

Relco Locomotives, Inc. and International Brotherhood of Electrical Workers, Local Union No. 347. Case 18–CA–074960

November 12, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND SCHIFFER

On June 12, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB 1145. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Eighth Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board’s Decision and Order and remanded this case for further proceedings consistent with the Supreme Court’s decision.

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

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge’s decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein.¹ Accordingly, we affirm the judge’s rul-

¹ In adopting the judge’s finding that the Respondent knew that employees Mark Douglas and Jerry Sindt engaged in union activity, we rely on Supervisor Cliff Benboe’s separate unlawful interrogations of Douglas and Sindt, the timing of Douglas’s and Sindt’s terminations, the Respondent’s general knowledge of its employees’ union activity, the Respondent’s otherwise demonstrated union animus, and the pretextual reasons offered by the Respondent for the terminations. See *North Atlantic Medical Services*, 329 NLRB 85, 85–86 (1999) (finding that the Board may infer employer knowledge of specific employees’ union activity based on “the timing of the alleged discriminatory actions; the Respondent’s general knowledge of its employees’ union activities; the Respondent’s animus against the Union; and the pretextual reasons given for the adverse personnel actions”), enf.d. 237 F.3d 62 (1st Cir. 2001). We do not rely on *Evenflow Transportation, Inc.*, 358 NLRB 695, 697 (2012), cited in the vacated Decision and Order.

In adopting the judge’s findings that the Respondent unlawfully solicited grievances and instructed an employee not to distribute authorization cards on “company time,” we do not rely on *Latino Express*, 358 NLRB 823 (2012), but rather on the decisions cited in that case for the relevant propositions, nor do we rely on *Loparex LLC*, 353 NLRB 1224 (2009), enf.d. 591 F.3d 540 (7th Cir. 2009), cited by the judge.

ings, findings, and conclusions and adopt the judge’s recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB 1145, which is incorporated herein by reference. The judge’s recommended Order, as further modified herein, is set forth in full below.²

ORDER

The National Labor Relations Board orders that the Respondent, Relco Locomotives, Inc., Albia, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively questioning its employees about their union activities on behalf of International Brotherhood of Electrical Workers, Local Union No. 347, or any other labor organization.

(b) Instructing employees not to distribute union authorization cards on company time.

(c) Soliciting employee complaints and grievances and impliedly promising to remedy those complaints and grievances in order to discourage employees from selecting union representation.

(d) Maintaining a distribution and solicitation policy requiring employees to seek authorization from management before employees engage in any distribution or solicitation, including that during nonwork time and in nonwork areas.

(e) Discharging employees because they engage in union activities or other protected concerted activities to discourage employees from engaging in those activities.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed 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 from the date of this Order, rescind the Respondent’s handbook rule stating, “Employees are not permitted to . . . solicit or distribute literature without

In finding a broad cease-and-desist order and a public reading of the notice appropriate, we agree with the rationale in the Amended Remedy section of the vacated Decision and Order. We note that the United States Court of Appeals for the Eighth Circuit enforced the Board’s decisions in *Relco Locomotives, Inc. (Relco I)*, 358 NLRB 229 (2012) (cited in the vacated Decision and Order and the judge’s decision), and *Relco Locomotives, Inc. (Relco II)*, 358 NLRB 298 (2012) (same), both of which found that the Respondent committed multiple violations of the Act. *NLRB v. Relco Locomotives, Inc.*, 734 F.3d 764 (8th Cir. 2013). Accordingly, both decisions are binding on the Respondent and, together with this case, establish its proclivity to violate the Act and its general disregard for its employees’ rights.

² We shall modify the judge’s recommended Order and substitute a new notice in accordance with our recent decision in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014). We shall further modify the notice in accordance with our decision in *Durham School Services*, 360 NLRB 694 (2014).

management approval,” and notify employees in writing that this has been done.

(b) Furnish all current employees with inserts for the current employee handbook that (1) advise that the unlawful solicitation and distribution rule has been rescinded, or (2) provide the language of a lawful rule; or publish and distribute to all current employees a revised employee handbook that (1) does not contain the unlawful rule, or (2) provides the language of a lawful rule.

(c) Within 14 days from the date of this Order, offer employees Mark Douglas and Jerry Sindt full reinstatement to their former positions, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Mark Douglas and Jerry Sindt whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(e) Compensate Mark Douglas and Jerry Sindt for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful terminations of Mark Douglas and Jerry Sindt, and within 3 days thereafter, notify them in writing that this has been done and that the terminations will not be used against them in any way.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in Albia, Iowa copies of the attached notice marked “Appendix.”³ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent 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, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent 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 Respondent has gone out of business or closed its operations at Albia, Iowa the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 2011.

(i) Within 14 days after service by the Region, hold a meeting or meetings during working time and at the Respondent’s facility, and scheduled to ensure the widest possible attendance, at which the attached notice is to be read by a responsible management official of the Respondent or by a Board agent, in the presence of a responsible management official of the Respondent.

(j) Within 21 days after service by the Region, file with the Regional Director for Region 18 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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 coercively question you about your activities on behalf of International Brotherhood of Electrical Workers, Local Union No. 347 or any other labor organization.

WE WILL NOT instruct you not to distribute union authorization cards on company time.

WE WILL NOT solicit your complaints and grievances and impliedly promise to remedy those complaints and

³ 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.”

grievances in order to discourage you from selecting union representation.

WE WILL NOT maintain a solicitation and distribution policy requiring you to obtain management approval for soliciting and distributing in nonwork areas during non-worktime.

WE WILL NOT discharge you because you engage in activities on behalf of International Brotherhood of Electrical Workers, Local Union No. 347, or any other labor organization, to discourage you from engaging in union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, rescind our employee handbook rule stating, "Employees are not permitted to . . . solicit or distribute literature without management approval," and we will notify you in writing that this has been done.

WE WILL furnish you with inserts for the current employee handbook that (1) advise that the unlawful solicitation and distribution rule has been rescinded, or (2) provide the language of a lawful rule; or WE WILL publish and distribute to all current employees a revised employee handbook that (1) does not contain the unlawful rule, or (2) provides the language of a lawful rule.

WE WILL, within 14 days from the date of the Board's Order, offer employees Mark Douglas and Jerry Sindt full reinstatement to their former positions or, if these positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Mark Douglas and Jerry Sindt whole for any loss of earnings and other benefits suffered as a result of their unlawful terminations in the manner set forth in Board's decision.

WE WILL compensate Mark Douglas and Jerry Sindt for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful terminations of Mark Douglas and Jerry Sindt, and WE WILL, within 3 days thereafter, notify them in writing this has been done and their terminations will not be used against them in any way.

RELCO LOCOMOTIVES, INC.

The Board's decision can be found at www.nlr.gov/case/18-CA-074960 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

