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**Goodyear Tire and Rubber Co. and Mitchell Johnson.** Case 26-CA-23778

August 3, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER  
AND PEARCE

On March 25, 2011, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Acting General Counsel filed an answering brief.

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

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 conclusions<sup>1</sup> and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Goodyear Tire and Rubber Co., Union City, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. August 3, 2011

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Wilma B. Liebman, Chairman

<sup>1</sup> In affirming the judge's finding that the Respondent violated the Act by prohibiting employees from wearing t-shirts in the plant that used the word "scab" in reference to retirees who returned to work for the Respondent as contract laborers, we agree with the judge that the Respondent failed to meet its burden of demonstrating that the ban was justified by special circumstances, including a divisive strike that occurred in 2006. We find *Reynolds Electrical Co.*, 292 NLRB 947 (1989), and *United Aircraft Corporation*, 134 NLRB 1632 (1961), two cases cited by the Respondent in which the Board found lawful a prohibition on the display of union insignia, to be distinguishable. In *Reynolds Electric* and *United Aircraft*, the employers banned union insignia as a "reasonable precautionary measure" 1 to 2 months after strikes that were marked by significant animosity and violence. The banned insignia bore messages that related directly to the strike. In this case, in contrast, the Respondent banned the t-shirts 4 years after the strike in question ended. Further, the levels of violence and animosity demonstrated in *Reynolds* and *United Aircraft* did not exist during the 2006 strike of the Respondent. Finally, the banned t-shirts in this case bore messages completely unrelated to the 2006 strike.

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Craig Becker, Member

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Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

*Christopher J. Roy, Esq.*, for the Acting General Counsel.<sup>1</sup>  
*John T. Billick, Esq.*, for the Respondent.<sup>2</sup>

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This is an interference with employee rights case I heard in Union City, Tennessee, on January 24, 2011. The case originates from a charge (and amended charge) filed by Mitchell Johnson, an Individual (Johnson or Charging Party) on July 12 and September 15, 2010 respectively, against Goodyear Tire & Rubber Co. (Company). The prosecution of this case was formalized on November 22, 2010, when the Regional Director for Region 26 of the National Labor Relations Board (Board), acting in the name of the Board's Acting General Counsel, issued a complaint and notice of hearing (complaint) against the Company.

It is specifically alleged Human Resources Specialist Mark Kitchen, in the plant, in early June 2010, told an employee he was prohibited from wearing a shirt that stated: "Union 'til I retire, then scab in!" It is further alleged Supervisor Louis Davis, in the plant, in early June 2010, threatened an employee with unspecified reprisals if the employee wore a shirt that stated: "When I retire I will not scab. I will go fishing." It is alleged the Company's actions violate Section 8(a)(1) of the National Labor Relations Act, as amended, (Act).

The Company, in a timely filed answer to the complaint, denied having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified and I rely on those observations in making credibility determinations. I have studied the whole record,<sup>3</sup> the post trial briefs, and the authorities cited. Based on the detailed findings and analysis below, I conclude and find the Company violated the Act substantially as alleged in the complaint.

<sup>1</sup> I shall refer to counsel for the Acting General Counsel as counsel for the Government and to the Acting General Counsel as the Government.

<sup>2</sup> I shall refer to counsel for the Respondent as counsel for the Company and I shall refer to the Respondent as the Company.

<sup>3</sup> Counsel for the Acting General Counsel's unopposed Motion to Correct Hearing Transcript is granted. The corrections are as set forth in the Motion which has been made a part of the record as Judge's Exhibit 1.

## FINDINGS OF FACT

## I. JURISDICTION, LABOR ORGANIZATION STATUS, AND SUPERVISORY/AGENCY STATUS

The Company is an Ohio Corporation, with a facility located in Union City, Tennessee, where it is, and has been, engaged in manufacturing tires. During the 12-month period ending October 31, 2010, a representative period, the Company purchased and received at its Union City, Tennessee facility goods valued in excess of \$50,000 directly from points outside the State of Tennessee. During that same time period, the Company sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of Tennessee. The evidence establishes, the parties admit and I find, the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties admit, and I find, United Steelworkers, Local 878L is, and has been, a labor organization within the meaning of Section 2(5) of the Act.

