

Eaton Corporation and Drivers Local Union No. 61 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.¹ Case 11-CA-13731

March 29, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On December 31, 1990, Administrative Law Judge Thomas A. Ricci issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a cross-exception, a supporting brief, and an answering 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,² and conclusions 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, Eaton Corporation, Kings Mountain, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹On November 1, 1987, the Teamsters International Union was readmitted to the AFL-CIO. Accordingly, the caption has been amended to reflect that change.

²The 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.

The General Counsel excepts to the judge's failure to find an 8(a)(3) violation. Because an 8(a)(3) finding would not alter the affirmative remedy, we find it unnecessary to address the General Counsel's exception.

Jane P. North, Esq., for the General Counsel.
William Ross McKibbin, Jr., Esq. (Haynsworth, Baldwin, Johnson & Greaves), of Greenville, South Carolina, for the Respondent.

Linda S. Brown, Esq., of North Mountain Ave., North Carolina, for the Charging Party.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge. A hearing in this proceeding was held at Shelby, North Carolina, on September 27, 1990, on complaint of the General Counsel against Eaton Corporation (the Respondent or the Company). The complaint issued on August 6, 1990, on a charge filed on February 26, 1990, by Drivers Local Union No. 61 of the

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, AFL-CIO (the Charging Party). The complaint raises three questions that are disputed by Respondent. Did the Respondent "impliedly" promise its employees that it would discontinue a past practice of favoritism to induce them to abandon their prounion activity? Did it make "unspecified threats" to the employees toward the same end? Did it purposely single out one employee for criticism because she solicited membership in the Union inside the plant? Briefs were filed by the General Counsel and the Respondent

On the entire record and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, an Ohio Corporation, operates a manufacturing facility located in Kings Mountain, North Carolina, where it is engaged in the manufacture of truck transmissions. During the 12-month period preceding issuance of the complaint, a representative period, Respondent received at that location goods and raw materials valued in excess of \$50,000 directly from points outside the State of North Carolina. I find that the Respondent is an employer within the meaning of the Act.

II. THE LABOR ORGANIZATION

I find that Drivers Local No. 61 of the International Brotherhood of Teamster, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A movement toward collective bargaining started among these employees in November 1989 when the Union held a meeting for them at a local hotel. A second meeting was held on January 7, 1990, and the Union filed an election petition with the Board on February 6. As a result an election was scheduled to be held on April 5, 1990. With the charge here to be considered filed on February 26, the election was not held. After the second meeting held by the Union on January 7, employees started distributing prounion literature and membership cards both inside and outside the plant. The company learned of this, of course. There also developed a widespread antiunion movement among other employees. With this the Respondent for the first time in so far as this record shows came up with a no-solicitation rule among the employees, enforced against both groups—the prounionists and the antiunionists. A number of employees in both categories testified that they were told to stop it, at least during working hours and in the work areas.

One of the employees who was criticized for distributing leaflets and was given a written warning of wrongdoing for it was Gladys Hardy. She said that beginning in January she placed union literature on the table in her work department, where she worked with others. Apparently there is such a table in all the departments, where work orders and documents relating to the work performed there are often placed. Hardy also went to other departments, including one called "Heat Treat," and placed her literature on the table inside those department. In addition, of course, she placed her lit-

erature in the canteen, where the employees rest during their lunchbreaks and have their lunch, and in the lady's locker room, in the lady's restroom, etc. On or about February 16, still according to her testimony, Hardy went into the heat treat department, where she did not work but while others where on duty, and placed her literature on the record table in that department.

There is conflicting testimony by the various witnesses about whether Hardy also spoke about the Union to other employees while they were at work, or in the work areas. She said she did not, but others said they heard her solicit membership in the Union in the work areas during working time.

