." Gilbert continued that he then told the two men they could not go on vacation, and then added, ". . . I heard that they were going to go on their vacation anyway, and I went and I told them, 'Don't go, I can't guarantee your jobs if you go.'" "I told them, you know, several times, 'Do not go, I can not guarantee your jobs if you go.'" Gilbert denied having said anything to the cameramen, Balfour included, about signing anything to reject the Union, or about asking others to do so, or promising an increase in pay as a reward to Balfour. Redmond, apparently the son of an owner, corroborated Gilbert with respect to what conversations the production manager said he had with Redmond. Redmond also testified that he then told Berridge he could not go on vacation because of "the increase in work volume that we would have." And the third witness for the Respondent, Bob Prince (the Respondent only called three witnesses — Gilbert, Redmond, and Prince), the man in charge of sales for the Company, said only that he was present and heard Redmond tell Belgrave he could not go on vacation.

C. *Credibility Resolution; Conclusion*

I credit the testimony of the three cameramen and I find the contrary testimony of Gilbert unbelievable. There are many reasons for this credibility resolution, some directly related to Gilbert and some based upon the affirmative defense of discharge for cause generally. The very demeanor of the witnesses at the hearing tended to make Belgrave, Berridge, and Balfour more credible than Gilbert.

1. Counsel for the Respondent correctly states that if a man is told he may not leave his job for vacation purposes, but does so in defiance of what then are really work orders, it does not matter whether the pressure of work was or was not heavy, normal or abnormal, or whether the inconvenience to the employer was great or small. But the determinative question here is not whether the 2 weeks' departure of the men caused insoluble "problems." The fact is that in one way or another the so-called problems were resolved, the work was done. It may very well be, therefore, that Gilbert did tell Belgrave and Berridge he could take care of a possible problem, make their vacations easy, if they obliged him by quitting the Union. But

regardless of all this, the Respondent chose to assert that there was a great increase in the volume of the business, comparing the last 2 weeks of January with the first 2 of February, when the men were away. In the attempt to prove this self-serving factual assertion, its witnesses fared very badly, and thereby cast a very serious doubt upon the entire conversation of discharge for cause.

To start with, Gilbert said he told the men, and their union agent, that in January there was added work expected, with more than the usual amount of work to be done. Later he and Redmond equivocated on whether they really had reason to expect any significant additional customers. There is no evidence of any additional customer ever arriving. Belgrave, Berridge, and Balfour each worked on a different shift, the three of them around the clock. At the start of the defense testimony, the implied argument was that with two men gone how could only the remaining one do all the work. The first question to Gilbert as a defense witness was: ". . . how many people worked in the camera department?" He answered: "Three," Balfour, Berridge, and Belgrave. This was a deliberate attempt to deceive then and there. As he went on, Gilbert admitted there was a fourth full-time cameraman in the department — Ansis Kreslins — whom he called a working supervisor. There is uncontradicted testimony by Balfour that the Company regularly brings cameramen from its nearby plant called Typetron to do work in this department. Speaking of the two locations, Redmond himself testified about the transfer of employees between camera departments, ". . . Switching back and forth for business, economic reasons, yes. . . . This has been the practice for the last four years, I believe, since we have loaned Typetron." The increase in business which Gilbert tended to exaggerate at the hearing now after the discharges could not have been too great. And finally, there are daily records of the plant called logs; each lists in complete itemization all the orders that must be completed each day. The Company's witnesses talked a great deal about these logs, and of the great increase in volume; all they had to do to prove the point was to produce them. The failure of the Respondent to offer any of these logs, or indeed any other kind of record to support the defense assertion, increases the doubt as to the veracity of its witnesses.

2. As evidence that Belgrave and Berridge lied about what Gilbert said, the Respondent contends there has always been an established company policy of requiring written printed form applications for vacations. The idea here is that the two men necessarily knew Gilbert had no authority to approve any requests, or to make any tentative arrangements for them. Gilbert said he never sees these written requests every year, that they are all funneled to young Redmond, and then up to his father, apparently the higher authority, who with others then decides these things. In this matter, as with others, Gilbert was not consistent in his testimony:

Q. Are you consulted, as far as making out the vacation schedule?

A. No, I am not.

A few lines later:

Q. Are you ever consulted about the production requirement or who can or cannot go on vacation?

A. Yes, I advise how many people can go.

The only "proof" of the asserted practice requiring written requests is the oral testimony of Gilbert and a printed form offered as an exhibit; the exhibit is an application that was used in July 1975.

