

Western Yarns, Inc. and Graphic Communications Union, District Council #2, affiliated with Graphic Communications International Union, AFL-CIO. Case 21-CA-23209

28 February 1985

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

On 14 December 1984 Administrative Law Judge Richard J. Boyce issued the attached decision. The General Counsel filed limited exceptions and the Respondent filed a statement that it does not oppose the limited exceptions.¹

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions² and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent Western Yarns, Inc., City of Commerce, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Engaging in surveillance of union meetings or other union activities of its employees."

2. Substitute the attached notice, to be printed in Spanish, as well as English, for that of the administrative law judge.

¹ The General Counsel requests only that the notice be printed in Spanish as well as English. We shall so order.

² In the absence of exceptions by the Respondent, our adoption should not be construed as an endorsement by the Board of all of the judge's findings and conclusions.

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT engage in surveillance of union meetings or other union activities of our employees.

WE WILL NOT tell employees, directly or by implication, that it would be futile for them to obtain union representation.

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.

WESTERN YARNS, INC.

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge. This matter was tried in Los Angeles, California, on October 25, 1984. The charge was filed on June 1, 1984, by Graphic Communications Union, District Council #2, affiliated with Graphic Communications International Union, AFL-CIO (the Union). The complaint issued on July 16, alleging that Western Yarns, Inc. (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) about May 20, 1984, by "engag[ing] in surveillance of a meeting of employees who were engaged in union activities," and again on about May 22 by "threaten[ing] an employee that Respondent could eliminate bonuses and pay whatever wages Respondent desired if the employees selected the Union as their collective-bargaining representative."¹

I. JURISDICTION

Respondent manufactures and sells yarns in and from a facility in Commerce, California. Its sales directly to customers outside California annually exceed \$50,000.

Respondent admittedly is an employer engaged in and affecting commerce within Section 2(2), (6), and (7) of the Act, and it is so found.

II. LABOR ORGANIZATION

The Union is conceded to be a labor organization within Section 2(5) of the Act, and it is so found.

¹ Sec. 8(a)(1) makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7" of the Act. Sec. 7 states in relevant part "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities."

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Union began to organize Respondent's employees on April 18, 1984. The organizational onset was heralded by the distribution of about 150 leaflets at Respondent's City of Commerce facility, during shift change, on the afternoon of that day. The distributing was done by officials of the Union. A second round of prounion leafletting occurred at the facility on May 5.

B. The Alleged Surveillance

1. Evidence

On May 20, a Sunday, union officials met with certain of Respondent's employees at the Hyatt House Hotel, city of Commerce. Notices of the meeting, scheduled to begin at 2 p.m., had been mailed to the approximately 50 employees who had signed union authorization cards. About 11 employees attended.

The Hyatt House is on the southwest corner of Telegraph Road and Washington Boulevard. Telegraph is a two-way, four-lane street running north-south; Washington runs east-west. The hotel's second floor, where the meeting was to be held, has *al fresco* balconies overlooking Telegraph.

One of the employees to attend the meeting, Xavier Chavez, testified that, while on a balcony waiting for it to begin, he and others saw Respondent's personnel director, Ed Velasco, drive by in a white van of unknown make; and, after a series of maneuvers, park it in a lot on the other side of Telegraph, "facing" the hotel. Chavez particularized that the van was proceeding north toward Washington, in the curb lane on the far side of Telegraph, when someone—he could not recall who—pointed it out to him. Chavez continued:

[Velasco] went up to Washington Boulevard, made a right turn, a U-turn . . . on Washington Boulevard, came back down Washington to Telegraph, made a right turn [onto Telegraph] then went half a block and made a U-turn, came back down Telegraph Road and made another U-turn into a parking lot across from the hotel.

Chavez testified that, some time after the van was parked—he was not sure whether it was less than a minute after, or more than five—he left the balcony because "the meeting was going to start." Thus, he explained, he did not know how long the van remained parked.

