

**Greensboro News Company and Greensboro Printing
and Graphic Communications Union, Local 319.
Case 11-CA-10323**

31 July 1984

DECISION AND ORDER

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

On 17 November 1982 Administrative Law Judge Benjamin Schlesinger 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,¹ and conclusions only to the extent consistent with this Decision and Order, and to adopt his recommended Order as modified.

The judge concluded that the Respondent's vice president, Hendricks, violated Section 8(a)(1) of the Act by threatening employee Shatto to discourage her from engaging in protected activities. The judge also concluded that the Respondent violated Section 8(a)(3) and (1) by transferring Shatto from the copy desk to a dispatcher position to prevent her from organizing the Respondent's employees. We agree that Hendricks' threat violated Section 8(a)(1), but conclude that the Respondent's transfer of Shatto was not a violation of the Act.

The Respondent is engaged in the publication, circulation, and distribution of a daily newspaper. Within its advertising department, the Respondent retains entry-level employees at its copy desk and as dispatchers. The copy desk employees are office personnel; the dispatchers travel to and from the Respondent's advertisers for delivery and receipt of advertising proofs. A dispatch and copy desk coordinator supervises the work of both groups of employees.

Shirley Shatto worked at the copy desk for 7 years prior to the events at issue in this case. Another employee, Christie Hollis, was unsuccessful as a dispatcher, but transferred in December 1981 to the Respondent's copy desk and performed there successfully for 4 to 5 weeks until being terminated in late January 1982 for lack of work.

In late January or February 1982,² the Respondent learned that dispatcher Janness would soon lose his driver's license. Since a driver's license was a prerequisite for dispatchers, the Respondent confronted the need to fill a dispatcher position.

On 8 February Shatto approached the Respondent's assistant advertising director, Moore, on another topic. The Respondent's dispatch and copy desk coordinator, Nelson, was then in the process of applying for another position. Shatto suggested that she be considered as Nelson's replacement. Moore indicated that Shatto was unqualified because she had no experience as a dispatcher, one of the employee functions she would have to supervise. Shatto expressed her willingness to learn about the dispatcher's job, but not to go out on a dispatcher's route, as Nelson did when a dispatcher failed to report to work.

Long before this conversation, the Respondent had proposed paths for Shatto's advancement within the advertising department. In 1981 the Respondent's manager, Williams, urged her to enroll in typing school. Shatto attended for 2 months and then left the course for personal reasons. The same year Williams asked her if she wished to become a dispatcher. Moore and Nelson had each worked as dispatchers prior to their promotion to management. Shatto tried out this job and reported to Williams that she did not want to take it.

Shatto was also actively engaged in union organization. She had previously participated in unsuccessful efforts to organize the advertising department in 1980 and 1981. In 1982 she signed a letter from the Union which notified the Respondent that four employees, herself included, had formed an in-plant organizing committee. On 10 February vice president Hendricks approached Shatto and said, "[I]t looks like we'll be battling again. . . . I got the union letter this morning."³

On 17 or 18 February Moore announced to Shatto that she was being transferred to dispatcher effective 22 February. No one was forcing him to take this step, Moore assured her; rather, he explained, "This is just one way for you to learn." Hollis was recalled to perform Shatto's copy desk duties. Shatto expressed to Moore her unhappiness with the transfer and telephoned Hendricks at his home on the evening of 17 or 18 February to overturn it. Hendricks advised that she should not have signed the union letter, but should merely have

¹ 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.

² All subsequent dates refer to 1982 unless otherwise stated.

³ We note that the judge incorrectly related the 10 February conversation between Shirley Shatto and Richard Hendricks to a separate statement made by Hendricks to Shatto "that evening." It is undisputed that the sole evening conversation between these two took place 17 or 18 February.

signed a union card and remained neutral. The dispatch role assigned to Shatto was enlarged as she took up the position. The Respondent learned in April that the new route was overly burdensome and immediately restored the route to its prior size. The time constraints of Shatto's dispatcher duties have precluded her from extended on-the-job communication with other advertising department employees. Such communication had been the primary means for her earlier organizing activities.

