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

LOCAL 252 TRANSPORT WORKERS UNION, AFL-CIO (TRANSDEV d/b/a NASSAU INTERCOUNTY EXPRESS)

And **Cases 29-CB-139434**
29-CB-145498

ANGELA PACORA, an individual

Kimberly Waters Esq., for the General Counsel.
Edward J. Groarke Esq. and Alicia M. Shotwell Esq., counsel for the Respondent.

Decision

Statement of the Case

Raymond P. Green, Administrative Law Judge. This case was heard by me in Brooklyn, New York, on March 5, 2015, and April 29, 2015. The charge and the amended charge in Case 29-CA-138693 were filed on October 9 and October 30, 2014. [1] After the hearing in that case closed, the Regional Director issued another complaint in 29-CA-145498 on March 27, 2015. This was based on a charge that had been filed on January 30, 2015. Both complaints were thereafter consolidated and I reopened the hearing on April 29.

The first complaint made the following allegations:

1. That on or about October 8, 2014, Pacora engaged in activity in support of a rival labor organization (National Employees Union), by campaigning for and soliciting signatures for a representation petition.

2. That on or about October 8, 2014, the Employer by Dennis Farrell and Local 252 by Patrick Piegari, had Pacora removed by the Nassau County police from the Mitchell Field Depot.

3. That on or about October 23, 2014, Local 252 by its shop steward, Susan Sblendorio, threatened employees with termination for supporting the National Employees Union.

The second complaint alleged that on or about January 4, 2015, the Respondent, by its president, Debra Hagan, "made statements to and about the Charging Party which restrained and coerced employees' exercise of their Section 7 rights."

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[1] The original consolidated complaint named Local 252 Transport Workers Union, AFL-CIO and Transdev Services, Inc. d/b/a Nassau Intercounty Express as Respondents. Case 29-CA-138693 was thereafter severed from Case 29-CA-138693 on March 2, 2015, because the Employer entered into a settlement agreement.

On the entire record in this case, including my observation of the demeanor of the witnesses and after reviewing the briefs filed, I hereby make the following

Findings of Fact

I. Jurisdiction

The parties agree and I find that Transdev is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also is agreed and I find that the Union is a labor organization as defined in the Act and is subject to the jurisdiction of the Board.

II. The Alleged Unfair Labor Practices

For many years, certain employees of Transdev have been represented by Local 252 Transport Workers Union, AFL-CIO. Currently there is a collective-bargaining agreement covering these employees between Local 252 and the employer.

For a time, some of the employees have expressed dissatisfaction with Local 252 over a variety of issues including the system by which school bus runs are chosen. In or about September 2014, two employees, Nicholas Viola and Angela Pacora decided that it would be a good idea to form a new and independent union. Previously, both had run for and lost elections for offices in Local 252. They named the new union, the National Employees Union or NEU.

On or about September 15, 2014, Viola created a petition for employees to sign and he and Pacora started soliciting signatures on September 17. In this regard, they tried to do so in a secretive manner so that neither management nor Local 252 representatives would learn of their efforts.

Notwithstanding the efforts to keep their organizing efforts a secret, the evidence shows that at least the shop steward at the Mitchell Field facility was aware that there was activity by these two employees to organize a rival union.

On Wednesday October 8, 2014, Pacora went to the Company's Mitchell Field facility in order to attend a mandatory training session that was being run on that and subsequent days. She arrived too late for the class and while waiting for the next class to begin, she spoke to another driver and handed him a paper to support the NEU. While speaking to that employee, Patrick Piegari, the Local 252 shop steward approached, looked over the shoulder of the employee holding the paper, and asked what it was for. He stated; "I hope this isn't anti-union propaganda." Pacora then took back the paper from the employee and told Piegari that it wasn't for him and that he should mind his own business. She also told Piegari to "shut the fuck up." After some more give and take, Piegari told Pacora that she should leave the building and she refused. He then reported the incident to the Company's terminal manager who also asked Pacora to leave the building while suggesting that she come back at a later date for the training. When she refused, the terminal manager contacted the local police who arrived and escorted Pacora out of the building.

On October 17, 2014, the NEU filed a petition with the NLRB in Case 29-CA-139017 and this was supported by a petition signed by about 300 employees. Pursuant to a Decision and direction of election, an election was conducted on December 31 which was won by the

incumbent union, Local 252. Local 252 was thereafter certified as the bargaining representative on January 9, 2015.

The General Counsel presented a witness, Milaui Bonila, who testified to an incident that allegedly took place on October 23, 2014, at the Employer's Rockville Center facility. Her testimony was that she had a conversation with Local 252 assistant shop steward, Susan Sblendorio, who told her that if the NEU won the election, employees would lose their jobs. She testified that this was said in the presence of the other shop steward, Gene Fremont, plus two employees whose names she didn't recall. Sblendorio testified that no such conversation ever occurred and neither side called any of the other persons who allegedly were present. Therefore, this issue boils down to a faceoff between Bonila and Sblendorio.