It is admitted Plant Manager Perry Tennison, Human Resources Manager Tom Gossett, Human Resources Specialist Mark Kitchen and Supervisor Louis Davis are supervisors and agents of the Company within the meaning of Section 2(11) and (13) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

## 1. Background

The Company opened its Union City, Tennessee facility in 1968 and has 47 acres under roof. At various times the Company has employed approximately 1750 to 2000 employees and employs approximately 500 to 600 on its second shift. The plant is divided into various departments, the largest of which is the tire room employing approximately 150 to 200 employees. The tire room, as its name implies, is where the tires are made. There are various other departments such as the shears, bias cutters, shipping, receiving and, some what pertinent to this case, the banbury department. Raw components are assembled and processed into flat rubber in the banbury department then utilized throughout the plant in the tire building process. There are approximately 20 to 25 employees on second shift in the banbury department.

The Company and Union have a long bargaining relationship beginning in 1968. The parties' most recent collective-bargaining agreement expires in 2013. According to HR Manager Gossett, the bargaining relationship is currently the best it has been in the past 40 years. The Company and Union have partnered on various projects that are beneficial to the plant. The parties partnered on safety, profit sharing, production standards and obtaining government money for training and other purposes.

A work stoppage occurred during contract negotiations in 2006. The employees went on strike starting in October and ending December 31, 2006. The Company continued to maintain production during the strike and a number of employees crossed the picket line. Ten to 12 employees who crossed the picket line are still working at the facility.

According to HR Manager Gossett, the Company has always encountered high absenteeism during the summer months. The Company, as a result thereof, asked some experienced retirees to return to work for a limited time in 2008. Gossett explained this was one way for the Company to offset the increased absenteeism and make production quotas on weekends. The Company hired 15 to 17 experienced retirees through Labor Finders of Jackson, a supplier of temporary labor to companies. The Company advised Local Union President Harry Alberg of the need for the retirees. The Union took no adverse action nor did the Union file a grievance regarding the Company bringing in retirees. Retired employee Norman Boucher, for example, worked 5 weekends building tires in March/April 2008.

Pertinent to this case the Company again utilized experienced retirees to build tires in 2010 during June/July and October, November, and December. The Company discussed with Local Union President Ricky Waggoner, its needs regarding retirees for tire building starting in May 2010. The Company followed up its dissuasions with Waggoner in letters to him on May 20, July 8, and August 5, 2010. The retirees brought back in 2010 came as employees of the temporary employee service company Hamilton-Ryker. According to HR Manager Gossett, retirees were needed in the summer of 2010 because the Company was transitioning from one building equipment to another and in the transition the Company could not train new employees quickly enough to allow it to maintain daily production quotas. The Company utilized approximately 17 to 20 retirees in 2010, the last of which left at the end of December. For example, retiree Norman Boucher worked at the Company as an employee of Hamilton-Ryker during June and parts of July 2010 building tires, whereas, retiree Richard Gephart worked building tires in June and July as well as October, November, and December 2010. No retirees have worked in the plant since the beginning of 2011.

The Company has had a zero tolerance policy since the facility opened in 1968. The policy provides for "a work environment that is professional, respectful and free from discrimination, harassment or violence."

## 2. Government's evidence

The Union held a meeting at its hall of the second shift employees in March 2010. Local Union President Ricky Waggoner informed members the Company was talking with the Union about bringing in retirees to build tires. According, Danny Foy, who attended the meeting, "a lot of [the] membership voiced our opinion against it." Waggoner said retirees would be brought back through a labor contracting service and he did not know their rates of pay because he only negotiated wage rates for members but, he figured the retirees rates would be around \$24 per hour. Foy was frustrated because, "union brothers that were new hires . . . was making \$13 an hour. And I did not feel it was right to bring people back in as contract labor making more money than my union brothers paying dues."

