

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

VOITH INDUSTRIAL SERVICES, INC.

Cases 9-CA-075496

9-CA-078747

9-CA-082437

and

GENERAL DRIVERS, WAREHOUSEMEN &
HELPERS, LOCAL UNION NO. 89, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, AFL-CIO

and

UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, LOCAL UNION NO. 862, AFL-CIO

Cases 9-CB-075505

9-CB-082805

and

GENERAL DRIVERS, WAREHOUSEMEN &
HELPERS, LOCAL UNION NO. 89, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

COUNSEL FOR THE ACTING GENERAL COUNSEL'S
BRIEF IN SUPPORT OF LIMITED CROSS EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S DECISION

- A. The Administrative Law Judge erred in concluding that Voith adequately remedied an 8(a)(1) violation of threatening to discharge employees if they did not wear a safety vest bearing the UAW logo. (Exception Number 1).**

It is unlawful for an employer to threaten employees for engaging in protected Section 7 activity such as refraining from showing allegiance to a labor union. E.g. *Bellsouth*

Telecommunications, Inc., 346 NLRB 637 (2006). The ALJ credited the testimony of Brenda

Helm, Kelly Stein, Brenda Swift and Patti Murphy in concluding that Regional Manager Brett Griffin made coercive statements on May 31 at an employee meeting when he told employees that they would be required to wear vests bearing the UAW logo. The ALJ also relied on credibility determinations in concluding that later that day, Griffin told employees that they would not be allowed to work if they refused to wear the UAW vest. The ALJ erred, however, in concluding that Voith remedied this coercive conduct pursuant to *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). (ALJ Decision p. 8, ll 16-32). The fact that Voith subsequently reversed itself and told employees that they did not have to wear the UAW vest is insufficient to cure the initial unfair labor practice under the Board's standard. In *Passavant*, the Board set forth its criteria for curing past unfair labor practices. The Board found that repudiation must be (1) timely, (2) unambiguous, (3) specific to the coercive conduct, and (4) free from other illegal conduct. In the instant case, Voith did not cure its violation of Section 8(a)(1) by simply issuing a new policy making the UAW vests optional. First, Voith did not admit any wrongdoing, a key requirement of *Passavant*. *Direct TV, LLC*, 359 NLRB No. 54 (January 25, 2013). Additionally, in order to cure its violation, Voith also would have been obligated to clarify for its employees that they have a Section 7 right to refrain from engaging in union activity. Finally, the revocation of the unlawful rule in this case was not free from other illegal conduct. Among other violations found by the ALJ, Voith continued to illegally withhold recognition from the Teamsters 100 Union and continued to unlawfully recognize the UAW as its employees' collective bargaining representative. Although employees were allowed to wear shirts which showed their Teamster affiliation, unlike with the UAW vests, they were not *required* to do so under threat of discipline.

B. The Administrative Law Judge erred in failing to order Voith to reimburse the Teamsters for dues that would have been remitted to them had Voith recognized the Teamsters as the bargaining representative of its employees, as it was legally required to do. (ALJ Decision, pp. 29-30, ll 11-49). The Administrative Law Judge also erred in failing to order Voith to reimburse the difference in taxes owed upon receipt of a lump-sum payment and to submit documentation to the Social Security Administration so that back pay would be allocated to appropriate periods. (Exception Numbers 2 and 3).

Although the ALJ ordered Voith to rescind all unilateral changes and make employees whole, he did not order Voith to reimburse the Teamsters for dues that it would have withheld on behalf of employees, absent Voith's unlawful refusal to recognize and bargain with the Teamsters. This remedy is appropriate and necessary here to fully rectify Voith's unfair labor practices. See *Anthony's Painting, LLC*, 2011 WL 9363836 (NLRB August 25, 2011). Additionally, the ALJ declined to rule on whether Respondent should be ordered to reimburse the difference in taxes owed upon receipt of a lump-sum payment and to submit documentation to the Social Security Administration so that back pay would be allocated to appropriate periods. The Counsel for the Acting General Counsel renews his request for this remedy pursuant to the Board's recent decision in *Latino Express, Inc.* 359 NLRB No. 44 (2012).

C. The Administrative Law Judge erred by failing to present a consistent scope of remedy with regard to the refusal to hire and consider for hire across his findings, conclusions, and remedy. (Exception Numbers 4-8) (ALJ Decision p. 22, ll 14-19)

The ALJ found and concluded that Voith violated Section 8(a)(3) of the Act by implementing a plan to hire employees with the intention of excluding the hiring of employees who were former employees of Auto Handling because those employees engaged in concerted activities or in order to avoid an obligation to recognize and bargain with the Teamsters. Elsewhere in his decision the ALJ concluded that Voith's scheme to avoid hiring the Teamsters represented employees of the predecessor extended to the similarly situated Teamsters 89 affiliated applicants who were not also employed by the predecessor. Therefore, it is apparent

that the ALJ inadvertently left out of his findings a statement that Voith unlawfully avoided hiring two groups, the 166 employees on the Auto Handling seniority list (G.C. Ex. 6), which includes those employees listed on Attachment A to the Complaint, and the Teamsters affiliated applicants who were not employed by the predecessor.

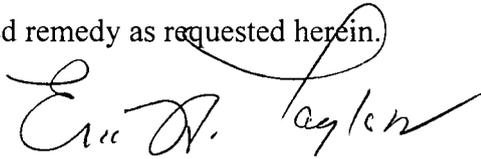
With regard to the ALJ's characterization of a plan to hire "84" employees, the record evidence shows, that while Voith bid the so-called permanent vehicle processing work with 84 employees, and the Complaint also characterizes the plan as such, it is clear that Voith also sought to avoid hiring the predecessor's employees and other Teamsters affiliated applicants for batch and hold work, work that the record discloses Voith hired 300 or more employees to perform.

The substance of the remedial scope cross-exceptions revolve around the Acting General Counsel's contention that the record discloses that Voith refused to hire and to consider for hire nearly all of 267 Teamsters affiliated employees who applied for vehicle processing positions. This aggregate consists of about 85 employees on Exhibit A to the Complaint, including one employee added at hearing, the remaining 81 applicants on the Auto Handling seniority list without separate applications, for a total of 166 predecessor employees, and about 101 additional Teamsters affiliated applicants who were not also employees of Auto Handling. It is submitted that the ALJ fully intended to provide a hire and consider for hire, as well as a make whole, remedy for all of the 267 applicants identified to the record who were not hired by Voith. As noted, only a small number were ultimately hired by Voith. To the extent that those applicants were belatedly hired, it is requested that they be made whole for that delay in addition to any other make-whole remedy to which they are entitled. The ALJ's recommended Notice reflects two separate groups of discriminatees who are to be offered immediate employment by Voith;

those listed on Attachment A to the Complaint and those submitted to Voith by Teamsters 89.

This issue was fully and fairly litigated at hearing. Evidence was adduced, including testimony, a massive exhibit of applications, and the Auto Handling seniority list, that show the scope of the remedy was fully presented and considered favorably by the ALJ and that Voith was fully apprised of the class of potential discriminatees. (G.C. Ex. 6, G.C. Ex. 10)

Accordingly, it is respectfully requested that the Board correct the ALJ's errors by clarifying his findings, conclusions, recommended remedy as requested herein.



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