Local 252 presented the testimony of its president, Debra Hagan, who stated that prior to the election, she instructed shop stewards that they should tell employees that it was their choice as to which union they wanted and that Local 252 would not take any adverse action against employees who supported the NEU. She also testified that she made similar statements in response to employee questions when they were presented to her privately or at union meetings held before the election.

Because the election was scheduled to be held on December 30, 2014, the Company did not furnish to Local 252, documentation regarding routes and seniority until December 31. The Company advised Local 252 that it was not furnishing this information because it did not know which union would win the election.

This information is used, in accordance with the collective-bargaining agreement, to participate in a system whereby employees are given the opportunity to bid for routes based on their seniority. The effective date for this to be accomplished is January 18 so that Nassau County has drivers ready for the start of the school semester. The January selection process also involved vacation picks. And because there were a number of new shop stewards, this whole process was compressed in time and became more complicated than in past years.

In any event, because the Company delayed furnishing the necessary information until Wednesday, December 31, Local 252 decided to have the bidding process take place on Saturday and Sunday, January 3 and 4. This was done in order to have sufficient time to take care of the bidding process and to correct any mistakes in routes or other matters that might require changes before January 18, 2015.

On Saturday, January 3, Pacora showed up and started complaining to vice president, Thomas Callagy, that the Union should not have scheduled the bidding for the weekend. She also complained that the bidding process had been delayed by the Respondent in order to gain some advantage in the election. Callagy told her that this was not true.

Pacora was scheduled to make her bid at around 2 or 3 p.m. on Sunday afternoon. The testimony was that when Pacora arrived at around 1 p.m., she started to complain to other employees about the fact that the bidding was taking place on the weekend. At one point, Pacora engaged in a conversation with union President Hagan in the presence of other employees. Although there is not that much difference as to the substance of this conversation, I am going to credit Hagan's version which I believe is more complete and accurate. Basically, I conclude that Pacora complained to Hagan about the bidding having been delayed and being held on the weekend. Hagan explained that the reason for the delay was because the Company had not furnished the required information until after the election. Pacora then

insisted that the Union could have posted the routes and seniority information without the Company and she accused Hagan of delaying the process in order to give the incumbent union an advantage in the election. Hagan said that the Union had incurred $30,000 in legal fees because of the election and Pacora replied that she would cause Local 252 to spend a lot more than $30,000. There was also a discussion about the fact that the Union had intervened on Pacora's behalf when she had been previously fired and where the Union managed to get her job back with a "last chance" agreement. [2]

Subsequent to these events, the Company, in March 2015, sought to discharge Pacora because of a uniform violation. In that matter, the Union processed her grievance with the result that she was not discharged.

III. **Analysis**

The transaction that led to Pacora's eviction from the building on October 8, 2014, involved her activity in talking to another employee about unionization. She therefore was involved in union activity at the time. When the shop steward happened to observe Pacora giving a paper to another employee he asked what it was and stated that he hoped it wasn't anti-union propaganda. This triggered an adverse reaction by Pacora. She took the paper back, told the steward to mind his own business and told him to "shut the fuck up." This conduct, in my opinion was unprovoked by the steward's comments and was sufficiently offensive so as to justify him telling her to leave. Thereafter, it was the Company's management that decided to call the police to have Pacora evicted from the building. There is no contention or evidence that union representatives demanded or requested that Pacora be discharged, disciplined, or otherwise affected in her job because of her behavior.

Based on the facts described above, I do not think that the Union violated Section 8(b)(1)(A) of the Act when the shop steward asked about the paper that Pacora was distributing and I do not think that it violated the Act, simply by telling her to leave and then reporting the incident to management. It was after all, the Company and not the Union that contacted the local police.

Regarding the incident that allegedly took place on October 23, it seems to me that on balance, the testimony of Sblendorio was more credible than the testimony of Bonila. This is one of those cases where the competing testimony is in equipoise and as such, it is the General Counsel's burden to convince me that the testimony of her witness is more credible than the testimony of the Respondent's witness. As it is my opinion, that this burden has not been met, I shall dismiss this allegation of the complaint.

Finally, regarding the alleged statements made by Hagan to Pacora on January 4, 2015, I conclude that Hagan's testimony is more complete and more credible than the testimony of Pacora. As such, I do not think that any of the statements made by Hagan can be construed as threats or otherwise constituting restraint or coercion as defined in Section 8(b)(1)(A) of the Act.

Conclusion

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[2] Pacora apparently, did not report an incident on her bus and refused to sign the appropriate incident report. As to Pacora's conversations with Hagan on January 4, she apparently recorded those conversations on her phone. However, she could not produce them because she stated that they were accidently deleted.

For the reasons stated above, I conclude that the complaint should be dismissed.

Dated: Washington, D.C. July 24, 2015

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Raymond P. Green
Administrative Law Judge