

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DETROIT LEGAL NEWS COMPANY
d/b/a INLAND PRESS
and

Case 7-CA-50893

DAVID W. SNYDER, an Individual

Patricia Fedewa, Esq.,
for the General Counsel.
Fred W. Batten, Esq., (Clark Hill, PLC),
of Detroit, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN T. CLARK, Administrative Law Judge. This case was tried in Detroit, Michigan, on May 5, 2008. The charge was filed on November 29, 2007, by David W. Snyder (the Charging Party). The charge was amended by the Charging Party on January 30, 2008, and the complaint was issued February 29, 2008. The complaint alleges that the Detroit Legal News Company d/b/a Inland Press (the Respondent), violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) when, about August 27, it informed the Charging Party that it was refusing to hire, or accept him for temporary referral, in retaliation for his union and protected concerted activities. The Respondent filed a timely answer to the complaint denying the essential allegations and requesting that the complaint be dismissed.

On the entire record, including my observation of the demeanor of the witnesses, my credibility determinations based on the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole and, after considering the briefs filed by the parties, I make the following

Findings of Fact

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Detroit, Michigan, has been engaged in the business of printing the Detroit Legal News and other printed materials, including brochures, annual reports, posters, and catalogs for various commercial entities. During calendar year 2007, a representative period, the Respondent in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and

received at its Detroit facility goods and materials valued in excess of \$50,000 directly from points outside the State of Michigan. The Respondent admits and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 2/289-M of District Council 3, Graphic Communications Conference of the International Brotherhood of Teamsters (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

David Snyder, the Charging Party, is a union member who was referred to the Respondent for temporary work as a floor worker in December 2005. A floor worker prepares loads for the press, cleans up, flips stock, restocks, stacks and runs errands. As a temporary worker Snyder accrued no seniority rights and received no benefits. Snyder testified without contradiction that he also worked as a second pressman, that he ran a two-color press and that he was a member of a two person team that operates a six-color press.

Snyder was laid off eight or ten times as a temporary employee. He was always recalled by Fred Seigris, his supervisor. Seigris, who is also a member of the Union, never asked the Union to refer Snyder out of the union hiring hall, but recalled Snyder directly. Because Snyder was a temporary employee, Seigris did not have to recall Snyder or even consider him for rehire. Thus, during this period there is no evidence that Seigris was not pleased with Snyder's work. Snyder testified, without contradiction, that at times Seigris complimented him on his work. During September 2006 Snyder made an error running the two color press. The error resulted in a lost of at least 10 percent of the job, yet Snyder was not disciplined. In fact, shortly thereafter, on September 18, 2006, he was hired as a permanent employee. Permanent employees receive benefits, earn seniority, and have recall rights commensurate with their length of time in permanent status.

A. Events Before Snyder's Layoff

1. The pension plan issue

In late October 2006, the Respondent requested that the Union reopen the collective-bargaining agreement. The Respondent, in an effort to reduce the cost of its pension plan contributions, intended to propose replacing the existing defined benefit pension plan with a 401(k) plan. Snyder was concerned that the Respondent could not afford the existing pension plan. Seigris, Snyder's foreman, was an active union member who at one time had sat on the union executive board. Snyder talked to Seigris about his concern. Snyder testified that Seigris opposed the reopening because he thought that the Respondent was "trying to screw us." Shortly after talking with Seigris, Snyder met with Seigris, and union steward and employee, Jim Shedadi. Snyder credibly testified that he continued to argue for the reopening, which was opposed by both men. Snyder testified that he talked with other union members employed by the Respondent and attended meetings on this issue. At some point thereafter the bargaining unit voted to reopen the agreement and thereafter voted to ratify the changes.

2. The steward election

5 In December 2006 an election for the position of union steward, also called the chapel chairman, was held. Nobles testified that he knew that the candidate Snyder was supporting was not the individual that was endorsed by Shehadi who was the incumbent steward. Snyder's candidate lost.

B. Snyder's layoff and events subsequent

10 Snyder was laid off for lack of work on February 11, 2007. The duration of the layoff was initially unknown, but in April the Respondent's production manager told Steven Nobles, the union president that there could be openings for laid off employees if "work ever dictates." Snyder frequently called the Union to inquire about returning to work for the Respondent. On May 21 he went to the Respondent's facility and spoke with the production manager, who
15 assured Snyder that the Respondent would consider recalling him when a new newspaper printing press was fully operational. Snyder lost his seniority rights, including his right to recall, on July 11, 2007.

