

**Torin Corporation and International Union, United
Automobile, Aerospace, and Agricultural Imple-
ment Workers of America, UAW, Local 507.
Case 39-CA-744**

28 March 1984

DECISION AND ORDER

**BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS**

On 30 September 1982 Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed cross-exceptions and supporting briefs, and the Respondent filed a reply 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 briefs and has decided to affirm the judge's rulings, findings, and conclusions¹ and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Torin Corporation, Torrington, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The judge's Conclusion of Law 3 should read, in pertinent part: ". . . Respondent thereby violated Section 8(a)(1) of the Act."

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint in this case issued on September 4, 1981; it alleges that Torin Corporation (herein called Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (herein called the Act). In particular, the complaint alleges that, although Respondent had recognized the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local 507 (herein called the Union) as the exclusive bargaining representative of the production and maintenance employees at three of Respondent's facilities in Torrington, Connecticut (comprising its Still River Division), Respondent (a) unlawfully refused to recognize Lillian Raymond as the Union's recording secretary and to honor any written requests submitted by the Union because she signed them and (b) promulgated and enforced a rule barring retired employees from its premises in order to keep Lillian Raymond from posting

union notices on the Union's bulletin boards inside Respondent's facilities. Respondent does not dispute the factual assertions in the complaint. All parties agree that there is little dispute about the salient facts and that the issues in this case are predominately legal issues. The hearing was held before me in Hartford, Connecticut, on June 9, 1982.

On the entire record, including my observation of the demeanor of the witnesses and upon careful consideration of the briefs by the parties, I make the following

FINDINGS

I. THE BUSINESS OF RESPONDENT

Based on the pleadings, I find that Respondent is an employer within the meaning of Section 2(2) of the Act and that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE UNION'S STATUS

The pleadings also establish and I find that the Union is a labor organization as defined in Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent manufactures air fans at facilities in Torrington, Connecticut, where the Union has for many years represented a unit of production and maintenance employees.

In 1979 Respondent and the Union had apparently reached agreement as to the terms of a renewal contract. When the contract was drawn up and submitted by Respondent to the Union for signing, however, the Union contended that the document did not reflect the agreement reached. Lillian Raymond was at that time employed by Respondent and was the president of the Union. She led the unit employees out on strike then. That was the first strike ever conducted at Respondent's facilities. Respondent viewed her then and still views her as a "trouble-maker" who often took "a position that doesn't fit the mainstream of labor-management relations." The 1979 strike was settled and various related unfair labor practice charges filed then were disposed of before formal resolution as to their merits. In October 1980 Raymond applied for disability retirement, asserting that she was being unduly harassed into a nervous state by Respondent. Her application was approved. She resigned as the Union's president and then retired. She was at that time president of a plant credit union. She has continued in that post and, in that capacity, has used an office located in the front of one of Respondent's buildings where its administrative offices were also located. As president of the credit union, she also was allowed to use the conference room. In May 1981, she ran for the post of recording secretary of the Union and, despite the fact that she had retired from Respondent's employ, she was elected. The Union's recording secretary had virtually always performed the function of posting union notices on the Union's bulletin boards at Respondent's facil-

ity and the function of signing "zip sheets." Zip sheets are written requests by the Union to Respondent for permission to have employees excused from work to perform union business.

B. *The Events in May and June 1981*

The Union's president in 1981, Fred Sidelinger, informed Respondent's director of personnel, William McClane, in May 1981 that Lillian Raymond was back as a union officer, as its recording secretary. He told McClane that she would post the Union's notices and process the zip sheets. McClane told Sidelinger that he considered her to be a "trouble-maker," and "instigator," "agitator," a "rabble-rouser" and that she would not be allowed onto Respondent's premises to conduct union business as she was not an employee or a full-time paid International representative of the Union. A reading of the transcript may indicate that McClane was highly agitated when he referred to Raymond in the terms quoted above. McClane impressed me as one who is considerate of others and reserved in his demeanor. In referring to Raymond as he did, he was in my judgment stating in a matter-of-fact manner the corporate view that Respondent had of Raymond.

The Union decided to test Respondent's resolve. Raymond saw McClane in June 1981 and informed him that she, as the Union's recording secretary, wanted to post union notices, pertaining to an election of a steward, on the Union's bulletin board in the plant. She was not allowed to do so. Instead, she was told by McClane that she was welcome in the plant as an officer of the credit union or as a retiree but not as a union official.¹

On one occasion the Union was conducting a meeting of its officers in a conference room at Respondent's premises. Raymond was not allowed there by Respondent; as noted above, she has been permitted to use that room in her capacity as president of the credit union, an entity unconnected with the Union.

It is undisputed that Respondent has refused to accept any zip sheets signed by Raymond as recording secretary for the Union and that it, instead, has honored them when signed by other union officials.

