

**Intersystems Design and Technology Corp. and
Local Union 569, United Brotherhood of Car-
penters and Joiners of America. Case 15-CA-
8730**

30 September 1983

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

Upon a charge filed on 24 September 1982, and amended on 21 October 1982, by Local Union 569, United Brotherhood of Carpenters and Joiners of America, herein called the Union, and duly served on Intersystems Design and Technology Corp., herein called Respondent, by the Regional Director for Region 15, issued a complaint on 9 November 1982, which was thereafter amended, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the amended complaint alleges that, both prior to and subsequent to a Board election on 14 May 1982 in Case 15-RC-6897¹ and certification on 24 May 1982 of the Union as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate, Respondent engaged in the following conduct:

Paragraph 9

(a) Since on or about 27 April 1982, Respondent has maintained in effect and enforced these rules which prohibit employees from:

12. Distributing literature, written or printed matter of any kind, posting or delivering notices, signs or writing in any form anywhere in the premises unless specifically authorized to do so by the Company.

* * * * *

16. Soliciting contributions of any kind unless authorization in writing is given by the Company.

¹ Official notice is taken of the record in the representation proceeding, Case 15-RC-6897, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

(b) The foregoing "are overly broad rules which interfere with the Section 7 rights of employees to engage in protected activities for mutual aid, protection and support."

Paragraph 10

On or about 27 April 1982 Respondent issued a written warning to employee Janice Salter for "conducting Union activities on job site during Company time."

Paragraph 11

(a) On or about 1 April 1982 Respondent interrogated its employees about their union activities, and threatened them with discharge and plant closure if they selected the Union as their representative for purposes of collective bargaining.

(b) During the first week of April 1982, at a meeting of its employees, Respondent threatened employees with plant closure if they selected the Union as their representative for purposes of collective bargaining.

(c) On or about 8 April 1982 Respondent interrogated an employee about the union activities of its employees.

(d) On or about 14 April 1982 Respondent told an employee that all of Respondent's employees would be terminated if they selected the Union as their representative for purposes of collective bargaining.

(e) On or about 22 May 1982 Respondent told an employee that the selection by Respondent's employees of the Union as their representative for purposes of collective bargaining would "hurt" them.

Paragraph 12

On or about 24 June 1982, Respondent announced and implemented a temporary layoff of certain unit employees.

Paragraph 13

On or about 2 July 1982 Respondent announced and implemented a conversion of the temporary layoff of 24 June 1982 to a permanent layoff, and also announced and implemented a layoff of certain additional unit employees.

Paragraph 14

Respondent engaged in the conduct described in paragraph 12 and 13 without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of Respondent's employees with

respect to the implementation of the layoff or over the effects thereof.

By the conduct described in paragraphs 9, 10, and 11, Respondent violated Section 8(a)(1) of the Act, and by the conduct described in paragraphs 12, 13, and 14, Respondent violated Section 8(a)(1) and (5) of the Act.

On 22 November 1982 Respondent filed its answer to the complaint admitting in part, pleading *nolo contendere* in part, and denying in part, the allegations of the complaint. On 5 January 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 17 January 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the allegations in paragraph 9 and 10 of the complaint, Respondent does not deny the promulgation of the no-solicitation/no-distribution rules and pleads *nolo contendere* to the issuance of a warning to employee Salter for "conducting union activities on job site during Company time." However, Respondent asserts that the rules were not unlawful because they were not implemented until 18 June 1982 after they were "accepted" by the certified Union.

The General Counsel contends, and we agree, that even if the rules were issued subsequent to the certification of the Union and the latter's "acceptance" thereof, they nevertheless violated Section 8(a)(1) of the Act² because they constituted an overly broad restriction on the Section 7 rights of Respondent's employees.³ We further find that the warning to Salter was an overly broad restriction on her union activities and for that reason said warning also violated Section 8(a)(1) of the Act.⁴

In its answer to paragraph 11 of the complaint, Respondent denies the allegations as to (a), (b), and (d), and pleads *nolo contendere* as to (c) and (e). The General Counsel urges that Respondent be deemed to have admitted (c) and (e). The General

Counsel also takes the position that a finding of a violation based on (a), (b), and (d) would not significantly alter any remedial order in this case. The General Counsel therefore requests that, for purposes of the motion only, no findings be made as to those allegations. We agree with the General Counsel that allegations (c) and (e) were in effect admitted and that said conduct violated Section 8(a)(1) of the Act. However, in view of the denial of Respondent's allegations to (a), (b), and (d), we deem it necessary to have their factual and legal validity determined at a hearing before an administrative law judge.