20 It was not until late July or early August that the Respondent made its initial request to the Union to refer a floor worker and a second pressman. An individual was dispatched for the second pressman position. Nobles was aware that Snyder was working for another employer but he called Seigris anyway to ask if he wanted Snyder back. Snyder had told Nobles that he would quit any employer to return to work with the Respondent. Nobles testified that Seigris told him that he did want Snyder because "I want to go in a different direction." Nobles asked
25 for clarification and Seigris replied that Snyder struggled on the presses and that "he tends to agitate the shop a little bit." (Tr. 17-18.)

30 On August 27 Snyder learned that he had not been referred. Snyder testified that he spoke with Seigris and Nobles on that day. I found Snyder to be a credible witness who was making a sincere effort to be accurate and truthful. He also appeared to be an extremely nervous and high-strung individual who tended to ramble and occasionally appeared to be confused as to the order of things. Accordingly, the following is his credited testimony as to what was said and by whom on August 27, although it is not perfectly clear as to whom Snyder spoke with first.

35 Snyder testified that Seigris told him that he(Snyder), talks to the wrong people, takes "every problem to the Union," does not follow the proper pecking order, and was not returning to work for the Respondent. Nobles told Snyder that Seigris said that the Union could send anyone but Snyder. Nobles said that there was nothing further that he could do and that Snyder should
40 plead his case directly to Seigris. During the final telephone call that Snyder made to Seigris on August 27, Seigris said "why the f—k are you bothering me? The Union assured me that I'm done with your ass."

45 At some point after August 30, 2007, Snyder, Nobles, Seigris, Young, the steward, and Shehadi the past steward, met to discuss four grievances relating to Snyder's recall rights and reimbursement for health insurance. Nobles had filed the grievances on August 30 and they had been denied by Seigris. Nobles asked Seigris why he did not want Snyder to return to work for the Respondent. Nobles testified that Seigris replied that Snyder did not come as advertised, he

could not run the two-color press and he was always agitating. Since September 2007 the Respondent has continued to request referrals from the Union.

C. Discussion

5 In *Meyers Industries (Meyers II)*, 281 NLRB 882, 887, the Board reiterated its definition of concerted activity as encompassing “those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management.” The Board also noted with approval the
10 Third Circuit’s comments in *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (1964) defining the scope of concerted activity:

15 [A] conversation may constitute a concerted activity although it involves only a speaker and a listener, but to qualify as such, it must appear at the very least that it was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of the employees.

20 Moreover, when an individual employee solicits other employees to engage in group action, even where such solicitations are rejected, the inability to sway coworkers does not change the concerted nature of the activity. *Circle K Corp.*, 305 NLRB 932, 935 (1991) (citing *El Gran Combo*, 284 NLRB 1115, 1117 (1987), *enfd.* 853 F.2d 996 (1st Cir. 1988).

25 With the above principles in mind I find, contrary to the Respondent’s contention, that Snyder was engaged in concerted activity when he spoke with Seigrist, his foreman and fellow union member, and Shedadi, his steward and fellow employee, in an attempt to get their support to reopen the collective-bargaining agreement and negotiate a new pension plan.

30 Snyder’s credited testimony that Seigrist told him that the reason he was not going to rehire him was because he took “every problem to the union” was neither disavowed by Seigrist nor addressed by the Respondent in its brief. Accordingly, it is an uncontradicted admission that the Respondent’s reason for failing to rehire Snyder is unlawful. The Board has long held that such statements “coerce employees from seeking the assistance of their recognized bargaining agent and impairs their resort to rights protected under Section 7 of the Act.” *Interlake Inc.*, 218 NLRB 1043, 1043 (1975), *enfd.* 529 F.2d 1277 (8th Cir. 1976); see also *Buck Brown Contracting Co.*, 283 NLRB 488, 502 (1987). The Board has also held that where, as here,
35 protected concerted activity is the basis for the employee’s discipline, the analysis set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), is not required. E.g. *Chromalloy Gas Turbine Corp.*, 331 NLRB 858, 864 (2000) (“where protected concerted activity is the basis for an employee’s discipline, the normal
40 *Wright Line* analysis is not required”), *enfd.* 262 F.3d 184 (2d Cir. 2001).

