

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

**ENJO CONTRACTING CO., INC.
D/b/a ENJO ARCHITECTURAL MILLWORK**

and

**Case Nos. 29-CA-25899
29-RC-10093**

**NEW YORK DISTRICT COUNCIL OF CARPENTERS,
UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA**

*James P. Kearns, Esq., Brooklyn, NY,
for the General Counsel.*

*Denise Forte, Esq. (Trivella, Forte & Smith, LLP),
Valhalla, NY, for the Respondent.*

Walter Clayton, Jr., Organizer, for the Union.

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge: Based on a charge filed on October 15, 2003, and an amended charge filed on December 22, 2003 in Case No. 29-CA-25899, by New York District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America (Union), a complaint and an amended complaint were issued against Enjo Contracting Co., Inc. d/b/a Enjo Architectural Millwork (Respondent) on January 7, 2004, and March 18, 2004, respectively.

The complaint, as amended, alleges essentially that on about August 13 and September 15, 2003, the Respondent, by William Colandrea created the impression among its employees that their union activities were under surveillance by the Respondent, and on about August 13, 2003, interrogated employees about their Union activities. The Respondent's answer denied the material allegations of the complaint.

On November 6, 2003, the Regional Director issued a Report on Objections and Notice of Hearing in Case No. 29-RC-10093.¹ On January 13, 2004, he issued a Supplemental Report on Objections, Order Consolidating Cases and Notice of Hearing which consolidated for hearing the unfair labor practice case and the objections case, and on March 18, 2004, the Director

¹ The petition was filed by the Union on September 5, 2003. A Stipulated Election Agreement was executed by the parties and approved by the Regional Director on September 15. An election was held on October 17 in a unit consisting of all full-time and regular part-time cabinet makers, machinemen, assemblers, finishers, truck drivers and sander employees employed by the Employer at its facility located at 16 Park Avenue, Staten Island, New York, but excluding all other employees, guards and supervisors as defined in Section 2(11) of the Act. The election resulted in a vote of 2 ballots for the Union, 13 ballots against the Union, and 2 challenged ballots. The challenged ballots are not at issue here.

issued a Second Supplemental Report on Objections and Notice of Hearing. On April 22, 2004, a consolidated hearing was held before me in Brooklyn, New York.

5 An objections hearing was directed on Objection Number 1, which alleges that at some time before the election the Respondent told its employees that (1) if the Union won the election, the company would shut down and all of the workers would be unemployed and (2) it was considering laying off employees because of the upcoming election. It was also directed that the objections hearing consider the issue of whether the Employer created the impression of surveillance of its employees' Union activities on September 15, 2003.

10 On the entire record, including my observation of the demeanor of the witnesses, and after considering the closing argument made by the General Counsel and the brief filed by the Respondent, I make the following:

15 **Findings of Fact**

I. Jurisdiction

20 The Respondent, a domestic corporation, having its principal office and place of business located at 16 Park Avenue, Staten Island, New York, has been engaged in the manufacture of architectural woodwork. During the past year, the Respondent purchased and received at its facility, goods valued in excess of \$50,000 directly from points located outside New York State. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Facts

30 **1. Background**

35 As set forth above, the Union filed its petition on September 5, 2003 and the election was held on October 17. At the time of the election about 15 employees worked for the Respondent, which is owned by Joe Autovino. The main supervisor is William (Billy) Colandrea.

40 Paul Gallart was employed from August, 1999 to October, 2003 as a sander and finisher. Gallart was discharged in October, 2003, and a charge alleging that the discharge was unlawful was withdrawn.

45 Gallart first met Walter Clayton, the Union's organizer, in Spring, 2001, when Clayton was employed by the Respondent. Clayton was discharged in May, 2001. Thereafter, Clayton visited the delicatessen near the shop once per month for three years, and spoke with the employees at those times. Gallart stated that he wanted the Union to represent the workers, and he always spoke to Clayton when he saw him. In fact, he alone among the workers was not afraid to speak to Clayton openly. Whenever Clayton came to the shop, the other employees were frightened to speak to Clayton, and would "run and hide." Gallart noted that everyone knew that he spoke to Clayton and they would jokingly comment, "oh, Walter's around again." Colandrea conceded seeing Clayton having lunch with Gallart and other workers.

50 The General Counsel requested that I take official notice of a prior case involving the same parties, *Enjo Architectural Millwork*, 340 NLRB No. 162 (2003), in which the Board found

that Clayton was unlawfully discharged, and that other unfair labor practices were committed by the Respondent. I have taken official notice of that decision, but I have not given the findings concerning the Respondent's prior misconduct dispositive weight regarding any of the issues before me, particularly in view of the evidence presented here. *Bronx Metal Polishing Co.*, 276 NLRB 299, 300 fn. 5 (1985).