Chavez was unable to estimate the van's speed, or its distance from him, when he first saw it. Nor could he describe what Velasco was wearing. He did recall, however, that Velasco did not have a mustache and was not wearing glasses. He also was unable to approximate the number of people on the balcony with him, other than to venture that it was more than 1 and less than 10.

Chavez initially testified that he first saw Velasco and the van "a little before 2 o'clock," and that his view of the van was continuous from that time until it was parked. He later amended that the time of first sighting

was about 2:15,² and that, after Velasco turned onto Washington, he didn't see him until he came back and made a turn on Telegraph again"

Chavez was discharged a few days later—on May 24. He testified that this did not detract from the truthfulness of his recital. He had been with Respondent some 11 years.

Another employee to be at the meeting, Alicia Rodriguez, also testified that she saw Ed Velasco from the balcony beforehand. She elaborated that she went to the balcony "in the first place" because she heard someone say that Velasco was "parked across the street"; and that, when she got there, she saw Velasco, in a white van, "coming out of the parking lot across the street." She added that the van "was already moving" when she first saw it, and that she watched it turn onto Telegraph, proceeding toward Washington, before she "went inside" for the start of the meeting.

Rodriguez recounted that others were with her on the balcony when she saw the van, which was "about 2:30, 2:35, something like that"; that she saw only Velasco in it; and that, except for "believ[ing]" him to have been wearing "dark glasses," she was unable to recall his attire.

Rodriguez concededly never before had seen Velasco driving a van, nor had she ever seen the van in question at Respondent's facility. She quit her job with Respondent on May 24, prompted by anger over the suspension of a coworker. She testified that this did not affect her testimonial integrity. She began with Respondent in 1976.

Velasco denied that he drove a white van "anywhere in the vicinity of" the Hyatt House on May 20, and, more generally, that he either owns a van or ever had "occasion to drive a white van." He also denied parking across from the Hyatt House on May 20.

2. Conclusions

Facts. Both Chavez and Rodriguez exhibited convincing testimonial demeanor. Velasco, on the other hand, cloaked his denials in a mechanistic curtness that simply was unpersuasive. Chavez and Rodriguez therefore are credited concerning the essentials of their recitations.³

² The meeting did not start on schedule.

³ That Chavez was unable to relate certain details—the van's speed and distance from him on first sighting, what Velasco was wearing, how long the van was parked before Chavez left the balcony, and how many were with him on the balcony—is not seen as affecting his overall persuasiveness. Nor did the changes in his testimony regarding when he first saw the van and his ability to see it from that time until it was parked amount to significant impeachment. Additionally, neither his credibility, nor that of Rodriguez, was appreciably impaired by their having left Respondent's payroll under unhappy circumstances. Finally, that Rodriguez believed Velasco to have been wearing dark glasses, when Chavez did not, is not necessarily a discrepancy inasmuch as they did not purport to have seen Velasco at the same time. And, even if they had, it would not have been so basic an inconsistency as to discredit one or both. The absence of a link, otherwise, between Velasco and a white van if anything strengthens their stories. Had they been fabricating, they surely would have placed him in a vehicle he had been known to drive on other occasions. Their identification of Velasco as the person in the van was most convincing.

More specifically, Chavez is credited that Velasco, in a white van, drove by the hotel in one direction and then in the other, and that he then parked across the street, facing the hotel; Rodriguez is credited that Velasco, in a white van, drove onto Telegraph from the parking area across the street from the hotel, and both are credited that these things happened about the time the union meeting was to begin in the hotel.

