

**Roadway Express, Inc. and Konstantine Petros.**  
Case 8-CA-14982-2

17 February 1984

**DECISION AND ORDER**

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

On 20 September 1982 Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

In adopting the judge's conclusion that the Respondent violated Section 8(a)(1) of the Act by removing the bulletin boards from two breakrooms used by employees, we rely on the following: On 29 January 1981 employee Konstantine Petros posted a notice on a breakroom bulletin board which protested the Respondent's use of production cards and proposed a resolution which, if it had been accepted, could have resulted in a strike. The Respondent removed the notice for the stated reason that the bulletin boards were to be used for official business only. The judge found, however, that the bulletin boards had been used for other purposes, including the posting of union literature for 6 years. Petros filed an unfair labor practice charge regarding the Respondent's action. On 23 April 1981 after Petros withdrew his charge, he posted notices on the breakroom bulletin boards concerning internal union matters. The Respondent removed all bulletin boards from the breakrooms on 26 April 1981. When Petros questioned the removal of the bulletin boards, the Respondent's terminal manager, Ivan Hoffmann, admitted in an apparent reference to the 29 January incident that he did not want any material posted on the bulletin board which created problems such as strikes against the Respondent. Despite this admission, the Respondent asserts that it removed the boards on 26 April because threatening and obscene messages appeared on the boards. We agree with the judge's conclusions that this was a convenient reason to

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

mask the Respondent's true motive, i.e., to prevent the posting of union-related materials. Thus, the Respondent's January 1981 action in removing and prohibiting the posting of TDU or union materials in conjunction with Hoffmann's statement about the removal of the bulletin boards in April and the timing of the removal of the bulletin boards emphasize that the Respondent's proffered reasons for removing the bulletin boards were pretextual.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Roadway Express, Inc., Toldeo, Ohio its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

**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 the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT prohibit or prevent the posting of any union material by removing bulletin boards from the employees' breakrooms or by any other means.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL replace the bulletin board in each of our employees' breakrooms, expressly permitting the posting of TDU or any other union-related material.

**ROADWAY EXPRESS, INC.**

## DECISION

KARL H. BUSCHMANN, Administrative Law Judge: This case was tried at Toledo, Ohio, on June 14, 1982. The charges were filed on August 11, 1981, by Konstantine Petros, an individual. The complaint issued on January 21, 1982. The issue is whether the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) when it removed the bulletin boards from two breakrooms used by the employees.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following

## FINDINGS OF FACT

The Company, a Delaware corporation, is a common carrier of general motor freight. One of its terminals which is the subject of this proceeding is located in Toledo, Ohio. The Respondent is admittedly an employer within the meaning of Section 2(6) and (7) of the Act.

The Union, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 20, has been the bargaining representative of the Respondent's hourly employees. The bargaining agreement provided for a union bulletin board at the workplace. Accordingly, the Company maintained two bulletin boards. They were locked and glass enclosed. One was for official company business and the other for union business. However, in addition to these bulletin boards, the Company maintained a bulletin board in each of the Company's breakrooms, the inbound breakroom and the breakroom on the outbound dock. These bulletin boards which had been in use for about 6 years were used by the employees for general news items, such as notices of upcoming events, items for sale, or meetings. The boards were also used to post union literature.

Konstantine Petros, a 10-year veteran on the Respondent's work force, had used these bulletin boards from time to time for union business. He was not only a member of Local No. 20, but he was also a member of Teamsters for a Democratic union, "TDU." In that capacity, he had used the boards for approximately once a month since March 1980 for the posting of TDU material. These postings advocated membership in TDU or informed employees of their legal and contractual rights. The material was sometimes marked "TDU," but it did not advocate any illegal or hostile action.

On or about April 26, 1981, the Respondent removed the bulletin boards in each of the breakrooms. According to the Respondent, the boards were removed because they contained objectionable and threatening messages directed at the Company's terminal manager, Ivan Hoffman. The General Counsel, on the other hand, argues that the Respondent's motives were pretextual, and that the real reason for the Respondent's action was animus against Petros' union activity involving the TDU.

In this regard, the record shows that several months earlier on January 29, 1981, Petros had posted a document (J. Exh. 1) on the bulletin boards in the breakrooms, which protested the Respondent's practice involving the use of production cards. The posting was in form of a resolution which, if accepted by the member-

ship, could have resulted in a sanctioned strike. Paul Ray, the terminal operations manager, looked at the notice shortly after its posting, read it, and removed it from the board. He later explained to Petros that he had removed the notice, because the bulletin boards were to be used for official company business only. Petros appealed this action to Dean Schuler, the assistant terminal manager. Schuler, however, agreeing with Ray, merely confirmed management's position that the boards were company bulletin boards which should be used for official company business only.