In answer to the allegations of paragraphs 12, 13, and 14 of the complaint that the layoffs took place without prior notice to the Union and without having afforded it an opportunity to negotiate and bargain with respect to the implementation of the layoffs and the effects thereof, Respondent, which does not challenge the validity of the certification of the Union as the exclusive bargaining representative of Respondent's employees, "agreed" with said allegations. As Respondent's answer does not dispute those allegations, the General Counsel in its motion urges the Board to find said conduct unlawful. However, Respondent in its reply to the subsequent Show Cause Order contends that the layoffs were not unlawful for the following reasons: Six employees were temporarily laid off on 25 June 1982, due to the unavailability of the drill rig on which they had been working. On 30 June 1982, Respondent "received direction from its customer which mandated an emergency 32% minimum reduction in the work force by 2 July 1982." The absence of prior notice from the customer concerning the need for this layoff precluded Respondent from bargaining with the Union in advance about the selection of employees for the layoff. Only one meeting had been held prior to this emergency and "a bargaining relationship had not a chance to become established." At the time of the layoffs, Respondent engaged in bargaining, which included that subject, and on 15 October 1982, an agreement was executed between Respondent and the Union. The Union has received notice of and has concurred with all subsequent layoff actions.

It is clear from (1) Respondent's defense of its conduct in not bargaining with the Union prior to the implementation of the layoffs and (2) its statement that it did bargain with the Union over the effects thereof that there are substantial and material issues of fact and law which must be resolved at a hearing conducted before an administrative law

² *NLRB v. Magnavox Co.*, 415 U.S. 322 (1974).

³ See *Intermedics, Inc.*, 262 NLRB 1407 (1982), concerning that company's rule which prohibited soliciting or distributing literature "on company property."

⁴ *Shultz Foods Co.*, 260 NLRB 1177 (1982).

judge.⁵ We shall therefore deny the General Counsel's Motion for Summary Judgment insofar as it pertains to paragraphs 12, 13, and 14 of the complaint.

However, as already indicated, we shall grant the motion as to paragraphs 9, 10, and 11(c) and (e) of the complaint.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Delaware corporation with offices and facilities in several States of the United States, maintains a facility at Pascagoula, Mississippi, the only facility involved herein, where it is engaged in the business of constructing oil rig housing units. During the 12 months preceding 9 November 1982, which period is representative of all times material herein, Respondent purchased and received at its Pascagoula, Mississippi, facility goods valued in excess of \$50,000 directly from points located outside the State of Mississippi.

We find on the basis of the foregoing that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local Union 569, United Brotherhood of Carpenters and Joiners of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE REPRESENTATIVE PROCEEDING

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Respondent at the Pascagoula, Mississippi, operation, excluding all office clerical employees, technical employees, professional employees, truck drivers, guards and supervisors as defined in the Act.

2. The certification

On 14 May 1982, a majority of the employees in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for

Region 15, designated the Union as their representative for the purposes of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on 24 May 1982, and said Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices found above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Intersystems Design and Technology Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union 569, United Brotherhood of Carpenters and Joiners of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining in effect and enforcing since about 27 April 1982 the no-solicitation/no-distribution rules set forth in paragraph 9 of the complaint, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By issuing a written warning about 27 April 1982 to employee Janice Salter for "conducting Union activities on job site during Company time," Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. By interrogating about 8 April 1982 an employee regarding the union activities of the employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. By telling an employee about 22 May 1982 that the selection by Respondent's employees of the Union as their representative for purposes of collective bargaining would hurt them, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

⁵ See *Raskin Packing Co.*, 246 NLRB 78 (1979), and *Brooks-Scanlon, Inc.*, 246 NLRB 476 (1979).

THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Intersystems Design and Technology Corp., Pascagoula, Mississippi, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees regarding their union activities.

(b) Issuing warnings to employees with respect to their conducting union activities on the jobsite during company time.

(c) Telling employees that their selection of the Union as their representative for purposes of collective bargaining would hurt them.

(d) Maintaining in effect and enforcing no-distribution rule 12 and no-solicitation rule 16.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Rescind the foregoing unlawful no-distribution and no-solicitation rules.

(b) Expunge from Respondent's records any written warning issued to employee Janice Salter on or about 27 April 1982.

(c) Post at its Pascagoula, Mississippi, facility copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

⁶ In the event that 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 and Order of the National Labor Relations Board."

(d) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the Motion for Summary Judgment be, and it hereby is, denied insofar as it pertains to paragraphs 12, 13, and 14 of the amended complaint.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 15 for the purpose of issuing a notice of hearing and scheduling before an Administrative Law Judge a hearing limited to taking evidence as to paragraphs 11(a), (b), and (d), 12, 13, and 14 of the amended complaint.

IT IS FURTHER ORDERED that the Administrative Law Judge shall thereafter prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following the service of the Administrative Law Judge's Decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall apply.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

WE WILL NOT interrogate our employees regarding their union activities.

WE WILL NOT issue warnings to employees with respect to their conducting union activities on the jobsite during company time.

WE WILL NOT tell our employees that their selection of the Union as their representative for purposes of collective bargaining would hurt them.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in the Act.

WE HEREBY NOTIFY you that we have rescinded these two rules which do not allow our employees to engage in the following conduct:

"12. Distributing literature, written or printed matter of any kind, posting or delivering notices, signs or writing in any form anywhere in the premises unless specifically authorized to do so by the Company."

"16. Soliciting contributions of any kind unless authorization in writing is given by the Company."

WE WILL expunge from our records any reference to the written warning issued to em-

ployee Janice Salter on or about 27 April 1982.

INTERSYSTEMS DESIGN AND TECHNOLOGY CORP.