Foy attended the Union's regular meeting in April for second shift employees at the union hall. Local Union President Waggoner told the members the Company was still planning to bring in retirees to build tires. Foy asked why retirees, and why

the Company did not hire new employees instead. Waggoner explained 568 employees had accepted the April 2009 plant reduction buyout and the Company needed to meet production in 2010 and was going to utilize retirees because there was not enough time to train new tire builders and still meet production quotas. Foy made a motion the Local Union send a letter to any returning retirees that the Local Union disapproved of their returning as contract labor.

Foy met with employees Mitchell Johnson and Donnie Revel near the end of May 2010 to talk about retired employees returning to work as employees of a contract labor employer. The three discussed their dissatisfaction with retirees, "coming back in and working as a scab for contract labor." Foy told Johnson and Revel he was going to have a shirt made reflecting his dissatisfaction and frustration with the retirees' returning to work. Johnson likewise decided he would have a shirt made and they discussed what should be on the shirts. Foy said his shirt would say, "When I retire, I will not scab, I'll go fishing." The three ended their meeting.

Foy had a shirt made near the end of May 2010. Printing on the shirt reads; "When I Retire I will Not \_\_\_ \_\_\_ \_\_\_ I'll Go Fishing." Foy, in large hand written lettering, filled in the blank spaces with all capitalized letters "SCAB."

Foy wore his printed shirt at work on June 1, 2010. During a company provided hamburger dinner in the tire room on that date, Foy met, for the first time, new Plant Manager Perry Tennison. Tennison said nothing to Foy about his shirt. However, about 45 minutes later, Tire Room Supervisor Louis Davis summoned Foy to his office. Foy asked Davis if he would need a union steward and Davis said he would not, that "we're going to talk man to man." Foy was okay with that. According to Foy, Davis asked him to turn around so he could see the shirt and asked, "Do you think anyone might get offended by that on your shirt?" Foy said he did not but Davis said people get offended at lots of things. Foy then asked Davis if he thought retirees might take offense but Davis did not respond. Foy explained he did not see how the retirees could get offended because they did not work for the Company but worked for "Hamilton-Ryker Scab Company." Davis told Foy not to wear the shirt back into the plant for his own good. Foy responded, he did not see anything wrong with his shirt, that he was a union man who was frustrated about what was happening. Foy thanked Supervisor Davis for their "man-to-man" talk and told him if he decided to wear the shirt back into the plant he would cross that bridge when he got to it.

A short time later that same day, Foy told coworker Mitchell Johnson and union steward Todd McCartney about his meeting with Davis. Foy has not worn the shirt in the plant since Davis warned him because he "felt like [he] would be fired for insubordination." Foy never spoke to any of the retirees about the shirt; never made threatening comments to them; was never involved in any fights or altercations with them; never made any threatening gestures toward them and there was no interruption in production in his department the day he wore the shirt.

Second shift shop steward McCartney testified Business Center Manager Tommy Greer, the highest ranking management official in the tire room, asked him if he had seen Foy's

shirt. McCartney told Greer he had the day before. According to McCartney, Greer told him, "That shirt is not allowed in here. You need to tell him not to wear it; that we have a zero tolerance in this plant. And you need to have a talk to Mr. Foy." McCartney told Foy about the conversation telling him he had talked with the Union and "we didn't feel like there was a problem with the shirt but, he needed to know all the facts and make his own decision."

Sixteen year banbury department employee Mitchell Johnson attended the regular union meeting at the hall in May 2010, at which Local Union President Waggoner spoke about the Company bringing retired employees back to build tires. Johnson said he and other coworkers were frustrated because new hire union employees at the Company were paid \$13 per hour, whereas, retirees being brought back through nonunion, Hamilton-Ryker, were being paid \$24 per hour.

