

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

HOWARD INDUSTRIES, INC.,
TRANSFORMER DIVISION

and

Case 15-CA-18637

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1317

Joseph A. Hoffman, Jr., and Shelly C. Skinner,
Esqs., for the General Counsel.
Elmer E. White III, Esq., for the Respondent.
Roger K. Doolittle, Esq., for the Charging Party.

SUPPLEMENTAL DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. This case was tried in Laurel, Mississippi, on July 6, 2009, pursuant to a consolidated complaint that issued on December 22, 2008. On July 28, 2009, I issued a bench decision in which I found, in Case 15-CA-18772, that the Respondent violated the Act by removing Union steward Gregory Jones from the plant. I found, in Case 15-CA-18637, that the Respondent did not violate the Act by threatening Union steward James Chancellor with discipline for using notes while representing an employee, and I recommended that the foregoing complaint allegation be dismissed.

The Board, in an unpublished Order dated October 22, 2009, in the absence of exceptions, affirmed my finding regarding the removal of Union steward Jones and severed Case 15-CA-18637 from Case 15-CA-18637. The Board remanded Case 15-CA-18637 to me directing that I reconsider the record evidence, make credibility determinations, and explain the basis for my findings. The Board expressed no opinion as the correctness of my initial disposition of the complaint allegation.

The alleged violation occurred in the course of an investigative interview with employee Dasmeon Caraway, who was employed as a painter by the Respondent. In my bench decision, I found it unnecessary to resolve the varying accounts of the interview insofar as I found that any threat to Chancellor "was not for using notes while representing ... [an] employee, ... [but for] showing notes to Mr. Caraway and having him read his response in the investigation." Consistent with the Board's Order, I shall reconsider the record evidence, make credibility determinations, and explain the basis for my findings.

In early April 2008, employee Caraway failed to use a "breakdown pad" which the Company uses to prevent denting transformer components. On April 7, 2008, he was directed to report to Human Resources. He requested the presence of a union steward. Steward James Chancellor came to accompany him. Prior to what both understood was to be an investigatory

interview, Chancellor spoke with Caraway. Although employee Caraway told Chancellor that he was unsure why he had been sent to Human Resources, the notes taken by Union steward Chancellor prior to the interview suggest that employee Caraway was aware that the upcoming interview related his failure to use a "breakdown pad." Chancellor, pursuant to his conversation with Caraway, wrote in his notebook, "I never was actually trained to do that job. I only filled in when he needed me. I'm actually a pay rate 17-painter." Whether the foregoing was true is immaterial. The complaint allegation relates to what occurred at the investigatory interview.

The investigatory interview was conducted by Human Resources Generalist Brant Stringer, an admitted supervisor. Stringer, Chancellor, Caraway, and Rufus McGill, Caraway's supervisor, were present. Stringer asked Caraway various questions including what he had been told regarding when breakdown pads should be used. Supervisor McGill did not testify.

Steward Chancellor recalls that, near the middle of the interview, he raised his notebook and tapped upon it, drawing the attention of employee Caraway to the written comment thereon relating to lack of training. He recalled that Caraway glanced at what was written and then asked Generalist Stringer how he could "receive a warning letter for a job that he was never trained on." According to Chancellor, Generalist Stringer told him to close the notebook or he would be suspended. Chancellor refused to close the notebook, stating that he needed the notebook "as a tool" to represent the employee. Upon Chancellor's refusal, Stringer repeated his directive that he close the notebook or he would be suspended. He then told Chancellor to place the notebook outside of the office, and Chancellor did so.

Employee Caraway only partially corroborated the testimony of Chancellor. He recalled that it was near the end of the meeting that Chancellor called his attention to the entry in the notebook relating to a lack of training. He admitted that he "started reading off of it." Stringer told Chancellor to "get the notebook out of there." Chancellor refused, stating "that was our defense," referring to the alleged lack of training. Stringer repeated his direction, this time telling Chancellor to "[g]et the notebook out of there before I suspend you." Chancellor did so.

Stringer testified that, near the end of the meeting, he observed Chancellor hold up his notebook in front of Caraway and that Caraway appeared to be reading what was written. Stringer recalled that he told Caraway "not to do that," because he wanted Caraway to respond "in his own words." Chancellor refused, stating that he would not remove the notebook "from how he was holding it in front of Mr. Caraway." Following Chancellor's refusal to remove the notebook from in front of Caraway, Stringer repeated his direction that Chancellor remove the notebook. He admitted stating to Chancellor that if he did not put the notebook away that he would be "refusing to follow instructions." At that point, Chancellor complied. Stringer denied making any threat relating to suspension or any other form of discipline.

