JD(ATL)–33–13
Grand Rapids, MI

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

DOVER ENERGY, INC.,
BLACKMER DIVISION

and **CASE 07-CA-094695**

THOMAS KAANTA, an Individual

Steven E. Carlson, Esq., for the General Counsel.
William H. Fallon, Esq. & Patrick M. Edsenga, Esq.
(Miller Johnson) , of Grand Rapids, Michigan,
for the Respondent.
Mr. Thomas Kaanta, for the Charging Party.

BENCH DECISION AND CERTIFICATION

Statement of the Case

KELTNER W. LOCKE, Administrative Law Judge. I heard this case on December 2, 2013, in Grand Rapids, Michigan. After the parties rested, I heard oral argument, and on December 5, 2013, issued a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, setting forth findings of fact and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript this decision.[1] The Conclusions of Law and Order provisions are set forth below.

Conclusions of Law

1. The Respondent, Dover Energy, Inc., Blackmer Division, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent did not violate the Act in an manner alleged in the complaint.

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[1] The bench decision appears in uncorrected form at page 168 through 181 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this Certification.

Further, a typographical error in par. 7(b) of the complaint and notice of hearing is corrected by changing the date August 10, 2013, to August 10, 2012.

On the findings of fact and conclusions of law herein, and on the entire record in this case, I issue the following recommended [2]

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ORDER

The complaint is dismissed.

Dated Washington, D.C. December 24, 2013

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Keltner W. Locke
15 **Administrative Law Judge**

[2] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.

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Bench Decision

Keltner W. Locke, Administrative Law Judge: Without authorization from higher Union officials, a shop steward twice requested that the Respondent furnish information unrelated to the performance of his duties as steward. These requests burdened Respondent, potentially intruded upon the privacy of bargaining unit members, and potentially interfered with negotiations between management and the Union for a new collective-bargaining agreement. I find that Respondent did not violate the Act by warning the steward that similar requests in the future would result in discipline, up to and including discharge.

Procedural History

This case began on December 11, 2002, when the Charging Party, Thomas Kaanta, an individual, filed an unfair labor practice charge against the Respondent, Dover Energy, Inc., Blackmer Division. Region 7 of the National Labor Relations Board docketed this charge as Case 07-CA-094695. The Charging Party amended this charge on September 11, 2013.

On September 13, 2013, the Regional Director for Region 7, acting for the Board's General Counsel, issued a Complaint and Notice of Hearing. Respondent filed a timely Answer.

On December 2, 2013, a hearing opened before me in Grand Rapids, Michigan. Both the General Counsel and the Respondent presented evidence and then rested. On December 3, 2013, counsel for the parties presented oral argument. Today, December 5, 2013, I am issuing this bench decision pursuant to Sections 102.35(10) and 102.45 of the Board's Rules and Regulations.

Admitted Allegations

Based on the admissions in Respondent's Answer, I make the following findings: The charge and amended charge were filed and served as alleged in Complaint paragraphs 1(a) and 1(b).

At all times material to this case, Respondent has been a corporation engaged in the manufacture and nonretail sale of pumps, and has maintained an office and place of business in Grand Rapids, Michigan. Respondent meets both the statutory and discretionary standards for the exercise of the Board's jurisdiction, and at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

At all material times, John Kaminski has held the position of Respondent's Director of Human Resources, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act, and an agent of Respondent within the meaning of Section 2(13) of the Act.

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At all material times the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), and its Local Union No. 828, have been labor organizations within the meaning of Section 2(5) of the Act. For brevity, I will refer to Local Union No. 828 as "the Union."

Complaint paragraph 7(a) alleges that on June 12, 2012, the Charging Party, in his capacity as steward for the Union, requested information from Respondent. In its Answer, the Respondent admits that the Charging Party made an information request on that date, but denies that he did so in his capacity as Union steward. Based on Respondent's admission, I find that on June 12, 2012, the Charging Party did request that the Respondent furnish certain information. Whether or not the Charging Party was acting in his capacity as steward will be addressed later in this decision.

Allegations Not Admitted

To the extent that conflicts arise, I credit the cogent, succinct testimony of Human Resources Director John Kaminski. Based upon my observations of the witnesses as they testified, I conclude that Kaminski's account is accurate and I rely on it in summarizing the facts. In general, though, the record is remarkably free of credibility conflicts.

My decision to resolve conflicts by crediting Kaminski does not imply that I considered any of the other witnesses to be less than candid. To the contrary, I believe that all witnesses strived to be accurate to the best of their recollections. However, at times, Charging Party Kaanta's answers did not seem entirely responsive, and provided a somewhat sketchy impression of his motivation and reasoning.