Berridge testified he had one vacation in July 1973 and another in August 1974, and each time only asked Gilbert, who gave his personal approval. Belgrave said he too had two previous vacations, both in 1974, and each time did no more than talk to Gilbert who gave his direct consent. Balfour also has worked there since 1973 and, like the other two, said he never heard of a written request until after the discharge of Berridge and Belgrave in 1975. Not only did Gilbert not contradict all this testimony, but no vacation forms of any kind from the Company's records antedating these events were produced at the hearing. Redmond Sr., who is said to be the one who decides these things, did not come to the hearing. The General Counsel called upon the Respondent especially to produce any forms that Berridge or Belgrave may have submitted in the past; Respondent's representatives responded that they had none. Again, whether an employer has this or that practice in its regular affairs does not necessarily decide an unfair labor practice case, but this was outright lying by Gilbert on this record.

3. Belgrave and Berridge started their vacation on Monday, February 3, and remained away 2 weeks. By letter dated February 10, Gilbert wrote to Edward Treacy, business agent of the Union, that the two men "had been fired." On February 14, Gilbert wrote separate letters directly to the two men, saying: "Due to your failure to report to work from February 3 to February 14, 1975 and after several warnings, I have no other course to take except to dismiss you from your employment."

The defense being that the men were discharged because they left work without permission, the General Counsel asked on cross-examination when did Gilbert decide to fire the men. The witness' varying answers to this question, together with the inconsistent and irreconcilable notations appearing in Company records — ostensibly made at the time of the events — and other facts of record directly related to the asserted positive intent to discharge, virtually robs Gilbert of all credibility. The men apparently left home during the weekend, for they did not come to work on Monday, February 3. Gilbert started by saying he made the decision to discharge them "probably the second day, February 4," and then added, "February 5th I would say, February 6." In support of the witness' testimony, the Respondent had already placed into evidence two time-cards; each permits clock entries for only 7 days. All that appears on the timecards is the name of the employee — one for "Berridge, R." and the other for "Belgrave, H.," followed in type by "W/E 2/14," and the longhand ink writing across the face of each card "Fired 2/5/75." These were not the cards for the first week of the men's absences, which occurred during the week ending February 7. But since the men were not there, and inasmuch as Gilbert knew why they were absent, how long they intended to stay

away, and even exactly where they were going, there was no reason for anyone to prepare timecards for them for the next week. If these cards were prepared at all before the day before the hearing, they surely were not prepared before the "week ending" February 14. If a supervisor wants to discharge a man because he is absent without authorization, and wants to record the fact on the man's timecard, he makes the entry on the employee's card for that week, not on the one for the following week. It follows, of course, that the entries "Fired 2/5/74" could not have been made on February 5!¹ When were these cards made?

In addition to this, there are two "Employment Records," again one for each man, taken from the Respondent's files. On these there are written for each man: "Fired 1/31/75." If Gilbert is to be believed, all he knew the previous Friday, January 31, was that he had told the men they could not go, and that was that. When asked at this hearing why did he not decide to discharge the men on February 3, the very first day of their absences, he answered: "I was still hoping they would come in." Had he "hoped" the previous Friday — before the men were scheduled to leave — that maybe they might not go, there would be some credibility in the production manager. But, apparently, if the employment records are genuine, he had no such hope the previous Friday. For him to say that, forewarned of their exact plans, he thought they might come back the following week just will not do. Redmond, the vice president, testified he had been told ". . . that they were invited by the Government of their country to go down and play in a band . . . that this was a big, you know, a big event, a big — it is something out of the ordinary for them." Redmond also said he had heard the men were going to go "come hell or high water." He even testified that in a conversation with a National Labor Relations Board agent, who was investigating another case, he, Redmond, "went on record" by telling the Board agent "if they walked out of the plant, which would in my opinion be a disruption of the business cycle, they will be dismissed from their jobs immediately." With this, the Employer's now asserted fixed determination not to stand for insubordination, its failure to take any unequivocal action against the men until the February 14 letter of discharge proves the entire story in defense must be rejected.

I find, as Belgrave and Berridge testified, that Production Manager Gilbert told both of them he would approve their vacation requests only on condition that they sign documents rejecting the Union, and, as Balfour testified, that Gilbert told him the employee might be given a better job with a raise in pay if he agreed to put an end to his union activities. By such conduct Gilbert restrained and coerced the employees in violation of Section 8(a)(1) of the Act, unfair labor practices chargeable to the Respondent.

The only rational explanation for all of this is a conclusion, which I reach with no qualifications whatever, that Respondent seized upon the fortuitous circumstances of the two men being invited to the "big event" in Trinidad as the occasion to compel them into resigning from the

Union. If Gilbert was uncertain, as of Monday, February 3, as to what their eventual reaction to his threat would be, it was only because he hoped they would yield to the Company's unlawful demands. They did not. This also explains why the discharge did not come until later, and why the confused and contradictory company records must be discredited. I find on the record in its entirety that the Respondent discharged Belgrave and Berridge because they refused to disassociate themselves from their Union, and thereby violated Section 8(a)(1) and (3) of the Act. This is not, as the Respondent's counsel argues in his brief, a matter of inferring illegal motivation and disregarding objective indication of proper purposes. Rather, the unfair labor practice is proved by direct evidence. It is a fact Gilbert told the men he wanted union resignation from them, and when they refused to quit the Union he fired them. The many decisional precedents cited are therefore inapposite.