Chancellor and Stringer agree that, immediately following the investigatory interview, they spoke together. Chancellor acknowledges that Stringer informed him that his using a notebook was not a problem, but that he "did not want the employees to use it as a script." Prior to April 7, 2008, Union steward Chancellor had carried and utilized his notebook during meetings at which he was representing employees, and he has continued to do so.

In assessing the foregoing evidence I find, consistent with the mutually corroborative testimony of Union steward Chancellor and Caraway, that Stringer did threaten Chancellor with suspension. As already noted, Supervisor McGill did not testify.

I do not credit Chancellor's testimony that Stringer, when first directing him to close the notebook, threatened suspension. There would have been no need for any threat of discipline if

Chancellor had complied with Stringer’s initial directive. Consistent with the testimony of Caraway, I find that, near the end of the interview, Stringer told Chancellor to “[g]et the notebook out of there before I suspend you” after Chancellor refused to close the notebook and had continued to hold the notebook so that Caraway could see it and read what was written.

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I further find, consistent Stringer’s observation of Caraway and the admission of Caraway, that Caraway was “reading off of” the notebook.

10 This was an investigatory interview, not a grievance meeting. Although a union steward may not be prohibited from speaking or presenting “extenuating factors” in an investigatory interview, an employer “is free to insist ... [upon] hearing the employee’s own account of the matter under investigation.” See *Postal Service*, 351 NLRB 1226, 1227 (2007).

15 Stringer did not request that Chancellor show him the notebook, thus he was unaware that Caraway’s recitation relating to lack of training was complete at the point that he directed Chancellor to close his notebook. Chancellor refused to close the notebook that he was using to prompt Caraway. He did not state that he needed to make, take, or personally use notes. He stated that he was using the notebook “as a tool” which, in the context of the interview, was consistent with Stringer’s conclusion that Chancellor was providing Caraway with a script.
20 Stringer observed that Caraway appeared to be reading, and Caraway admitted that he was reading. So far as Stringer knew, there was additional script to be read, and Chancellor did not state otherwise. Stringer sought to have Caraway respond in his own words rather than read from a script. The threat followed the refusal of Chancellor to close the notebook which was being used “as a tool” to provide Caraway with a script in the investigatory interview. It did not relate to Chancellor’s making or taking notes in his capacity as a Union steward. See *Postal Service*, 350 NLRB 441, 465 (2007). Chancellor used his notebook prior to April 7, 2008, and has continued to do so since that date.

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30 The complaint alleges that an employee was threatened with discipline “for using notes while representing other employees.” Chancellor was not prohibited from taking or making notes. The threat of suspension was made after Chancellor refused to close the notebook and continued to hold the notebook so that Caraway could see it and read his response.

35 The Respondent did not prohibit the Union from presenting whatever extenuating factors it desired to present on behalf of employee Caraway. Stringer sought to stop Caraway from reading. An employer may properly insist upon hearing “the employee’s own account of the matter under investigation.” *Postal Service*, 351 NLRB, supra at 1226. Immediately after the conclusion of the investigatory interview, Stringer assured Chancellor that his using a notebook was not a problem, but that he “did not want the employees to use it as a script.” Chancellor has continued to use his notebook in meetings in which he has represented employees.
40 Chancellor’s refusal to close the notebook while stating that he was using the notebook “as a tool” suggested that further scripted recitation by Caraway was to follow. The threat of discipline following the refusal of Chancellor to close the notebook that he was using to provide employee Caraway with a scripted response did not violate the Act.

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Having reconsidered the record evidence, made credibility determinations, and explained the basis for my findings, I reaffirm my initial decision that the Respondent did not violate the Act by threatening employees with discipline for using notes while representing other employees during investigatory interviews. Insofar as the foregoing allegation is the only allegation predicated upon the charge in Case 15–CA–18637, which as been severed, I shall recommend that the complaint be dismissed.

Conclusions of Law

The Respondent did not violate the National Labor Relations Act.

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

ORDER

10 The complaint is dismissed.

Dated, Washington, D.C., November 20, 2009.

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George Carson II
Administrative Law Judge

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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.