About a week after the union meeting, Johnson spoke with Foy and Donnie Revel near the banbury department. They discussed having t-shirts made to wear in the plant. Johnson had a shirt designed with the word "scab" on the front with a crossed out circle on top of it and on the back; "UNION TIL I RETIRE, THEN SCAB IN." Johnson wore his shirt the second week in June for a full work shift. No supervisor or manager spoke with Johnson that day about his shirt; however, Johnson's immediate supervisor, Gideon Fichu, observed Johnson wearing the shirt. The following day union steward Jeff Williams told Johnson that HR Specialist Mark Kitchen had spoken with him about Johnson's shirt and told him Johnson "didn't need to wear the shirt back in again that it was a violation of the zero tolerance policy."

Upon learning of Kitchen's comments, Johnson telephoned him the next day and asked about his conversation with union steward Williams regarding the shirt. Kitchen told Johnson he had relayed the position of the HR department to Williams. Johnson told Kitchen, "I think my shirt's fine." Kitchen responded; "It violates our zero tolerance policy. You're creating a hostile work environment." Johnson told Kitchen he did not bring the retirees back into the plant, the Company did, and it was the Company that was creating the hostile work environment. Johnson then told HR Specialist Kitchen, "Mark, if you tell me not to wear that shirt, I will call the National Labor Relations Board." Kitchen said that was fine if that was what Johnson needed to do. Johnson then asked, "So you're telling me not to wear this shirt back in the plant again?" Johnson testified Kitchen responded, "That's exactly what I'm saying. Don't wear it back in the plant again" and ended their conversation.

After Johnson wore his shirt in the plant several coworkers asked if he would have them one made. Johnson had 60 additional shirts made which he sold to coworkers. When his coworkers asked Johnson if they should wear their shirts into the plant, Johnson told them he had been told not to but added, if they did, it would be at their own risk. Six or seven coworkers wore their shirts at the plant on various occasions up to and including the Friday night before the trial. Johnson wore his shirt at work on two or three more occasions without any one from management mentioning it to him. Retirees were working at the plant on the days Johnson wore his shirt. Johnson was

never disciplined for wearing the shirt. Johnson said there were no fights, altercations or threatening gestures made at work nor was production interfered with as a result of his wearing his shirt. Johnson wore the shirt because he wanted his fellow union members to see his disgust with what was going on and for the retirees to see he did not approve of the situation. Johnson said he wanted the retirees to be offended by what they were doing.

Employees have displayed or worn, at the plant, various union related stickers and clothing for years and specifically since 2006. Foy displayed a sticker, "USW Local 878L I Would Never SCAB" on his truck parked in the company parking lot. The same type sticker has been displayed inside the plant on hard hats, tool boxes, forklifts, lunch boxes and the bicycles maintenance employees ride around the plant. According to Foy, no one from management has spoken with employees about the stickers. Foy has worn a shirt with the Union's logo on the sleeve in the plant for years which also reads, "I would never SCAB U.S.W.A. Local 878L." Foy has been observed by management wearing the shirt. Foy said several hundred other employees have worn this same type shirt for years and as recent as the week before the trial. No company official has, to Foy's knowledge, ever spoken with any of the employees about wearing the shirts. Johnson testified Supervisor Howard Nelson asked employees on more than one occasion, if they wanted "to work with that scab today", referring to an employee who had crossed the picket line during the 2006 strike.

### 3. Company's evidence

HR Specialist Kitchen notified HR Manager Gossett in June 2010 that employee Johnson had worn a shirt at the plant that made reference to the returning retirees as scabs. Gossett also learned Johnson was selling the shirts to coworkers and planned to have a number of the employees bring them into the plant. Gossett concluded Johnson's, as well as Foy's, printed shirts violated the Company's zero tolerance policy which provides for a workplace free from harassment, discrimination, violence and where employees are to be treated in a professional manner. Gossett said one of the returning retirees, Tommy Stewart, even complained about Johnson's shirt.