Law Velasco placed himself in a position to observe certain union activities of Respondent's employees; and, far from supplying an exonerating reason for so doing, he denied that he was there—which only underscores his illegitimacy of purpose. It is concluded, therefore, that Velasco's conduct constituted surveillance tending "to interfere with the free exercise of employee rights under the Act," thus violating Section 8(a)(1) as alleged. *Amason, Inc.*, 269 NLRB 750 fn 2 (1984). Also *Brigadier Industries*, 267 NLRB 559, 565 (1983); *Delta Faucet Co.*, 251 NLRB 394 (1980); *Rish Equipment Co.*, 169 NLRB 847 (1968)

C The Alleged Threat

1. Evidence

The aforementioned Alicia Rodriguez testified that, on May 22 "about 7:30, 7:25," in the evening, she "just happened to overhear a conversation" between Respondent's supervisor of quality and production, Victor Velasco, and one of its mechanics, Steve Raya. By her description, Velasco

was saying that all the people went to that meeting [at the Hyatt House], they wanted the Union because they were mostly the laziest people, that that is why they wanted the Union for, to back them up, and he kept saying that . . . the company could raise wages down [emphasis added] or take away the bonuses, if they wanted to and that even with union or no unions, they still could get the bonuses out.⁴

Rodriguez testified that Velasco further told Raya "how dumb that people was about going to that meeting"; and that the "people would make less money because they would have to pay union dues."

At length, Rodriguez went on, thinking that Velasco's remarks were for her "benefit," she

. . . went up to him and . . . told him that if he had anything to say to [her] . . . [to] just tell [her] straight because [she] was one of the persons who was at the meeting . . .

The exchange between Velasco and Raya was initiated by Velasco, according to Rodriguez, was in English, and lasted "about six, seven minutes." She was "about four or five feet away" from them, she testified, and heard no response from Raya.

Velasco denied having a conversation with Raya in late May concerning unions, and that he had any conver-

sation of that character with Rodriguez. More specifically, he denied telling Raya that Respondent "could take away bonuses [or] lower wages because the people were trying to join the Union,"⁵ or that "the people who attended the union meeting were dumb or lazy."

Raya did not testify.

2. Conclusions

Facts. Rodriguez, as earlier noted, displayed convincing demeanor under oath. By contrast, Victor Velasco, no less than Edward, was given to a curt and mechanistic testimonial style that was not impressive. Rodriguez consequently is credited that Velasco spoke to Raya, within her earshot, substantially as she recounted—to the effect that Respondent could decrease employee wages and take away their bonuses whether or not they had union representation.

Law. Velasco's remarks, while perhaps not construable as threatening to the employees should they seek or obtain representation, carried the unmistakable message that representation would be a futility as concerns wages and bonuses. It is concluded, on that ground, that they violated Section 8(a)(1). *E. I. DuPont*, 263 NLRB 159, 172 (1982); *Electric Hose Co.*, 262 NLRB 186, 215 (1982); *American Telecommunications Corp.*, 249 NLRB 1135, 1136 (1980).

CONCLUSIONS OF LAW

Respondent violated Section 8(a)(1) of the Act by Ed Velasco's surveillance of employee union activities at the Hyatt House on May 20, 1984; and by Victor Velasco's remarks to an employee, within earshot of another employee, on May 22, to the effect that union representation would be a futility as concerns wages and bonuses.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation⁶

ORDER

The Respondent, Western Yarns, Inc., City of Commerce, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Spying on union meetings or other union activities of its employees.

(b) Telling employees, directly or by implication, that it would be futile for them to obtain union representation.

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

⁵ As if arguing the implausibility of his having said such a thing, Velasco testified "That is not my competition [sic] I am just supervising quality and production"

⁶ All outstanding motions inconsistent with this recommended Order are denied. In the event no exceptions are filed as provided in 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.

⁴ Rodriguez, testifying in English, although apparently more adept in Spanish, later clarified that, by the phrase "raise wages down," she meant "decrease the wages."

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

(a) Post at its facility in City of Commerce, California, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional

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"

Director for Region 21, after being signed by an authorized representative of Respondent, shall be posted immediately upon receipt and be maintained for 60 consecutive days in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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