2. The August, 2003 Statements

a. The Alleged Interrogation and Impression of Surveillance

Gallart stated that in late August, 2003, Clayton arranged a meeting at the Union hall for 5:00 p.m. following the end of work. About six employees attended, including Gallart. The following day, Gallart was asked questions about the meeting and he explained what had occurred. At the end of the lunch period that day, Gallart and co-workers Jamal, Tony, Ricky and someone nicknamed "Horse", stood outside the facility waiting to return to work. They spoke for about five minutes about topics unrelated to the Union. Supervisor Colandrea returned from his lunch break and stopped to speak to the workers. They also spoke about topics not related to the Union. At the conclusion of their discussion, and immediately before the workers entered the building, Colandrea asked "what happened at the Union meeting yesterday?" No one responded and the men entered the building to resume work.

Jamal, Tony, Ricky and Horse did not testify. Colandrea denied making the statement attributed to him. He stated that he was once told by employees, perhaps in August, that a Union meeting was held three to four days before. Colandrea did not reply to that information, and did not ask any employee about that meeting.

b. The Alleged Threats

Gallart testified that in September, 2003, after the petition was filed, Colandrea told the workers at an employee meeting, that if the Union organized the shop, "things would get slow here" and he would "probably have to lay people off," adding that the Respondent did not want to lay off employees, and wanted to keep everyone at work, so "that's why we don't want the union." Gallart stated that all employees, including the three who testified here, were present at that meeting.

It should be noted that Gallart's pre-trial affidavit stated that, in the spring of 2001, Colandrea told the workers that the Union would cause the Respondent to lose work. However, at hearing Gallart added that notwithstanding that his affidavit limited those statements to the spring of 2001, Colandrea made such comments before and after the petition was filed. This variation between Gallart's affidavit and hearing testimony does not inspire confidence in his credibility.

There was no evidence in support of Objection No. 1 that if the Union won the election, the company would shut down and all of the workers would be unemployed.

Employees Richard Candelario, Clifford Ramjit, and Krishen Sundarsingh were called by the Respondent. They testified consistently that during the critical period, from August to October, 2003, they were not told by Colandrea that if the Union won the election there would be layoffs or that the company would close, or that it would lose work. Colandrea denied threatening the employees as testified by Gallart, adding that he did not have the authority to say that the Respondent would close its business.

3. The September, 2003 Statement

The Alleged Impression of Surveillance

5 Gallart testified that he was informed by Clayton that a petition had been filed and an election had been scheduled. Gallart stated that in September, 2003, just before the election, Colandrea called a meeting of all the employees. He spoke about the incentive program which began in July. At the end of the meeting, Colandrea distributed a memo to all the employees, including Gallart.

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The memo urged the employees to ask a Union official to “put its money where its mouth is”, by guaranteeing, in writing, that it would live up to its “crazy promises.” The guarantees that the Union was asked to sign included the following: (a) if the Union wins the election, the employees would automatically receive higher wages and would not lose anything (b) in the event of a strike, employees would not be required to picket, and if required, the Union would pay the employees’ regular wages, and the employees would be reinstated at the conclusion of the strike, even if permanently replaced (c) union dues would not be increased, and Union regulations concerning fines and assessments would not apply to the employees, and no one would be discharged if he fails to pay dues and (d) Union shop stewards would not receive special treatment.

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Gallart stated that when Colandrea gave him the document, he said “now you can give this to Walter. Tell Walter to put his money where his mouth is.” At first, Gallart said that Colandrea said nothing else, but after being shown his pre-trial affidavit, he added that Colandrea said at that time, that Gallart was “always helping out Walter” and that he had been giving Walter these letters. In fact, Gallart had given Clayton 10 pieces of literature that had been given to him by Colandrea. All 15 employees laughed at Colandrea’s remark to Gallart.

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Employees Candelario, Ramjit, and Sundarsingh testified consistently that they were given the memo on a Friday payday in August, 2003, as they were leaving the plant, and not at a meeting in September.² They did not hear Colandrea say anything to Gallart when he was given the document.

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Colandrea testified that he gave the document to the employees on a payday in August, and further denied the statement attributed to him regarding Gallart and Clayton. He denied distributing any literature after the Union filed its petition in September.

Analysis and Discussion

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The Alleged Impressions of Surveillance and Interrogation

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Gallart’s testimony about Colandrea’s alleged question, “what happened at the Union meeting yesterday”, was not corroborated by any of the three employees who allegedly overheard it, but did not testify. That statement is alleged as both an impression of surveillance and interrogation.