The judge concluded that the Respondent's transfer of Shatto was motivated solely to impede her union activities. The judge recognized that the Respondent desired Shatto to develop additional skills, but noted that Shatto remained content at the copy desk and made known her distaste for the alternatives which the Respondent had presented. The judge found "unconvincing" the Respondent's "sudden" interest in Hollis; considered it improbable that the Respondent would have transferred Shatto to the "menial" dispatcher position without some ulterior motive; and noted that the Respondent enlarged Shatto's dispatch route just as she began to run it, without any accompanying business justification.

In this case, the General Counsel has shown that the Respondent announced its transfer of Shatto within 8 days of its receipt of the union letter which she had signed. Hendricks violated Section 8(a)(1) when he communicated to Shatto his displeasure with her active union involvement on the night that the transfer was announced. The transfer significantly diminished Shatto's capacity to engage in organizing activity. Based on the foregoing evidence, standing alone, we find that the General Counsel has established a prima facie case of employment discrimination. In our view, however, the record substantiates the Respondent's rebuttal of that case.

The Respondent had known about Shatto's role in prior unsuccessful organizing campaigns, but had not retaliated against her. It had, however, often encouraged Shatto to improve her employment position beyond the entry level. Although she resisted such encouragement, her 8 February request for a promotion and the pending dispatcher vacancy prompted the Respondent to take the matter into its own hands. Although Shatto made clear to Moore on 8 February her distaste for dispatch work, we make little of the Respondent's disregard for her preference. The Respondent chose to fill its vacancy at the dispatcher position in a way that provided multiple business benefits. The transfer of Shatto provided her with a route to advancement. The return of Hollis to the copy desk ensured that Shatto's former responsibilities would be performed

by an employee who had already proven successful there. The Company's willingness to cut back Shatto's dispatch route to its previous scope when the difficulty of the original assignment was brought to its attention further reinforces the Respondent's legitimate motivation for the transfer.

Our adoption of the judge's conclusion regarding Hendricks' 8(a)(1) threat does not invalidate our analysis of the transfer. Under other circumstances, Hendricks' utterance might color our interpretation of the Respondent's motivation for its action. In this case, however, it is clear that the cause for the transfer—Janness' departure and Shatto's request—occurred entirely independent of any actions, and thus any motives, attributable to the Company.

Accordingly, we find that the Respondent demonstrated that it would have transferred Shirley Shatto to the dispatcher position even in the absence of her union activities. We therefore conclude that the Respondent's transfer of Shatto did not violate Section 8(a)(3) and (1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Greensboro News Company, Greensboro, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraphs 1(b) and 2(a) and reletter the subsequent paragraphs.
2. Substitute the attached notice for that of the administrative law judge.

MEMBER ZIMMERMAN, dissenting in part.

For the reasons set forth in the judge's decision, I would find that the Respondent violated Section 8(a)(3) and (1) by transferring employee Shatto in order to prevent her from discussing the Union's organizational campaign with her fellow employees.

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.

WE WILL NOT threaten our employees with unspecified reprisals to discourage them from engaging in union and protected concerted activities.

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

GREENSBORO NEWS COMPANY

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. This proceeding was heard before me on September 15, 1982, in Greensboro, North Carolina, and involves Respondent's alleged threat to employee Shirley Shatto with unspecified reprisals and its transfer of her from her job at the copy desk to the job of dispatcher, both allegedly because of her union activities and in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, 29 U.S.C., § 151 et seq.¹ Respondent Greensboro News Company denied that it violated the Act in any manner.

Respondent admits, and I find, that it is a North Carolina corporation with a facility located in Greensboro, North Carolina, where it is engaged in the publication, circulation, and distribution of a daily morning and afternoon newspaper in the Greensboro, North Carolina area. Respondent subscribes to the Associated Press, an interstate news service, publishes nationally syndicated features, and advertises nationally sold products. During the 12 months preceding the issuance of the complaint, a representative period, Respondent had a total volume of business in excess of \$200,000 and purchased and received materials directly from suppliers located outside the State of North Carolina valued in excess of \$10,000. I conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union, as Respondent admits, is a labor organization within the meaning of Section 2(5) of the Act.