Petros then contacted John Kilroy, an attorney, who considered the Company's action to be unlawful. He promptly filed a charge with the Board on behalf of Petros on February 27, 1981. Subsequently, Petros withdrew the charge because he had learned from Kilroy that a settlement had been reached whereby the Respondent had agreed to the posting of TDU material so long as it was clearly identified as TDU literature. On April 23, the Company was officially notified of the withdrawal of the charges.

On April 23, 1981, Petros posted notices on the breakroom bulletin boards calling for the defeat of a union bylaws' amendment. Petros informed Ray that he had posted the documents and referred to the agreement between attorney Kilroy and the Company permitting the posting of clearly marked TDU material. Ray, however, stated that he was unaware of any such agreement. Two days later, Petros noticed that the entire bulletin boards had been removed from the breakrooms. Petros and fellow employee Emmit Hudson approached Ivan Hoffman, and asked him why the bulletin boards had been removed. Hoffman replied that he was a stockholder in the Company, and that he did not want any material posted on the bulletin boards which caused problems or called for strikes against Roadway Express. He also stated that he did not want to see statements posted on the bulletin boards such as "Ivan sucks" or "Ivan you are next," in reference to him.

The record contains examples of such obscene and threatening messages directed at Ivan Hoffman. He had become the manager at the Toledo terminal in the fall of 1979. After the facility had been unprofitable, Hoffman had improved the profit picture by more aggressive leadership and management techniques. This caused tension between him and the employees. Slogans, such as "Ivan sucks," became commonplace on walls in the bathroom or on cartons. Occasionally such material also appeared on the breakroom bulletin boards. Hoffman testified that, while touring the docks during the last week in April 1981, he noticed a newspaper article on the bulletin boards in the breakrooms. The article reported the killing of a supervisor as a result of a labor dispute. Underneath the article, someone had written "Ivan you're next." This infuriated him to the point of tearing the article off the board and ultimately ordering the bulletin boards removed entirely. In the words of the Respondent, it was "the straw that broke the camel's back," after tolerating similar slogans over a period of time.

I have credited the Respondent's testimony that such an article with the threatening note had actually ap-

peared on the boards to the obvious annoyance of Hoffman. At first blush, therefore, the Respondent's action appeared plausible. However, consideration of the entire record leads to the only inference that the removal of the bulletin boards was actually motivated by union animus.

Understandably, the Respondent would have attempted to stop the posting of threatening or obscene material. However, the record shows that the graffiti appeared not only on the bulletin boards but also on bathroom walls or cartons. The removal of the boards would therefore not have had the desired effect of stopping the scrawling of similar messages in other areas of the Respondent's facility. While it is true that the Respondent had no duty, in the first place, to provide bulletin boards for the use of the employees, since it maintained the bulletin board under lock and key for union business in accordance with the bargaining agreement, the Respondent may not interfere with the protected activities of its employees. Once having provided the bulletin boards in the breakrooms and letting the employees use them for their union activities for several years, the Respondent interfered with the protected activities of its employees when it removed the boards in order to prevent the posting of TDU material. It was not denied by the Respondent that Supervisor Ray had removed the TDU material in January and that Ray and Schuler had, in effect, prohibited the posting of union material at that time. It was also not denied that the bulletin boards were removed in April, 2 days after Petros had again posted TDU material. Hoffman's explanation<sup>1</sup> that as a stockholder in the Company he did not appreciate postings which created problems for his Company, such as strikes, constituted an admission that the boards had been removed in direct response to Petros' union activity. Considering the timing of the Respondent's action in relation to Petros' union activity of posting the article in April, and the Respondent's earlier prohibition of posting TDU or union materials, as well as Hoffman's explanation, I can only infer that the Respondent's true motives were union related, and that the obscene and threatening material provided the Respondent with a convenient but disingenuous reason to remove the bulletin boards. I, therefore, find that the Respondent violated Section 8(a)(1) of the Act.

#### CONCLUSIONS OF LAW

1. The Respondent, Roadway Express, Inc., is admittedly an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

<sup>1</sup> I have credited Petros' testimony in this regard which was corroborated by Hudson.

Local No. 20, is admittedly a labor organization within the meaning of Section 2(5) of the Act.

3. By removing bulletin boards in order to prohibit the continued posting of union material, the Respondent interfered with the protected activities of the employees in violation of Section 8(a)(1) of the Act.

#### REMEDY

Having found that the Respondent has engaged in unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall order that the Respondent post a notice and that it replace the bulletin board in each of the breakrooms.

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

#### ORDER<sup>2</sup>

The Respondent, Roadway Express, Inc., Toledo, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting or preventing the posting of union material by removing bulletin boards from the breakroom of the employees or by any other means.

(b) In any like or related 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) Replace the bulletin board in each of the employees' breakrooms, expressly permitting the posting of TDU or other union-related material.

(b) Post at its facility in Toledo, Ohio, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> 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.

<sup>3</sup> 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."