In view of the lack of corroboration of Gallart’s testimony, and Colandrea’s clear denial of it, I cannot find that Colandrea asked Gallart what happened at the Union meeting yesterday. I

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² Sundarsingh could not specifically recall when the document was distributed or if Gallart was present when it was given out.

accordingly find that the General Counsel has not proven by a preponderance of the evidence, that the statement was made.

5 “Interrogation is not a per se violation of Section 8(a)(1) of the Act. In determining whether an interrogation is unlawful, the Board examines whether, under all the circumstances, the questioning reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.” *Rossmore House*, 269 NLRB 1176, 1177-1178 (1984). The Board examines factors such as whether the interrogated employee is an open and active union supporter, the background of the interrogation, the nature of the information sought, the identity of the questioner, and the place and method of interrogation.” *Demco New York Corp.*, 337 NLRB 850 (2002). Under these standards, and even assuming that the statement was made, it was not coercive. The comment was not made in a formal, office setting. It was made in passing in a parking lot as the workers were on their way into work, and as to which apparently no response was sought and none was given. It was made to Gallart, an open and active union supporter. Although there was no evidence that the three other employees were similarly open union activists, the manner in which the comment was made, and the comment itself, support a finding that it was not coercive.

20 The other statement alleged to constitute an impression of surveillance involved Colandrea’s allegedly telling Gallart to give the “Union guaranty” document to Clayton, remarking that Gallart was “always helping out Walter.” I cannot find that Colandrea made this statement to Gallart. All the employees were allegedly present, yet none corroborated Gallart’s testimony. The three employees who did testify, denied hearing the remarks. In addition, Colandrea credibly denied making the statement.

25 In addition, Gallart first testified that Clayton did not say anything more than that he should give it to Walter, and that he should tell Walter to put his money where his mouth is. Gallart only testified to the second part of the statement, in which Colandrea allegedly remarked that Gallart was always helping Walter, after being shown his pre-trial affidavit.

30 In addition, since Gallart’s union sympathies were a matter of common knowledge, and he was aware that his views were known to others, it cannot be inferred that he assumed from Colandrea’s statement that his union activities were under surveillance. *Schrementi Bros., Inc.*, 179 NLRB 853 (1969). Colandrea’s remark expressed what had been well known – that Gallart was a union supporter. *Curwood, Inc.*, 339 NLRB No. 148, slip op. at 11 (2003). *Kathleen’s Bakeshop, LLC*, 337 NLRB 1081 (2002); *General Fabrications Corp.*, 328 NLRB 1114, 1120 (1999); *Reno Hilton*, 319 NLRB 1154, 1170 (1995); *Fiber Glass Systems*, 278 NLRB 1255 (1986).

40 **The Alleged Threats**

45 I cannot credit Gallart’s testimony that Colandrea threatened employees that if the Union came in, the Respondent would lose work, work would slow down, and employees would probably be laid off. First, Gallart’s credibility is harmed by his inconsistent statements that these remarks were made in the spring of 2001 and in September, 2003. Although it is possible that the statements occurred at both times, his affidavit did not state that they were made beyond the spring of 2001. In addition, no corroboration was offered to prove those statements.

50 Furthermore, three employees who were present when the threats were allegedly made all denied that they were made. Colandrea, too, denied making the threats. In these circumstances, I cannot find that the preponderance of the evidence supports a finding that these threats were made.

III. The Representation Case

5 As set forth above, no credible evidence has been offered to prove that the Respondent engaged in objectionable conduct. First, there was no evidence at all that the Respondent told its employees that if the Union won the election, the company would shut down and all of the workers would be unemployed.

10 In addition, I can find no credible evidence that employees were told that if the Union organized the shop, the Respondent would lose work, work would slow down and employees would be laid off. Further, no credible evidence was presented that the Employer created the impression of surveillance of its employees' union activities.

15 Accordingly, I shall recommend that Objection Number 1 filed in Case No. 29-RC-10093 be overruled, and that a certification of results be issued.

Conclusions of Law

20 1. The Respondent, Enjo Contracting Co., Inc. d/b/a Enjo Architectural Millwork, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The New York District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America is a labor organization within the meaning of Section 2(5) of the Act.

25 3. The Respondent has not violated the Act as alleged.

4. The Respondent has not committed objectionable conduct as alleged in the Reports on Objections.

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

35 IT IS RECOMMENDED that the complaint be dismissed.

IT IS FURTHER RECOMMENDED that the objection filed in Case No. 29-RC-10093 be overruled, and that a Certification of Results be issued.

40 Dated:

Steven Davis
Administrative Law Judge

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50 ³ 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.