Shatto had been employed by Respondent for approximately 8 years, 7 as a copy desk clerk in its advertising department. In late 1980 and early 1981 she engaged in union organization by soliciting employees to sign authorization cards for the Newspaper Guild, she encouraged employees to support that organization, and she was a member of the in-plant organizing committee; but the Guild's campaign failed. In 1982, a new organizing effort was commenced in support of the Union, and Shatto once again was fully involved. On February 9, 1982,² the Union sent a letter to Respondent notifying it that four employees, including Shatto, were members of the Union's volunteer in-plant organizing committee.³

On February 17, Gary Moore, Respondent's assistant advertising director, informed Shatto that, effective February 22, she would be a dispatcher, which is essentially

a messenger's job and required her to deliver proofs of advertisements and "tear sheets" to customers and pick up copies of proofs to return them to Respondent. The General Counsel claims that that position effectively removed Shatto from the environs of the office and hampered, if not shattered, her ability to discuss with other employees the benefits of union representation. I agree. As a copy desk clerk, Shatto had morning, lunch, and afternoon breaks when she could schedule appointments and meet with other employees. As a dispatcher, she was out of the office most of the day; and, when she was in the office, she was kept so busy that she did not have time to meet with other employees. That condition was especially true from February 22 to mid-April, during which Respondent added part of another route to the one driven by Shatto's predecessor and caused Shatto to work 44-46 hours each week, to work through her lunch period, and to be unable to schedule appointments with other employees, as she did prior to February 22.

That much is clear; but whether Respondent was motivated to change Shatto's job assignment by her union activities or whether Respondent was motivated by business considerations was hotly contested. Because the witnesses were far apart in their perception and narration of what led up to Shatto's transfer, it is necessary to resolve issues of credibility which often results in findings of fact which are determinative of the issue of motivation. Two particular episodes merit attention. Respondent received the Union's February 9 letter on February 10. Shatto testified that about noon on that day Richard Hendricks, Respondent's vice president of operations, came to her desk and stated, "it looks like we'll be battling again. . . . I got the union letter this morning." Hendricks could not remember the date of this conversation but recalled that Shatto said to him, "Looks like we're going to be battling again," to which he replied, "Well, we were friends last time. We ought to be friends again this time." What may otherwise be thought of as a relatively innocuous conversation becomes important because Hendricks was accused of making a statement to Shatto that evening which would supply a key to Respondent's motivation in making her transfer. Shatto recalled the earlier conversation far more precisely than Hendricks; and I find it most improbable that Shatto would have introduced the fact that the union organizing effort was ongoing. Instead, it is much more probable, and I find, that Hendricks raised the union campaign only after receiving the Union's letter, which, Shatto testified, he admitted receiving that morning.

Another factual dispute concerns Moore's designation of Shatto as the one to be transferred from copy desk clerk to dispatcher. Moore testified that when he announced the change to Shatto, she seemed "partly satisfied" with Moore's explanation and left the appointment smiling. However, the same day, she attempted to solicit the aid of Hendricks to stop the transfer, quite inconsistent with her alleged smiling reaction to Moore earlier that day and consistent with her testimony, contradicted by Moore, that she made known to him that she did not want to transfer to the job of dispatcher. I find that Shatto's narration was more credible and probable than the

¹ The charge was filed by Greensboro Printing and Graphic Communications Union, Local 319 (Union), on March 4, 1982, and a complaint issued on April 8, 1982.

² All dates hereinafter refer to the year 1982, unless otherwise stated.