HR Manager Gossett concluded Johnson's and Foy's shirts also violated the Company's dress code specifically the portion that prohibits "clothing with inappropriate or offensive slogans, lettering, or symbols." According to Gossett, Johnson, Foy and all employees are trained annually on the Company's zero tolerance and other policies which help to protect the Company's good name and image. Additionally, Gossett stated that if little things at the Company are ignored they tend to escalate and could result in disciplinary problems. Gossett specifically viewed Johnson's and Foy's shirts as attempts at getting the retirees to leave the plant. Gossett explained that the difference between the messages on Johnson's and Foy's shirts and those of other union related messages worn on clothing or displayed in the plant was that the two messages, at issue were directed at specific individuals namely the retirees whereas the other messages were not. Gossett acknowledged employees wore caps, shirts, and jackets at the plant with union logos. He noted that during negotiations for the most recent collective-bargaining

agreement employees wore shirts with the picture of a cobra with the message, "If provoked, I will strike" and shirts which said, "I would never scab" on them.

Gossett said neither Johnson nor Foy was ever disciplined for wearing the shirts in question at the plant. Gossett did not consider the messages on the shirts at issue to be obscene or vulgar and the shirts did not direct employees to be violent or hostile toward other employees, nor did the shirts disparage the Company's products or call for a work stoppage.

HR Manager Gossett said that during the strike at the Company in 2006 temporary workers were hired from a temporary staffing agency to supplement salaried employees and those who crossed the picket line to maintain production. During the 2006 strike there was an altercation involving a delivery driver for a supplier and a striker that resulted in the striker being sent to the hospital with some pretty severe injuries. Some incidents occurred after the 2006 strike ended. On February 12, 2007, James Pope reported to his supervisor, Vince Youngquest, that he had observed graffiti on one of the bathroom walls making reference to "Bonnie and Cowboy" who had crossed the picket line during the strike. The graffiti referred to the two as scabs and included a racial slur. HR Manager Gossett said "Bonnie" was Bonnie Moss and "Cowboy" was Greg Phelps one of which was African American. A Company report of the incident indicates that "[w]ithin an hour, the graffiti . . . [was] cleaned up [and] . . . gone." Other incidents included rolls of toilet paper placed in toilets causing overflows. David Weber reported in March 2007, his tool box stolen and a personal fan "torn up." Weber also complained that the employee who worked at his same workstation but on the earlier shift left the machine in disarray. Weber's written complaint reflects the employee on the earlier shift had admitted, thought not to Weber, he was leaving the area messed up because Weber, admittedly, was a scab who crossed the picket line during the 2006 strike. In the report Weber was asked what could be done about his machine being left in disarray. He responded, "Nothing. I just came up here because I figured it would aggravate him to be investigated." HR Manager Gossett said employee Johnson Motley complained after the strike, he was "having trouble getting the items he needed brought to him in the plant . . . [and] . . . had some issues with his vehicle." Motley's written report dated May 17, 2007, indicates a "chemical" of some kind was put in his vehicle's gas tank. Motley crossed the picket line during the 2006 strike. Gossett testified an employee reported he had lug nuts loosened on his vehicle which he believed happened at work. Randy Garner filed a written report with the Company on May 22, 2007, in which he indicated he had 5 lug nuts on his pickup truck loose enough that he could tighten them by hand and he believed the lug nuts may have been loosened at the plant. Garner and his wife both worked during the 2006 strike.

Retired tire builder Norman Boucher testified he returned to the Company as a retiree for a period in the spring of 2008, and again in June 2010. Boucher recalled that during his 2008 return to work Mitchell Johnson told him he was disappointed in his being there. Boucher specifically recalled Johnson telling him "tire builder scabs were coming in there and I shouldn't be there." Boucher saw but did not speak with Johnson when he

returned as a retiree in 2010. Boucher saw Johnson wearing the shirt at the plant that made reference to retirees being scabs. Boucher did not, however, complain to the Company about Johnson wearing the shirt.

Retired Employee Thomas Stewart returned as an employee of Hamilton-Ryker in June 2010 and observed Mitchell Johnson in the tire room wearing a shirt that said something about retirees and scabs. Stewart claimed Johnson had no business in the tire room but acknowledged Johnson said nothing and his presence did not stop Stewart from doing his work. Stewart further acknowledged Johnson made no threatening gestures toward him or the other retirees. Stewart has seen shirts in the plant stating, "I would never scab."