THE REMEDY

To effectuate the policies of the Act the Respondent must be ordered to cease and desist from commission of such unfair labor practices as were committed here, and from any other unfair labor practices. It must also be ordered to reinstate to their prior employment both Belgrave and Berridge, and to make them whole for any loss of earnings that they suffered in consequence of the illegal discrimination against them, in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 712 (1962).

As stated above, when the hearing started there were refusal-to-bargain allegations in the complaint, charging violations of Section 8(a)(5). In the light of information first acquired by the General Counsel during the course of the hearing, the parties agreed on the record to an informal settlement of those portions of the complaint. Accordingly, with the explicit agreement that the Respondent is not found to have committed any violations of Section 8(a)(5), and in implementation of the agreement of the parties, the Respondent will be ordered to bargain in good faith with Local 183 pursuant to the outstanding Board certification, and to post a special notice to the employees pertinent to the informal settlement.

THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set out in section III, above, occurring in connection with the operations of the Respondent described in section I, 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.

¹ From Gilbert's testimony

Q And did there come a time during that week when you acted with regard to their absences?

A. Yes Wednesday night when they did not come in, I wrote on their timecards that they were let go for being absent

CONCLUSIONS OF LAW

1. By discharging Horace Belgrave and Ronald Berridge in February 1975, the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(3) of the Act.

2. By the foregoing conduct, by telling employees that their vacation requests would be granted only on condition that they sign documents abandoning their interests in the Union, and by promising employees increases in pay in return for their abandonment of the Union, the Respondent has engaged in and is engaging in 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.

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

ORDER ²

The Respondent, West Shore Publishing, Inc., Bogota, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or in any other manner discriminating against its employees because of their union activities.

(b) Telling employees that their vacation requests would only be granted in return for the abandonment of their union or union activities, or promising employees increases in pay in return for their abandonment of union activities.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form, join, or assist International Printing Pressmen Assistants and Offset Workers Union of North America, Local 183, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

(a) Offer Horace Belgrave and Ronald Berridge immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(b) Make whole both of the foregoing employees for any loss of pay or any benefit they may have suffered by reason of the Respondent's discrimination against them, in accordance with the Remedy herein.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Upon request, bargain in good faith with International Printing Pressmen Assistants and Offset Workers Union of North America, Local 183, AFL-CIO, as required by

law and pursuant to the National Labor Relations Board certification issued in May 1974 with respect to employees in the camera and printing department in the Bogota plant.

(e) Post at its plant in Bogota, New Jersey, copies of the attached notices marked "Appendix 1" and "Appendix 2."³ Copies of said notices on forms provided by the Regional Director for Region 22, after being duly signed by its representatives, 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 it to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

³ In the event that the Board's 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 1

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

The National Labor Relations Board having found, after a hearing, that we violated the Federal Law by discharging employees because of their union activities and by committing other acts of illegal coercion:

WE WILL NOT discharge or in any other manner discriminate against any employees for engaging in concerted union activities.

WE WILL NOT condition the granting of vacation requests to our employees upon their compliance with our request that they abandon their union or union activities.

WE WILL NOT promise promotion or increase in pay to our employees as inducement for them to abandon their union or union activities.

WE WILL offer Horace Belgrave and Ronald Berridge immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges.

WE WILL pay Horace Belgrave and Ronald Berridge for any earnings they lost as a result of our discrimination against them, plus 6-percent interest.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist International Printing Pressmen Assistants and Offset Workers Union of North America, Local 183, AFL-CIO, or any

other labor organization, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WEST SHORE PUBLISHING
Co.

APPENDIX 2

NOTICE TO EMPLOYEES PURSUANT TO SETTLEMENT AGREEMENT

WE WILL bargain in good faith and pursuant to law with International Printing Pressmen Assistants and Offset Workers Union of North America, Local 183, AFL-CIO, pursuant to the National Labor Relations Board certification issued to that Union as bargaining

agent for employees in our Bogota plant camera and printing department employees.

Throughout the period covered by our present collective-bargaining agreement with Local 183, we WILL NOT use the service of Dario Molina as an employee within the bargaining unit represented by the Union in the Bogota plant.

WE WILL honor any request that may be made by the Union, in accordance with the provisions of our contract now in effect, requiring membership in the Union by David Housman.

The posting of this notice is not to be taken as an admission by the Company that it violated the law in any respect, or as indication that the National Labor Relations Board has found we committed unfair labor practices in these respects.

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