At all material times, Kaanta was a second shift shop steward, but not on the Union's bargaining committee. Although documents such as the Union's by-laws and the collective-bargaining agreement did not include any limiting definition of the steward's responsibilities, in practice, Kaanta represented fellow employees in grievance proceedings but did not have any duties relating to the negotiations which were underway, in the summer of 2012, for a new collective-bargaining agreement. The Union president, Dennis Raymond, and a bargaining committee, represented the bargaining unit in those negotiations.

Kaanta believed that Union President Raymond also was part-owner of a machine shop performed work for Respondent. However, Kaanta's testimony does not include an explanation for this belief. Kaanta also believed that the asserted relationship between Respondent and Union President Raymond compromised Raymond's status as a negotiator for the employees.

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On June 28, 2012, Kaanta gave the Respondent's human resources director, John Kaminski, an information request handwritten on a grievance form. It stated as follows:

Information Request

> I Tom Kaanta steward of Local 828 request any and all financial information (names, dates, amounts, etc.) pertaining to any and all financial relationships outside the collective bargaining agreement (employee/subcontractors, employee liaisons to subcontractors, employee/company investigators, monies, benefits, gifts, side deals, etc.) between Blackmer PS6 (Power) and Local 828 members, reps, pensioners, spouses, and immediate children. I request this information for the purpose of future bargaining.

Human Resources Director Kaminski accepted the paper from Kaanta and said he would take a look at it, but did not otherwise discuss it. Kaminski then contacted the Union president, Dennis Raymond, to find out if the Union had authorized the request, and learned that the Union had not. According to Kaminski, whom I credit, Raymond told Kaminski not to provide the information. Kaminski informed the Charging Party by June 19, 2012 letter which stated, in its entirety, as follows:

> Per your request for information for various financial information and financial relationships is denied. Any requests must be processed through the normal bargaining committee process for bargaining and may or may not be disclosed as the company determines. You are not part of the negotiation committee and your request is outside your scope.

Kaminski credibly testified that he and Kaanta did not discuss this matter further. Kaanta did not file a grievance over the denial of the information request. However, during the summer, as the negotiations progressed, he became concerned with another matter.

Kaanta believed that the Respondent was making changes which increased the compensation of certain employees by placing them in higher classifications, to influence their votes on contract ratification. His testimony does not explain the basis for this suspicion.

At the bargaining table, by August, the prospect of concluding an agreement had increased the intensity of the process. The negotiators were focused on the details of the contractual language, matters which required their exquisite attention. Then, on August 10, 2012, Kaanta sent Kaminski another information request. It stated, in its entirety, as follows:

> To: John Kaminski
>
> Union officer requests photocopy of all employee paychecks for the pay period ending Dec. 1, 2007 and pay period ending August 5, 2012.

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> Also, I request a spreadsheet printout representing all employee total hours and pay for each pay period, starting with August 12, 2012, and every pay period thereafter, until the contract is ratified.
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> I believe the company is manipulating wage rates for the purpose of influencing the union vote! I request the information for labor board investigation.

Kaminski contacted the Union president. Crediting Kaminski's testimony, I find that Raymond said that Kaanta was not authorized to see all of the employees' paycheck records and that Kaminski should not honor the request. On August 23, 2012, Kaminski met with Kaanta and gave him a document titled "Verbal Warning." It stated as follows:

> This is to serve as a verbal warning for continued frivolous requests for information (photocopies of all employee paychecks for a period ending December 1, 2007 and pay period August 5, 2012 and spreadsheets for total hours and pay for each pay period starting with August 12, 2012, and every pay period thereafter, until the contract is ratified) and interfering with the operation of the business. You are not on the Bargaining Committee and fail to work within the parameters of such to bring matters to the Bargaining Committee. We are not individually bargaining with you or any other individual.
>
> Similar requests such as this will result in further discipline up to and including discharge.

The Complaint alleges that Respondent violated Section 8(a)(1) of the Act by threatening an employee with discipline for engaging in Union and protected, concerted activities, and Section 8(a)(3) and 8(a)(1) by issuing the disciplinary warning.

Analysis

Section 7 of the National Labor Relations Act gives employees the following rights: To form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; to refrain from any or all such activities. 29 U.S.C. Section 157. In essence, Section 7 protects three kinds of activity: union activity, other concerted activity for "mutual aid or protection," and refraining from such activity.

The latter right, to refrain, obviously may be exercised by one person alone, but the other two arise when employees act in concert, either in the context of a union or otherwise. To establish a violation here, the General Counsel must, as part of the government's proof, establish that Kaanta's activity in question either was union activity or other protected concerted activity.