Retired employee Richard Gephart built tires at the Company as a temporary employee of Hamilton-Ryker in June and July and from mid-October to December 2010. Gephart observed Mitchell Johnson in the plant a few times in the summer of 2010 and on an occasion saw Johnson wearing a shirt with "retirees and scabs" on it and other words too small for Gephart to read at the distance he was from Johnson. Gephart said the words retiree and scab made him feel "weary" because he did not consider himself a scab. Gephart paid union dues even when he worked as a retiree. Gephart said Johnson never made any threatening gestures toward him.

### III. CREDIBILITY COMMENTS, ANALYSIS AND CONCLUSIONS

It does not appear there are any controlling credibility conflicts in the testimony outlined and relied on. However, it is helpful to specifically address what might appear to be a credibility conflict involving portions of the testimony given by employee Foy and Supervisor Davis. Foy testified Supervisor Davis told him not to wear his, "When I retire I will not SCAB, I'll go Fishing" shirt back into the plant for his own good. Supervisor Davis acknowledged, "I told Foy that the T-shirt he was wearing was maybe offensive to some people and for him not to wear it back in the plant again". However, Davis immediately, thereafter, testified he never in any way threatened Foy about wearing the shirt. To the extent it is necessary; I do not credit Davis' denial of a threat. I find Davis denial to be nothing more than his view on the meaning of the words he spoke to Foy as credibly testified to by Foy.

I turn to the validity of the Company's prohibition of the wearing of the two shirts at issue. It is established the Company prohibited employee Johnson from wearing a shirt stating, "Union 'til I retire, then scab in!" and prohibited employee Foy from wearing a shirt stating, "When I retire I will not scab I will go fishing." I find the Company, through Supervisor Davis, threatened Foy with unspecified reprisals for wearing his shirt when he instructed Foy not to wear the shirt in the plant again for his own good. Davis' statement makes it clear there will be adverse consequences, if Foy wears the shirt again in the plant. I find the content of the messages reflected on the two shirts worn by Johnson and Foy to be protected by the Act. The Board, with court approval, has long held that in the absence of special circumstances employees have a Section 7 right under the Act to wear insignia at work referring to unions or other matters pertaining to working conditions for the purpose of mutual aid or protection. *Midstate Telephone Corp.*

262 NLRB 1291, 1292 (1982), enf. denied 706 F.2d 401 (2d Cir. 1983); *Boise Cascade Corp.*, 300 NLRB 80, 82 (1990). Johnson and Foy were, by the messages on their shirts, attempting to protest a tacit agreement between the Company and the Union, that the Company could bring back experienced retired employees on a short time basis to fulfill a labor shortage. They were also protesting that the retired employees were being brought back through Hamilton-Ryker, a nonunion supplier of temporary labor, which labor (the retirees) would be performing bargaining unit work in the plant as nonunion employees while being paid substantially more per hour than the newly hired but untrained unit employees. It is reasonable to conclude and I do, that Johnson and Foy were acting together to mobilize solidarity in an effort to discourage the retired employees from participating in the nonunion retiree program and for support in favor of the lower paid untrained unit employees. Foy for example testified, "I did not feel it was right to bring people back in as contract labor making more money than my union brothers paying dues." The mere fact both messages utilized the word "scab" does not remove the Act's protection from Johnson and Foy in wearing the shirts. The Act's protection of employee rights extends to use of the word "scab" a common and well-known reference to a person or firm who is nonunion or works during a strike. *Boise Cascade*, supra, 300 NLRB at 82; *Letter Carriers v. Austin*, 418 U.S. 264, 282-287 (1974); *Linn v. Plant Guard Workers*, 383 U.S. 53, 60-61 (1966). In *Linn* the Supreme Court noted the Board has allowed wide latitude to statements or expressions by the parties in labor controversies and has concluded that scab is an epithet that is commonplace and is not so indefensible as to remove the protection of the Act from the use of it. For Foy and Johnson to associate the words, "scab" and "retire" on their shirts does not somehow denigrate retirees but merely focuses the point of their message. I note in this regard there is no evidence or contention that Foy and/or Johnson engaged in any threats, violence, physical gestures or contact in the process of wearing their shirts displaying the word "scab" and associating it with the returning retirees nor did it cause any disruptions of production.