Sometime in January Raymond Horton, the supervisor in department 23 where Hardy worked, told her he had heard she was engaged in soliciting membership in the Union during worktime and in the work area, and that she must stop because it was prohibited. Hardy denied having done that. On February 16, Hardy again placed union literature on the worktables, this time going into the heat treat department. Three days later, on February 19, another supervisor of hers, Charles Wright, called into her the office of Scot Harrim, the personnel director. Wright told her she was being written up—a document called counseling report—for going into the heat treat department and distributing union literature during working time. This time Hardy did not contradict the statement. Instead she wrote on the written document that the supervisors had prepared that document—“because she was wearing a union badge.”

The complaint specifically alleges that Supervisor Horton's oral criticism of her in January for engaging in union activity, and the written record made by the Respondent on February 19, for continuing prounion activity, were separate incidents violations of Section 8(a)(1) of the Act.

The General Counsel's theory of illegality as to these two incidents—the major question involved in this entire case— involves diverse contentions. The first is the party did not violate the no-solicitation rule the Company had put in effect when it learned of the union activity that had started. A second argument is that even if Hardy did ignore the newly established solicitation rules, others did it also, and the managers picked her for special criticism for the express purpose of stopping the prounion activity. And the third basis for this complaint allegation is that the Respondent had always permitted solicitation of all kinds to be carried on in the workplace without ever having a no-solicitation rule, and only established the rule for the purpose of curbing the prounion activity.

In the light of this entire record it is unnecessary to pass on the first two of these theories of illegality as to the treatment of Hardy—did she violate the no-solicitation rule and why was she singled out for criticism. The third theory is amply proved by the evidence and fully justifies an order that the Respondent expunge from her employment record both the criticisms there recorded. Contrary to the Respondent's argument in its posthearing brief there is cumulative proof that before this union activity started the employees were permitted to engage in all kinds of solicitation—having nothing to do with their employment—during working hours and in the workplace. It was not until the union activity began that the Respondent first established its no-solicitation rule. That it was a union activity that it thereby wished to

stop could not by clearer. The Board has long held that a rule so established violates Section 8(a)(1) of the statute.

Five employees testified—with not one word of contradiction by any of the Respondent's witnesses—that during working hours and in the work area activity unrelated to the work was carried on at all times for years in this place, including the very period the Union and antiunion activity was being pushed.

From the testimony of Gladys Hardy:

A. Joyce Bridges sold the jewelry, clothes and other items.

Q. Alright. Will you describe for us more specifically what Miss Bridges did in that regard?

A. She had this big tote bag that she always carried her jewelry in, earrings, necklaces, watches, whatever and she had a table in her area and when somebody wanted something from her, if it was on work time, they would come to her job and look through her jewelry and get what they, you know, buy what they wanted.

Q. You have ever done that yourself?

A. Yes

Q. And, can you give us a time period during which miss Bridges did this prior to the Union Campaign—for how many—for how long?

A. Well, she has done that for the last three years, I know.

Q. What else have you observed, if anything, regard to items or products being sold at work?

A. I sold raffle tickets. I sold candy.

Q. To whom do you sell your raffle tickets?

A. I sold them to the employees in my department and sometimes in other departments, when I was in the canteen when I sold them to my department and just whoever was around I would ask them to buy one.

Q. Was this on break time or on work time?

A. Work time and break time.

. . . .

Q. Ms. Hardy, can you tell us more—any other incidents of items or products being sold by employees?

A. Tupperware was sold.

Q. By whom?

A. Cheryl McDonald sold Tupperware. It was during the first part of January—into the first couple of weeks of January.

Q. Of what year?

A. Of 1990.

Q. Did you make any purchases yourself?

A. Yes.

Q. What did you purchase?

A. I purchased a shacker that I used to shack Slim Fast in.

Q. Was this at work time or on break time?

A. It was on work time.

Q. And, the other employees that sell products that you know of?

A. Catherine Whinsant sold crafts, wreaths, shirts, bows, different kinds of crafts.

Q. And, when were these items sold?

A. They were sold during work and on breaks.

. . . .

Q. Ms. Hardy, before the Union campaign began, did you ever see any paper circulated among the employees at Eaton on the job?

