Stanadyne Automotive Corp. *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO. Case 34–CA–9365

July 31, 2008

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On August 24, 2005, the National Labor Relations Board issued a Decision and Order in this proceeding, in which it found, among other things, that the Respondent did not violate Section 8(a)(1) of the Act by issuing a statement, on June 6, 2000, during a representation election campaign, prohibiting "harassment."[1] Subsequently, the Union petitioned the United States Court of Appeals for the Second Circuit for review of the Board's Order. On March 20, 2008, the Second Circuit granted in part the Union's petition for review and remanded this case to the Board "for further proceedings consistent with [its] decision."[2] On June 26, 2008, the Board notified the parties to this proceeding that it had decided to accept the court's remand, and that additional briefing was not warranted.

We accept the court's remand as the law of the case.[3] Accordingly, we find that the Respondent violated Section 8(a)(1) by issuing the no-harassment rule.

Facts

The Respondent is an automobile parts manufacturer. In January 2000,[4] the Union began an organizing campaign at the Respondent's plant in Windsor, Connecticut. On May 15, the Union filed a petition with the Board seeking a representation election, and the Board scheduled the election for June 29. During a June 6 campaign meeting with employees, the Respondent's president and CEO, Bill Gurley, stated:

> [I]t has come to my attention that some union supporters, not all, but some, are harassing fellow employees. You can disagree with the Company position; you can be for the Union. You can be for anything you want to, but no one should be harassed. Harassment of any type is not tolerated by this company and will be dealt with.

Relying on *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004),[5] the Board majority reversed the judge and found that Gurley's statement prohibiting harassment did not violate Section 8(a)(1). The Board found that Gurley's statement did not specifically restrict protected activity and was never applied to restrict such rights. The Board further found that employees would not reasonably construe Gurley's words to prohibit Section 7 activity, nor was the statement promulgated in response to union activity. Rather, the statement was in response to reports of unprotected union activity. Upon review, the Second Circuit disagreed with this aspect of the Board's decision.

Analysis

The court held that the Board did not act reasonably in concluding that Gurley's statement (which the court called a no-harassment rule) was lawful. The court disagreed with the Board's analysis under *Lutheran Heritage*. The court found that, given the context of Gurley's statement, "no reasonable employee could fail to infer that the rule against 'harassment' . . . was intended to discourage protected election activity," noting that, at the time of Gurley's statement, the Respondent had already instituted an unlawful rule prohibiting solicitation or discussion of the Union during work hours. 520 F.3d at 197. The court observed that Gurley failed to define the term "harassment" or cite any specific incidents of alleged harassment in his speech; further, there was no evidence that employees were aware of such incidents and believed that Gurley was referring to those events. Id. Finally, the court found that, even if a reasonable employee understood the statement to refer to those incidents, there was nothing in the record to suggest that the employee would have considered the no-harassment rule as limited to such unprotected conduct. Id. The court thus "vacate[d] the NLRB's determination as to the lawfulness of the no-harassment rule" and, as noted, remanded the case to the Board for further action consistent with the court's decision.

[1] 345 NLRB 85 (2005). Member Liebman, dissenting in part, would have found that the Respondent violated Sec. 8(a)(1) by issuing this statement.

[2] 520 F.3d 192, 198 (2d Cir. 2008).

[3] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[4] All dates are in 2000, unless otherwise noted.

[5] In *Lutheran Heritage,* the Board majority held that if an employer's work rule explicitly restricts Sec. 7 activity, it is unlawful. 343 NLRB at 646. If the rule does not explicitly restrict Sec. 7 activity, it is nonetheless unlawful if (1) employees would reasonably construe the language of the rule to prohibit Sec. 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Sec. 7 rights. Id. at 647.

Having accepted the court's remand as the law of the case, the court's findings and conclusions are necessarily binding upon us. We therefore conclude that the Respondent violated Section 8(a)(1) by issuing its no-harassment rule on June 6, and we enter an Order reflecting the finding of that violation.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union 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 issuing a no-harassment rule.
4. The unfair labor practice found above affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent violated Section 8(a)(1) of the Act by issuing a no-harassment rule, we shall order the Respondent to cease and desist from engaging in such unlawful conduct, take certain affirmative action designed to effectuate the policies of the Act, and post an appropriate notice. Inasmuch as the court has already enforced the provisions of our original Order remedying the Respondent's maintenance and enforcement of its unlawful no-solicitation/no-distribution rule, we shall not repeat them here.[6]

ORDER

The National Labor Relations Board orders that the Respondent, Stanadyne Automotive Corp., Windsor, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with unspecified discipline if they engage in protected activities by issuing a rule prohibiting "harassment."

(b) 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) Rescind its unlawful rule prohibiting "harassment."

(b) Within 14 days after service by the Region, post at its facility in Windsor, Connecticut, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 34, 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 May 15, 2000.

(c) 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.

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.

[6] See, e.g., *West Penn Power Co*., 346 NLRB 425, 429 fn. 10 (2006).

[7] 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."

WE WILL NOT threaten employees with unspecified discipline if they engage in protected activities by issuing a rule prohibiting "harassment."

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

WE WILL rescind our unlawful rule prohibiting "harassment."

STANADYNE AUTOMOTIVE CORP.