I turn next to the Company's special circumstance contentions. An employer may prohibit the wearing of union insignia or insignia regarding working conditions by its employees if, and only if, the employer can demonstrate substantial evidence of special circumstances that would outweigh the employees' rights protected by Section 7 of the Act. Special circumstances can include violence, interference with training or production, or threats thereof, the instigation of disciplinary misconduct, disparaging the employer's products and/or services, interference with safety or unreasonable interferences with the image the employer desires for its employees to project its customers or suppliers. See e.g. *Escanaba Paper Co.* 314 NLRB 732 at 732-735 (1994). The employer bears the burden of proving special circumstances. *W. San Diego* 348 NLRB 372, 373 (2006). The special circumstance exception is; however, narrow and "a rule that curtails an employee's right to wear union insignia at work is presumptively invalid." *E & L Transport Co.* 331 NLRB 630 fn.3 (2000). General, speculative, isolated or conclusively evidence of potential disruption to an em-

ployer's operations does not amount to special circumstances. *Boise Cascade Corp.*, 300 NLRB at 82.

Norman Boucher, who had worked for the Company for 40 years before retiring, returned to the Company for work 5 weekends in the spring of 2008 as a retiree working for a non-union temporary labor supplier. Boucher testified Mitchell Johnson approached him in 2008 and told him he was "disappointed" in Boucher's being there and said "tire builder scabs were coming in there" and told Boucher he should not be there. Boucher was upset Johnson referred to him as a scab because he did not consider himself to be one because he did not cross the 2006 picket line at the Company. Boucher again returned to work in June and a portion of July 2010, working as an employee of a nonunion temporary labor provider. Boucher saw but never spoke with Mitchell Johnson during work in 2010. Boucher observed Johnson, on an occasion, "strutting down the aisle" wearing a shirt making reference to retirees as scabs. Johnson's wearing the shirt "upset" Boucher because he did not consider himself a scab. Boucher, however, never complained to anyone about Johnson's shirt.

I accept Boucher's description of his encounters with Johnson but conclude such does not constitute special circumstance that would justify the Company prohibiting Johnson from wearing his shirt in question in the plant in 2010. Johnson did nothing more in 2008 than attempt to persuade Boucher not to work nonunion in the plant as a tire builder. Johnson did not threaten Boucher in any manner. Nor does Johnson's 2008 comments to Boucher establish or demonstrate lingering animosity by him in 2010. In June and July 2010, Johnson never even spoke to Boucher nor made any threats toward Boucher or the other retirees. Boucher, though being "upset" made no complaints to management about Johnson's shirt. Any contention by the Company that Johnson's actions in 2008 and 2010 continue to bring up the 2006 strike, or unfairly single out retirees as scabs, and thus disrupt production or other problems is simply too speculative to justify the Company's prohibiting Johnson from wearing the shirt at issue. Clearly Johnson's shirt was not addressing the strike some 4 years earlier but was protesting the use of nonunion laborers to build tires in the unionized plant. Stated differently, the "scab" reference on Johnson's shirt, and for that matter Foy's shirt, was part of larger messages containing the word "retire" and clearly referred to the nonunion retirees working in the plant. It is highly unlikely that other employees understood the shirts to reference the 2006 strike or any misconduct associated with that strike.