A. Yes.

Q. What did you observe in that regard?

A. The football—its the football game—I don't know exactly what you call it, because I don't know how to play, but I know it was a football pool. It was like squares on there and you put your name—

Q. Alright, when you say squares on there to what are you referring?

A. On a piece of paper.

Q. And what happens to the piece of paper, if you know?

A. Well, it goes from one person to the other, whoever's playing it.

Q. And you have observed that happening yourself?

A. Yes.

Q. Have you ever helped pass this paper from person to person?

A. Yes.

Q. Alright. Are there any other kinds of papers that have circulated to your knowledge?

A. We play check pool.

Q. What is that?

A. You match the numbers on your check. Its like playing poker.

Q. Okay, and, what kind of papers do you use in that regard?

A. Well, we use a piece of paper to write down the names of the people that are playing and—

Q. And, what happens to that paper?

A. It goes from one person to the other.

Q. Is this on work time or break time?

A. On work time and break time.

From the testimony of Joyce Welsh:

Q. Did you ever observe any employees selling items on work time at Eaton, Mrs. Welsh?

A. Yes.

Q. Will you tell us what you observed in that regard?

A. Well, I can't remember dates or anything, but I have personally, myself bought jewelry from Joyce Bridges, and I have bought raffle tickets from various employees and I have played football pools, bought blocks in it.

Q. Alright. Focusing you on the jewelry—what have you—have you ever observed other employees buying them from Mrs. Bridges as well?

A. Yes I have.

Q. What have you observed in that regard in the last six months?

A. Yes, I have in the last six Months. There was an occasion when I had walked up to get a cup of water from the water fountain, and Joyce had the jewelry spread out on the table and Caroline Stone and her were standing there looking through it and then on another following day—I don't know, it was a day or two late—I'm not exact about that, but I was again at the water fountain and Becky Holder was up there with the

same thing—the jewelry spreadout on the table, both of them standing there looking through it.

Q. When you have purchased jewelry from Mrs. Bridges, was that on break time or on work time?

A. No, she had brought it to my work area, I went to her work area and bought it.

From the testimony of Vance Kirby:

Q. While you have worked there, have you observed any practice in regard to employees selling items at work?

A. Yes, candy and raffle tickets.

Q. Have you engaged in any of that yourself?

A. Yes.

Q. Alright. What have you done?

A. I've bought candy.

Q. Alright.

A. And, raffle tickets.

Q. And, when you did this, was it on break time or work time?

A. Work time.

Jimmy Herlong spoke of an incident that happened in January 1990:

I was in department 23 and I had stopped by the water fountain and I gave this boy my parlay card. I play a parlay card every week.

Q. What is a parlay card, Sir?

A. It's my football card. You bet on it. They give you odds and even numbers and you put five dollars on five and a dollar on three or whatever.

Q. Alright sir.

A. And, as I gave him the parlay card, he always looked at it before I turned it in each week. Somebody on the other aisle hallowed [sic] they needed some baskets, so I went to turn around and I left my parlay card with him before I could get it back. I turned my forklift around and I went around to the other aisle. Before I could get around to where he was at Raymond Horton stopped me and someone told him that I was passing out union literature and I told him, no, sir, I did not. I said I gave that boy a parlay card. He said well you know that you're not suppose to be giving parlay cards out on company time. I said yes sir.

Q. What happened after that?

A. Well, I just went on down and he walked off in other words, but later in the afternoon Charles Wright came up and kind of apologized to me for getting jumped on by Raymond and misunderstanding and that was all that was said about it.

Wright, the supervisor over Herlong, testified later for the Respondent, but did not contradict one word of Herlong's. What better proof that solicitation of nonunion related matters were knowingly allowed by the Respondent while anykind of union talk or solicitation was prohibited? See *Magnolia Manor Nursing Home*, 284 NLRB 825, 829 (1987).