³ A similar letter was sent during the 1981 organizing campaign. Only Shatto's name was on both letters.

testimony of both Moore and Hendricks, credit her generally,⁴ and find the following additional facts:

Early in February Shatto learned that Donna Nelson, the coordinator of the dispatch and copy desk area, was going to apply for a different position. On February 8 Shatto asked Moore whether she could be considered to replace Nelson, at least to the extent of coordinating from the office the work of the copy desk clerks and dispatchers. Moore replied that Shatto had no dispatching experience; and, although Shatto expressed her willingness to "ride out with the dispatcher to learn . . . what they had to do in order to bring back" proofs of advertisements, she made clear that she did not want to go out on a dispatcher's route, as Nelson did when dispatchers did not appear for work.⁵

On February 17 or 18, a week after Respondent's receipt of the Union's letter, Moore told Shatto that he had hired someone to replace her at the copy desk and that he was going to assign her as a dispatcher the following Monday, February 22. Shatto asked him who told him to do this to her and he replied, "Nobody. This is just one way for you to learn." Shatto protested that she did not want to do dispatching and this was not what she had talked with him about earlier. Moore said that she had no other choice and that her pay would be the same. As Shatto was leaving Moore's office, she met Hendricks and explained to him what Moore had just said to her. Hendricks replied that he was not aware of it but he would meet with Moore, find out what was going on, and let her know. Hendricks did not return to Shatto that day, so she called him twice at home that evening. He was not in but later returned her call to inform Shatto that he had not had time during the day to talk with Moore, but promised to do so the following morning. He added that Shatto should not have put her name on the union letter but should have signed a Union card and stayed neutral. Shatto stated that he knew how she felt about the people she worked with and that they did not make enough money.⁶

The next morning Shatto asked Moore whether she would be fired if she refused to take the dispatcher's job. Moore said he would have no alternative because at that time he had no other openings. Shatto stated, "Gary, I didn't ask for this job." Later, Hendricks came to her desk and told her that she did not want to stay in that office and "sling" papers for the rest of her life and that she should take the dispatcher's job and bring back some new ideas. He also advised her to return to school and

take typing and shorthand and said, "You are just going to go out and get all frustrated and upset and the first thing you know, you're going to quit." Shatto replied, "No. You may have to fire me, but I will not quit."

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel is required to show that the union or concerted and protected activity was a motivating factor in the discharge. This the General Counsel has clearly shown. First, Hendricks made known his displeasure at Shatto's having involved herself directly in the employees' organizing efforts. His words directed her not to take an open stance in her support of the Union. Within a matter of days of Respondent's receipt of knowledge that Shatto was once again involved in union organizing efforts, she was transferred from a position that she essentially held for almost 8 years to a position which she had been offered a year before and refused. Further, I infer from Hendricks' remarks that he anticipated that the pressures of the dispatching job would cause Shatto to quit, a result desired by Respondent. Hendricks simply did not understand Shatto's resolve. I find that under *Wright Line* the General Counsel has established a prima facie case of a violation of Section 8(a)(3) of the Act.

At such point, under *Wright Line*, the burden shifts to Respondent to persuade that the same action would have taken place even in the absence of Shatto's union activities. In this regard, Respondent's argument is as follows: Janness, one of Respondent's dispatchers, was in late February or early March going to lose his driver's license for traffic violations and, since a dispatcher needed a driver's license, Janness would have to be discharged and his job would have to be filled. Respondent had previously employed another dispatcher, Christy Hollis, who had experienced two traffic accidents and who in December 1981 was reassigned to the copy desk. She was terminated at the end of January 1982 even though she had allegedly been a good employee. After Moore's interview with Shatto, Moore decided that he could give Shatto experience as a dispatcher and rehire Hollis on the copy desk. This Moore decided to do after his February 8 conversation with Shatto. He called Hollis on February 11 or February 12, Hollis accepted the job on February 15 and, on February 18, Moore reassigned Shatto to a dispatcher's position.

