

Airstream, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and President's Advisory Council (PAC), Party in Interest. Cases 8-CA-18263 and 8-RC-13163

August 20, 1991

SUPPLEMENTAL DECISION AND ORDER ON REMAND

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On March 25, 1988, the National Labor Relations Board issued its Decision, Order, and Direction of Second Election¹ in this proceeding. The Board found, inter alia, that the Respondent violated Section 8(a)(2) and/or (1) of the National Labor Relations Act by forming, dominating, and assisting a labor organization, by changing its attendance policy and lunchbreak procedure, and by removing a union notice from a company bulletin board. The Board also found meritorious most of the Union's objections to the conduct of the election held on March 15, 1985, and directed a second election.

The Respondent thereafter filed a petition for review of the Board's Order with the United States Court of Appeals for the Sixth Circuit and the Board filed a cross-application for enforcement. On June 19, 1989, the court handed down its opinion granting in part and denying in part enforcement of the Board's Order and remanding the case to the Board for further proceedings consistent with the court's opinion.² In this regard, the court enforced the Board's findings of violations concerning the changes in the attendance policy and lunchbreak procedures. The court directed the Board on remand to reconsider two specific issues: (1) the 8(a)(1) allegation involving the use of company bulletin boards and (2) the Board's determination to direct a second election.

On February 22, 1991, the Board advised the parties that it had accepted the remand. On March 12, 1991, the Board invited the parties to submit statements of position with respect to the issues raised by the remand. Thereafter, the General Counsel, the Respondent, and the Union filed statements of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reconsidered this case in light of the court's opinion, which we consider the law of the case,

¹ 288 NLRB 220.

² 877 F.2d 1291 (6th Cir. 1989). As discussed below, the court also remanded for reconsideration the Board's Order of a new election. On June 28, 1989, the Board filed a motion asking the court to delete this aspect of its opinion. On July 16, 1990, the court denied this motion. On September 12, 1990, the court entered judgment consistent with its prior opinion. On February 6, 1991, the court issued its mandate.

and the parties' statements of position, and has decided to affirm the Board's Decision, Order, and Direction of Second Election only to the extent consistent with this Supplemental Decision.

1. Regarding the bulletin board allegation, the facts affirmed by the court may be briefly summarized as follows. In 1985 the Respondent maintained a company policy that required employees to obtain prior management approval for the posting of noncompany business items, including sales notices, social event announcements, and public interest material on plant bulletin boards.³ Consistent with this policy, the Respondent regularly removed "unapproved notices" from its bulletin boards, including union literature. In late February and early March 1985, the Respondent's General Foreman Oakley removed certain union notices involving the Charging Party (UAW) posted on a company bulletin board located in the main plant because the Respondent had not approved their posting.⁴ During the same period, notices pertaining to the Respondent's President's Advisory Council (PAC) were also displayed on another company bulletin board located elsewhere in the plant. PAC was an employee committee formed by the Respondent in March 1985 to serve as a means of communication between management and the employees. There is no indication in the record that PAC did not receive approval for posting notices on company bulletin boards.

In its original decision, the Board found that, because PAC was a labor organization within the meaning of Section 2(5) of the Act, it was discriminatory and a violation of Section 8(a)(1) of the Act for the Respondent to remove the UAW literature while allowing the PAC material to be displayed. On review of the Board's decision, the court rejected, inter alia, the Board's finding that PAC was a 2(5) labor organization. In light of this reversal, the court remanded for further consideration the issue of whether the Respondent had discriminatorily prohibited the posting of union literature by allowing PAC, and not UAW, material to be displayed on company bulletin boards.

Having accepted the court's remand as the law of the case and specifically its determination concerning the status of PAC, we find that the Respondent did not discriminatorily prohibit the posting of union literature. The UAW literature removed by Oakley had not been approved for posting as required by the Respondent's bulletin board policy for "noncompany business items." On the other hand, as the court observed, the record does not indicate that the PAC notices were not approved for posting. In addition, advance approval for the posting of PAC notices was not required under the

³ The credited testimony of the Respondent's president, LeTourneau, reveals that this company policy applied to all plant bulletin boards.