While there was some misconduct during and following the 2006 strike, such is separated from the events by as much as 4 years. One incident in the 2006 strike sent a striker to the hospital, however, it did not involve employees crossing the picket line but rather was an exchange between a driver for a supplier and a striking employee. Certain other incidents were reported to management beginning in 2007 and until May of that year. On February 12, 2007, graffiti was observed on a bathroom wall that made reference to two employees who had crossed the picket line as "scabs;" however, the graffiti was cleared away within an hour and no one was disciplined as a result of the incident; nor was there any evidence presented as to who may have been responsible for the graffiti. There were, at about this

same time, incidents where toilet paper was placed in toilets causing overflows but again no showing as to who was responsible. Employee Weber complained in March 2007 his tool box was stolen and a personal fan destroyed, however, no showing was established as to who was responsible. Weber also complained his work area was left in disarray by an employee on an earlier shift and he had heard it was because he was a scab. In May 2007, employee Motley complained some type of chemical had been placed in the gas tank of his private vehicle. Employee Garner, at about the same time, reported lug nuts had been loosened on his private vehicle. Garner and his wife both crossed the picket line during the 2006 strike. However, no one was ever disciplined for any of these incidents. Even assuming the incidents were strike related, there is no showing the animosity that may have persisted after the strike against those who crossed the picket line, continued to the time Johnson and Foy wore the shirts in issue some 4 years later in 2010. The Company could not point to any specific problems related to discipline or production caused by Johnson and Foy wearing the shirts in issue. Johnson and Foy had no contact with the public or customers of the Company. Employees had worn shirts with union insignia including the word "scab" for years without anyone being disciplined for doing so. The Company's perception that Johnson intended to disrupt plant operations by persuading retirees to quit their jobs is merely speculative and does not establish a true threat to disrupt production. The fact the Company had a policy against harassment that might create a hostile work environment is no defense. Where as here, there were no threats, the Company cannot enforce its broad restrictions to compel compliance with a zero tolerance and/or dress policy which interferes with the Section 7 rights of its employees. *Escanaba Paper Co.* 314 NLRB 732, 734 (1994). In sum, I find the Company has not shown special circumstances which would support a ban of the shirts in question with messages protected by the Act.

I find prohibiting Johnson and Foy from wearing the shirts at issue and additionally by threatening Foy with unspecified reprisals, the Company violated Section 8(a)(1) of the Act.

#### CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. By telling an employee he was prohibited from wearing a shirt stating: "Union 'til I retire, then scab in!" and from prohibiting an employee from wearing and threatening the employee with unspecified reprisals if the employee wore a shirt that stated: "When I retire I will not scab. I will go fishing" the Company engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violates Section 8(a)(1) of the Act.

#### REMEDY

Because I have found the Company has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative actions designed to effectuate the policies of the Act.

## ORDER

The Company, Goodyear Tire & Rubber Co., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting its employees from wearing shirts reading, "Union 'til I retire, then scab in!"

(b) Prohibiting its employees from wearing and threatening its employees with unspecified reprisals if they wear shirts reading "When I retire I will not scab. I will go fishing."

(c) Prohibiting employees from wearing articles of clothing with messages pertaining to the exercise of activities protected under Section 7 of the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to 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 after service by the Region, post at its Union City, Tennessee facility copies of the notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 26 after being signed by the Company's authorized representative, shall be posted by the Company and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site or other electronic means, if the Company customarily communicates with its employees by such means. Reasonable steps shall be taken by the Company 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 Company has gone out of business or closed the facility involved in the proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former em-

<sup>4</sup> 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."

ployees employed by the Company at any time since June 1, 2010.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 26 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Company has taken to comply.

Dated Washington, D.C. March 25, 2011

## 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 tell you that you are prohibited from wearing shirts at work that state "Union 'til I retire, then scab in!"

WE WILL NOT tell you that you are prohibited from wearing nor will we threaten you with unspecified reprisals if you wear shirts at work that state "When I retire I will not scab. I will go fishing."

WE WILL NOT interfere with restrain, or coerce our employees by prohibiting them from wearing articles of clothing with messages pertaining to the exercise of activities protected under Section 7 of the Act.

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.

GOODYEAR TIRE & RUBBER CO.