From the testimony of Henry Famble:

Q. Before the Union campaign began did you ever see any paper work—paper being signed by any employees at work?

A. Ball pools.

Q. Would you describe for us what you have seen in that regard?

A. I played them. They would be a paper on a table in a box and you would sign your name on the paper and put money in the box.

Q. Where would the table be for this?

A. Any particular place in the plant.

Q. What kinds of pools are held?

A. Football, baseball, basketball.

Q. Calling your attention to the baseball pool in the World Series last year, did you participate in that?

A. I sure did.

Q. Mr. Famble, you have already testified about an individual named Randy Horton, do you know an individual named Keith Ruff?

A. Yes.

Q. Who is he and what is his job?

A. Supervisor.

Q. What about Vernon Estridge?

A. Supervisor.

Q. Mr. Eric Yates?

A. Supervisor.

Q. And, Mr. Mark Champion?

A. Supervisor.

Q. In regard to the baseball pool, what, if anything, did you observe about the sheets you had looked at?

A. Well, after the sheets were filled, everybody gets a copy of it.

Q. How does that work?

A. They fill up the sheet with names, so many names and give 25, 50, whatever the amount is going for and once its filled whoever's name comes up with the scores thats on the sheet, win the money.

Q. How do you get those copies of the sheets?

A. Somebody runs them off, whoever is handling the pool.

Q. Then how, do you, yourself get a copy? Where do you pick up a copy?

A. Pick it up off the table where you played it at.

Q. Alright. Calling her attention to last years World Series baseball pool, what did you observe, when you got those sheets?

Q. That everybody was playing it, including supervisors.

Q. Supervisors that we have just named?

A. That's right.

That discriminatory enforcement of a no-solicitation rule—i.e., disciplinary warnings issued to employees soliciting membership in the union while knowingly permitting all kinds of solicitation unrelated to union activity—is a violation of Section 8(a)(1) of the Act is a long-established principle of Board law and requires little citation. See *Products Unlimited Corp.*, 280 NLRB 435 (1986). I find that by telling Hardy she could not solicit union membership in the plant and recording the warning in her personal file, and by issuing to her a written reprimand for engaging in union activity on Friday in February 1990, the Respondent violated

Section 8(a)(1) of the Act. *K & M Electronics*, 283 NLRB 279 (1987).

Another complaint allegation is that the Respondent promised to discontinue a past management practice in layoffs and promotions if the employees would vote against the Union in the expected election. One of the causes for complaint which the employees had long felt, and voiced, was that the supervisors often practiced a form of “favoritism,” an unfair method for selecting employees for discharge or more desirable positions. On this issue Jim Rinnert, the plant manager, is called the guilty party.

Rinnert first came to this plant on June 1, 1989, as plant manager. The following month there was a considerable reduction in the total number of employees which was about 635. About 12 were nonvoluntary layoffs, and about 25 people left voluntarily. Some of the employees voiced dissatisfaction over the way the selections were made, saying that a form of “favoritism” was practiced by the supervisors, which was unfair. They brought their gripes to Rinnert. He told them then that he was opposed to any form of favoritism, and that he would do his best to put a stop to it. In fact, he formed a committee—consisting of both management representatives and employees—to discuss the problem, and to find a satisfactory solution. The committee met and discussed the problem six times, from August into September 1989. Throughout the entire period Rinnert's position, as repeated again and to the employees, was that he would keep seeking a way to stop any form of favoritism.

Apparently early in 1990 there was another small layoff and again there resulted a complaint by the employees that favoritism was playing a part in the selection process. It became one of the objects which the employees hoped to achieve with a union.

On March 1, 1990, the Company held a meeting of employees to discuss the union movement with them. The employees brought up their dislike of “favoritism” by supervisors as one of their reasons for wanting a union. Rinnert again repeated what he had told them many times before, that he was opposed to any form of favoritism and that he would continue to try to put a stop to it. It is this statement by the plant manager that day to the employees that is called an unfair labor practice in the complaint.