Although facially plausible, Respondent's position does not withstand scrutiny. First, it is clear that Respondent desired Shatto to develop additional skills that would allow her to advance to a higher paying job within its advertising department and that it had suggested courses in typing, general business, introduction to computers, and writing. Shatto commenced a typing course, but discontinued it due to personal problems. Otherwise, she was essentially content to remain where she had been for 7 years, rejecting Williams' offer of a dispatcher's job in 1981 and making known her distaste for her reassignment to Moore and Hendricks. I find unconvincing Respondent's sudden interest in Shatto's welfare only after the

⁴ Shatto appeared to be a somewhat nervous and highly intense woman, often answering questions not actually posed. It may be that she listened more closely to what she said than what was being said to her. For that reason, I do not credit her fully but have based my factual findings on an amalgam of the testimony. See generally *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950).

⁵ In 1981, another manager, Bob Williams, had asked Shatto if she would like to be a dispatcher, and Shatto expressed her willingness to ride with a dispatcher to see what it was like but wanted to ensure from Williams that he was not ordering her to take the job. Williams agreed that she could try out the job to see whether she liked it. She did, found that she did not like it, and reported to Williams that she did not want the job. She was not reassigned.

⁶ Hendricks did not deny that Shatto made this statement. I find it a logical and probable continuation of the conversation which was preceded by Hendricks' comment about Shatto's union activities.

union campaign became public.⁷ Second, Respondent's sudden interest in rehiring Hollis is unconvincing. She had been employed for less than a year prior to her discharge and worked at the copy desk for only 4 or 5 weeks. If she were such an admirable employee, arrangements could have been made to retain her in some capacity rather than fire her. In a sense, Shatto's transfer constituted the replacement of her with a short-term employee, for which there is no compelling justification.

Third, Moore conceded that the dispatcher's job was primarily occupied by recent high school graduates, there was always a large turnover of dispatchers, and those jobs had many applicants. I find it improbable that, without some ulterior motive, Respondent would have transferred an employee of 8 years to this menial job that she did not want from a job where was, in Spears' words, "probably [Respondent's] most knowledgeable" and where she received merit increases. Fourth, the route of Shatto's new job had been enlarged just as she began to run it. The additional work involved, which ensured that Shatto would be unable to engage in union activities during working hours, was not justified by any business considerations.⁸

In sum, I am persuaded that Moore's personnel shuffle was motivated solely to impede Shatto's union activities and particularly to keep her away from the employees she was trying to organize. I conclude that Respondent has violated Section 8(a)(3) and (1) of the Act and that Hendricks' statement that Shatto should not have signed the Union's letter, followed as it was by her transfer, constituted a veiled threat, ultimately enforced, of action to discourage her from engaging in protected activities. I conclude that a violation of Section 8(a)(1) has been proved.

The activities of Respondent, occurring in connection with its operations described 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.

THE REMEDY

Having found that Respondent has violated the Act in certain respects, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. In particular,

⁷ Richard Spears, Respondent's advertising director, stated that Shatto's retention of her job for so many years was "affecting her attitude about her working conditions," which I infer relates to Shatto's union activities.

⁸ The General Counsel argues that Moore's explanation for his transfer of Shatto was omitted from his prehearing investigatory affidavit and that this lends support to her argument that Respondent's story was concocted. Although the official transcript is not wholly clear (there being numerous errors in it), Moore testified that what was written by the Region's agent were merely his responses to questions that he was asked. He stated that he was not asked about his entire motivation. I credit him.

I shall recommend that Shirley Shatto be reinstated to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed by her.⁹

On these findings of fact and conclusions of law and the entire record, I issue the following¹⁰

ORDER

The Respondent, Greensboro News Company, Greensboro, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with unspecified reprisals to discourage them from engaging in union and protected and concerted activities.

(b) Transferring its employees to different positions in order to discourage or prevent them from engaging in activities in support of Greensboro Printing and Graphic Communications Union, Local 319.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their Section 7 rights.

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

(a) Offer Shirley Shatto immediate and full reinstatement to her former position of a copy desk clerk or, if such position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed by her.

(b) Post at Greensboro, North Carolina, copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 11, 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 Respondent has taken to comply.

⁹ Inasmuch as Shatto received the same wages when she was transferred, no backpay order is appropriate herein.

¹⁰ 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.

¹¹ 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."