C. *Analysis*

The General Counsel asserts that Respondent's actions toward Raymond as the Union's recording secretary have interfered with the Union's right to select its agents and that Respondent thereby has interfered with "the rights of employees to select, with their discretion and without employer interference [the Union] for the purpose of collective bargaining."² The General Counsel and the Union have pointed out, too, that an employer cannot lawfully refuse to meet with a nonemployee des-

ignated by the incumbent labor organization to be its representative in processing a grievance.³

Respondent asserts that the cases relied on by the General Counsel and the Union have nothing to do with the facts of this case. Respondent contends that those cases pertain to a refusal by an employer to meet with a union's designated representative to negotiate a contract or to process a grievance and that they do not relate to the issue posed in the instant case—whether Respondent unlawfully denied Raymond the right of access to its plant or her requests on behalf of the Union that employees be excused from work. Respondent would require that the General Counsel establish that the Union had no other reasonable means of communicating with the unit employees and that Raymond was performing more than a ministerial act in signing the zip sheets before a violation can be found. Respondent thus contends that a balancing test should be used.⁴

At the hearing, the General Counsel indicated that Respondent's conduct toward Raymond constituted an unlawful unilateral change but did not pursue that argument in its brief.⁵

Respondent's construction of the cases cited by the General Counsel is unduly restrictive. More significant to me is the fact that, in the instant case, Respondent has always given the Union access to its facility. Thus, the right of access is not at issue; rather, the question is whether Respondent can lawfully veto the Union's choice of the representative designated to enter on Respondent's premises or to perform even ministerial functions. The Board cases make it very clear that an employer has to have a valid reason before it can lawfully refuse to accept a union's designation of an individual as its agent in dealing with that employer. Thus, in *Native Textiles*, supra, the Board expressly noted that the right of employees to designate and to be represented by representatives of their own choosing is a basic statutory policy and a fundamental right guaranteed them under Section 7 of the Act. It is not a right to be readily limited. In *Native Textiles*, the Board went on to state that "an employer [in] refusing to recognize a designated representative of its employees, especially for a matter of such obvious importance to employees as processing grievances . . . [interferes] with a basic statutory right of employees" In the instant case, the unit employees had elected Raymond to union office. The cases make it clear that, if the Union empowered that office with the functions of grievance processing, Respondent's contention would clearly lack merit. That Raymond performs other essential functions for the Union in carrying out its responsibilities in representing the unit employees can be no valid basis upon which the Respondent would be privileged to interfere with a basic statutory right. Re-

¹ I based this on crediting the testimony of the General Counsel's witnesses which was in good part uncontroverted and also corroborated by accounts of other witnesses that retired employees have had ready access to the plant.

² The General Counsel cited *Racine Die Casting Co.*, 192 NLRB 529 (1971), and *Lufkin Telephone Exchange*, 191 NLRB 856 (1971), for that proposition.

³ *Native Textiles*, 246 NLRB 228 (1979); *KDEN Broadcasting Co.*, 225 NLRB 25, 35 (1976); *Racine Die Casting*, supra, and *Lufkin Telephone*, supra.

⁴ Respondent suggests that the principles set out in *Sears Roebuck & Co. v. Carpenters*, 436 U.S. 180, 205 (1978); *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956); *S. B. Thomas, Inc.*, 256 NLRB 791 (1981), are applicable.

⁵ In that regard, Respondent notes that the change was brought about by the Union in allowing a nonemployee to run for office.

spondent, by barring Raymond from posting union notices in her capacity as recording secretary of the Union and in refusing to honor "zip sheets" signed by her in that capacity, interfered with the statutory right of the employees represented by the union to select her as a union official in dealing with Respondent.

Respondent further argues that the Board is obligated to consider a variety of factors and to weigh these in deciding whether Raymond's right of access is, on balance, superior to Respondent's private property rights. Thus, Respondent would have me consider the specific contract language, the provisions of the Union's constitution and bylaws, the harm if any done the unit employees by requiring the Union to use someone other than Raymond, and other factors. While I do not agree with that view, I will note, for purposes of review, that, were a balancing test to be applied, I would give controlling weight to the fact that Respondent, in barring Raymond from performing her union duties, was motivated by invidious reasons—its perception of her while in its employ as one who was too active a union member and, on that premise, I would find that, on balance, the General Counsel should prevail.

I shall however dismiss the 8(a)(5) allegation as there is no evidence that Respondent's refusal to recognize Raymond resulted in an impairment of the grievance procedures or otherwise constituted bad-faith bargaining.

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization as defined in Section 2(5) of the Act.
3. Respondent interfered with, restrained, and coerced its employees with respect to their right to freely choose their representative for purposes of collective bargaining and Respondent thereby violated Section 8(a)(1) of the Act.
4. The evidence fails to establish that Respondent did not bargain in good faith with the Union. Therefore, the allegation that Respondent violated Section 8(a)(5) of the Act must be dismissed.
5. The unfair labor practices found in paragraph 3 above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Based on the foregoing findings of fact, conclusions of the law, and the entire record in the case, I issue the following recommended⁶

ORDER

The Respondent, Torin Corporation, Torrington, Connecticut, its officers, agents, successors, and assigns, shall

⁶ 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.

1. Cease and desist from

(a) Refusing to allow Lillian Raymond onto its premises to perform her responsibilities as the recording secretary of International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, Local 507 (herein called the Union) or refusing to honor zip sheets signed by her in that capacity.

(b) In any like or related manner interfering with, restraining, or coercing its employees respecting the rights guaranteed them under Section 7 of the Act.

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

(a) Post copies of the attached notice marked "Appendix"⁷ at its Still River Division facilities in Torrington, Connecticut. Copies of that notice on forms provided by Regional Director for Region 39, after being signed by Respondent's authorized representative, shall be immediately posted 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 Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the allegation in the complaint that Respondent violated Section 8(a)(5) of the Act is dismissed.

⁷ 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."

APPENDIX

NOTICE TO EMPLOYEES

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

WE WILL NOT refuse to allow Lillian Raymond onto our premises when she is performing her responsibilities as recording secretary of International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, Local 507 and WE WILL NOT refuse to honor zip sheets signed by her as the Union's recording secretary.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees with respect to their rights under Section 7 of the National Labor Relations Act.

TORIN CORPORATION