I find no merit in that allegation. Rinnert did no more than restate the conditions as they existed long before the union activity started. It is one thing for an employer to promise to improve existing conditions of employment, but it is something else again to reaffirm existing conditions. It seems that on September 1989 to early 1990, Rinnert had been successful in his announced determination to stop the “favoritism.” If it happened again, what with 600 employees in 1 plant, it is understandable. It does not change the reality of what the employees always knew his position to be.

Don Bumgardner was 40 years an employee of the Company and well known to Fred Kovalik, the manager over a number of the Respondent's plants, including the one involved in this case, which he visits periodically. On March 12, 1990, he came there and had a personal talk with Bumgardner. There is a conflict in testimony between the two only with respect to one phrase which Bumgardner attributed to the manager.

Kovalik's testimony is that he knew the man was supporting the Union and that he said to him “I'm a little bit sur-

prised that you would be in favor of a union . . . and by the way that same day I had heard that your wife was soliciting for the Union outside the company. . . .”

Bumgardner’s testimony is a bit more detailed. He said that in their conversation “he [Kovalik] kept looking at my coat ‘badge, union badge,’ and he just—all the time he was standing talking to me and he said I better stop having my wife call people about the Union. She called just to see, if people were interested in the Union and quit having union meetings at my house and if I didn’t take that badge off, there was going to be some drastic changes made around there.”

Kovalik said he did not recall whether Bumgardner was wearing a union button that day, and denied saying there would be “drastic changes” of any kind.

It is clear that the manager was opposed to any union activity in the plant. He did not deny telling Bumgardner to have his wife stop calling people about the Union. I credit Bumgardner where the two witnesses disagreed. I find that the manager did say there would be drastic changes if Bumgardner did not remove his union badge, a clear threat to take some form of retaliation against him, as well as other employees, if the prouction activity did succeed. By that threat voiced by Kovalik the Respondent violated Section 8(a)(1) of the Act. *Case, Inc.*, 237 NLRB 798, 807 (1978). See also *J. P. Stevens & Co.*, 268 NLRB 11 (1978).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section 3, above, occurring in connection with the operations of its business, 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.

REMEDY

The Respondent must be ordered to cease and desist from again committing the unfair labor practices here found. It must also cease and desist from enforcing a no-solicitation rule against union activity while simultaneously permitting solicitations of all other kinds during the work hours and in the workplace. It must also expunge from the record of Gladys Hardy the two reprimanded notices issued to her in violation of the Act.

CONCLUSIONS OF LAW

1. By issuing two separate warnings to Gladys Hardy, and recording them in her personal file, for having engaged in union activity while simultaneously permitting all other kinds of solicitation during the work hours and in the workplace, the Respondent has violated and is violating Section 8(a)(1) of the Act.

2. By threatening to impose harsher conditions of employment on the employees in retaliation for union activity, the Respondent has violated and is violating Section 8(a)(1) of the Act.

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Eaton Corporation, Kings Mountain, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Issuing formal recorded reprimands to employees for soliciting union membership while simultaneously permitting solicitation of all other kinds in the workplace and in the work area.

(b) Threatening to impose harsher conditions of employment on employees in retaliation for the union activity.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to support, join, or assist Drivers Local Union No. 61 of the International Brotherhood Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, or any other labor organization, to bargain collectively as representatives of the own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to reframe from any and all such activities.

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

(a) Expunge from the personal record of Gladys Hardy the two recorded reprimands issued to her for having engaged in union solicitation.

(b) Post at its place of business in Kings Mountain, North Carolina, copies of the attached notice marked “Appendix.”² 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.

¹ 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.

² 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 of 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 reprimand employees for engaging in union solicitation in the plant while simultaneously permitting solicitation of all other kinds among the employees in the work area during working time.

WE WILL NOT threaten to impose harsher conditions of employment on the employees in retaliation for the union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to support, join, or assist Drivers Local Union No. 61 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, or any other labor organization, to bargain collectively through representa-

tives of their own choosing or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities.

WE WILL expunge from the record of Gladys Hardy the two reprimand entries made against her interest for such activity.

EATON CORPORATION