45 Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act when the Respondent by Seigrist, its supervisor and agent, told Snyder that he did not want him back working at the Respondent because he took every problem to the Union. I further find that since about August 27, 2007, the Respondent has refused to hire Snyder or accept him for a temporary job referral because he has engaged in activities that were protected by Section 7 of the Act and this refusal has also violated Section 8(a)(1) of the Act.

Moreover were I to apply a *Wright Line* analysis, I would find that the counsel for the General Counsel has met her initial burden of proving by a preponderance of the evidence that animus against protected conduct was a motivating factor in the adverse employment action. In addition to the foregoing 8(a)(1) violation, I would find that Nobles' undisputed testimony that Seigrist referred to Snyder as an "agitator" who was "trying to stir up s**t" was evidence of animus. Seigrist neither rebutted nor offered any alternative explanation. *All Pro Vending*, 350 NLRB No. 46, slip op. at 5 (2007) (finding that terms such as agitator are normally applied by employers to individuals who are attempting to instigate other employees to engage in concerted or union activities). I would also infer animus from the obscene response Seigrist directed at Snyder when Snyder called him to ask why he was not being rehired by the Respondent. I would also find that the Seigrist's contention that he did not want to rehire Snyder because he did "not come as advertised" is a total pretext. The Respondent offered no evidence, documentary or otherwise, that Snyder was ever reprimanded for anything while employed by the Respondent. Seigrist did not deny or explain why he recalled Snyder from layoff eight or ten times, and then hired him as a permanent employee, if Seigrist was dissatisfied with Snyder's work. Nor did Seigrist dispute Snyder's testimony that Seigrist had commended Snyder for his work performance. Because I would have found that the evidence establishes that the reasons offered by the Respondent for its failure to rehire Snyder are pretextual—that is, are either false or were not in fact relied upon—the Respondent would fail by definition to show that it would have taken the same action for those reasons, absent the protected conduct.

CONCLUSIONS OF LAW

1. The Respondent, Detroit Legal News Company d/b/a Inland Press, Detroit Michigan, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local 2/289-M of District Council 3, Graphic Communications Conference of the International Brotherhood of Teamsters is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by its supervisor and agent, Fred Seigrist, informing David W. Snyder that the Respondent did not want him working for the Respondent because he took every problem to the Union.

4. The Respondent since about August 27, 2007, violated Section 8(a)(1) of the Act by refusing to hire David W. Snyder or accept him for temporary job referral because he engaged in activities that were protected by Section 7 of the Act.

5. The unfair labor practices found above are unfair labor practices affecting commerce within the meaning of Section 2(6), and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unlawfully refused to hire David W. Snyder or accept him for

temporary job referral must offer him a temporary job and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from August 27, 2007, the date that the Respondent unlawfully refused to accept him for a temporary job to date of proper offer of a temporary job, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Detroit Legal News Company d/b/a Inland Press, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing employees that it will not rehire them if they engage in protected concerted activity.

(b) Refusing to rehire laid off employees for temporary jobs because they engaged in activities that were protected by Section 7 of the Act.

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

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

(a) Within 14 days from the date of the Board's Order, offer David W. Snyder a temporary job or, if no temporary job exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges, if any, that he previously enjoyed as a temporary worker.

(b) Make David W. Snyder whole for any loss of earnings and other benefits suffered as a result of the unlawful action taken against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful action taken against him, and within 3 days thereafter notify David W. Snyder in writing that this has been done and that the unlawful action will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Detroit, Michigan,

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 27, 2007.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(g) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. August 26, 2008

John T. Clark
Administrative Law Judge

² If 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
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT inform you that we will not rehire you because you have engaged in protected concerted activities.

WE WILL NOT refuse to rehire employees for temporary jobs because they engaged in activities that were protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer David W. Snyder a temporary job or, if no temporary job exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges, if any, that he previously enjoyed as a temporary worker.

WE WILL make David W. Snyder whole for any loss of earnings and other benefits resulting from our unlawful action against him, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful action taken against David W. Snyder, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful action will not be used against him in any way.

DETROIT LEGAL NEWS COMPANY d/b/a
INLAND PRESS

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

477 Michigan Avenue, Federal Building, Room 300
Detroit, Michigan 48226-2569
Hours: 8:15 a.m. to 4:45 p.m.

313-226-3200.

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 ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 313-226-3244.

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