⁴ The record shows, and the General Counsel concedes, that no one secured management approval before posting the union literature.

precise terms of the Respondent's bulletin board policy. Notices for PAC, an entity formed by the Respondent to communicate company business, cannot be classified as "noncompany business items." Under all the above circumstances, we find that the Respondent's removal of the UAW literature was not unlawful, and we therefore dismiss this 8(a)(1) allegation.⁵

2. The court also requested that the Board determine whether the March 15, 1985 election should be set aside on the basis of the 8(a)(1) findings enforced by the court relating to the extended lunchbreaks and the modification of the attendance policy. Specifically, the court affirmed the Board's findings that, during the critical preelection period, the Respondent had unlawfully added 3 minutes to the 30-minute lunchbreak for those employees who went out to lunch and had also unlawfully suspended the point system associated with an attendance program then recently instituted which affected all unit employees. For the reasons discussed below, we find that a new election is warranted on the basis of this 8(a)(1) conduct.

A violation of Section 8(a)(1) found to have occurred during the critical election period is, a fortiori, conduct which interferes with the results of the election unless it is so de minimis that it is "virtually impossible to conclude that [the violation] could have affected the results of the election." *Enola Super Thrift*, 233 NLRB 409, 409 (1977). See *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786 (1962); see also *Madison Industries*, 290 NLRB 1226, 1230 (1988); *Baton Rouge Hospital*, 283 NLRB 192, 192 fn. 5 (1987). In determining whether the unlawful conduct is de minimis, the Board considers the number of incidents, their severity, the extent of dissemination, the size of the unit, and other relevant factors. *Metz Metallurgical Corp.*, 270 NLRB 889 (1984); *Caron International*, 246 NLRB 1120 (1979). Here, 9 days after the UAW filed its representation petition, the Respondent posted on its

plant bulletin boards and distributed to its employees a notice announcing 2 significant changes affecting the entire unit of 310 employees. This notice was signed by Gerard LeTourneau, the Respondent's president, and indicated that the changes in question were in direct response to employee complaints. Thus, the 8(a)(1) violations here, which addressed employee complaints, involved action by the highest ranking official of the Respondent and were directed to all the unit employees. See *Westek Fabricating*, 293 NLRB 879 fn. 2 (1989) (conduct by the company vice president violated Sec. 8(a)(1) and warranted setting aside the election, and *Detroit Plastic Molding Co.*, 213 NLRB 897, 902 (1974), *enfd.* 519 F.2d 816 (6th Cir. 1975) (timing of unilateral change and the fact that it was in response to employee complaints indicated attempt to influence employees and warranted setting election aside. In addition, the change in the Respondent's attendance policy alone, or coupled with the change in the lunchbreak policy, affected all the unit employees. See *Archer Services*, 298 NLRB 312 (1990) (election set aside where significant number of unit employees were affected by the employer conduct). In these circumstances, we conclude that the Respondent's unlawful conduct is more than de minimis and clearly warrants setting aside the election and directing a second election. See *Enola Super Thrift*, *supra*.

ORDER

The complaint allegation involving the use of company bulletin boards is dismissed.

IT IS FURTHER ORDERED that the election conducted on March 15, 1985, in Case 8-RC-13163 be set aside and that this case be remanded to the Regional Director for Region 8 for the purpose of scheduling and conducting a second election at such time as he deems the circumstances permit a free choice of the issue of representation.

[Direction of Second Election omitted from publication.]

⁵Cf. *Lassen Community Hospital*, 278 NLRB 370 (1986), and *Honeywell, Inc.*, 262 NLRB 1402 (1982), *enfd.* 722 F.2d 406 (8th Cir. 1983) (restriction placed on the posting of union notices found to be discriminatory).