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The Charging Party is both an employee of Respondent and a Union steward. However, the title of "steward" does not make Kaanta's every action a union activity. Obviously, if a steward should make a mistake in the performance of his duty as an employee, his separate role as steward would not transform the work-related task into union activity.

Actions which a steward took in the course of his union duties would, of course, constitute union activity which, with some exceptions, would enjoy the protection of the Act. However, the present record does not establish that either of Kaanta's information requests constituted union activity, and that is true even though Kaanta wrote the first of those requests on a union grievance form.

The record clearly establishes that the Union never authorized Kaanta to file information requests for any purpose except in connection with grievance processing. Kaanta filed the first information request for "the purposes of future bargaining," but the Union had not empowered him either to engage in bargaining or to make information requests related to bargaining.

Moreover, Kaanta did not have the apparent authority to act on behalf of the Union for such purposes. Before Respondent's human resources director issued the "warning," he had learned from the Union's president that Kaanta's requests had not been authorized.

Kaanta concluded the second request with the words, "I request the information for labor board investigation." In passing, it may be noted that an employer has no duty to furnish information which a union requests for this purpose. However, the determinative factors are that the Union did not authorize Kaanta to request information for this purpose and Kaminski, who had checked with the Union president before issuing the warning, knew that Kaanta was acting without authorization.

The General Counsel cites *Nationway Transport Service*, 327 NLRB 1033 (1999) for the proposition that an employee's activity within the union, opposing the union's leadership, also constitutes union activity protected by the Act. The present record does not establish that either the Union or its president prompted the Respondent to take disciplinary action against Kaanta and, based on the credited evidence, I conclude that they did not.

Although Kaanta's information requests arguably could be viewed as dissident intraunion activity, warranting the Act's protection, the record does not establish that Respondent had any intention of intervening in an internal Union squabble. Likewise, the evidence does not establish any intent to retaliate against or punish Kaanta because he opposed the Union's leadership.

Rather, management was simply reacting to the burden of an information request which it regarded as "frivolous," a waste of time. Indeed, the August 23, 2012 "verbal warning" began with the words "This is to serve as a verbal warning for continued frivolous requests. . ." It ended with the caution that "similar requests" would lead to disciplinary action.

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The evidence clearly establishes, and I find, that Respondent was not acting from any motivation either to encourage or discourage union membership. Rather, complying with Kaanta's unauthorized information requests would have required Respondent to expend considerable time and effort. It simply did not want to be burdened by what it considered to be nonsense.

In sum, I conclude both that Respondent's decision to issue the written warning was not motivated by any intent to encourage or discourage union activities - such an intent was not a motivating factor at all, let alone a substantial one - and that filing the information requests did not constitute "union activity."

The evidence also fails to establish that it was concerted activity. The record falls short of establishing that other employees had asked Kaanta to make the information requests or that employees even had discussed with Kaanta any concerns reflected in the information requests. Thus, I conclude that the government has not met its burden of proving that Kaanta had engaged in protected, concerted activities.

Board precedent, such as *DaimlerChrysler Corp.*, 331 NLRB 1324 (2000), cited by the General Counsel, has long held that a "broad, discovery-type standard applies in determining relevance of information requests" and that an employer must furnish requested information that is of even probable or potential relevance to a union's duties. However, as the General Counsel notes, the present complaint does not allege a refusal to provide information, or any other violation of Section 8(a)(5) of the Act. No issue here concerns the Respondent's duty to provide information.

Here, I have concluded that Kaanta was not engaged in union activities because he made the information requests without authorization. Regardless of whether the requested information was relevant, either to Kaanta's purposes or to the Union' statutory functions, that factor would not change the unauthorized nature of the request.

The General Counsel also cited *Nu-Car Carriers, Inc.*, 88 NLRB 75, 76 (1950), in which the Board stated that "interference with intraunion disputes, under certain circumstances, may be violative of the Act to the same extent as coercion exerted in employer-union or interunion conflicts."

The *Nu-Car* holding must be viewed in light of the Supreme Court's decision, a quarter century later, in *Emporium-Capwell v. Western Addition Community Organization*, 420 U.S. 50 (1975). Therein, the Court stated, "Central to the policy of fostering collective bargaining, where the employees elect that course, is the principle of majority rule." 420 U.S. at 62, citing *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

For all these reasons, I conclude that the government has failed to prove, by a preponderance of the evidence, that Respondent violated the Act. Therefore, I will recommend that the Board dismiss the complaint.

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When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, and Order. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

Throughout the hearing, all counsel have acted with great professionalism and civility, which I truly appreciate. The hearing is closed.