

Hamilton Standard Division of United Technologies Corporation and Local Lodge #743, District #91, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 34-CA-5567

May 25, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

Upon a charge filed by Local Lodge #743, District #91, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing dated May 29, 1992. The complaint alleges that the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the National Labor Relations Act by threatening its employees with loss of employment because the Union filed an unfair labor practice charge and opposed the Employer's establishment of work teams. On July 10, 1992, the Respondent filed an answer to the complaint denying that it violated the Act and affirmatively pleading that it had engaged in protected free speech under Section 8(c) of the Act.

On October 8, 1992, the parties jointly filed a motion to transfer the proceeding directly to the Board and a stipulation of facts. The parties waived a hearing before an administrative law judge, the making of findings of fact and conclusions of law by an administrative law judge, and the issuance of an administrative law judge's decision. The parties agreed that the charge, complaint, the Respondent's answer, and the stipulation of facts with exhibits attached constitute the entire record in this case and that no oral testimony is necessary or desired by any of the parties. The parties submitted this case for findings of fact, conclusions of law, and order directly to the Board.

On March 11, 1993, the Board issued its Order approving the stipulation and transferring the proceeding to the Board. Thereafter, the General Counsel, the Charging Party, and the Respondent filed briefs in support of their respective positions.

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

The Board has considered the stipulation, the briefs, and the entire record in this proceeding and makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is an unincorporated division of a Delaware corporation with an office and place of business in Windsor Locks, Connecticut, and is engaged in the manufacture and nonretail sale and distribution of space suits, jet fuel controls, propellers, various elec-

tronic equipment for use in commercial and military aircraft, and related products. During the 12-month period ending April 30, 1992, the Respondent, in the course of its business operations, purchased and received goods valued in excess of \$50,000 directly from points outside the State of Connecticut. The parties stipulated, and we find, that the Respondent is now, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties stipulated, and we find, that the Union is now, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Since about December 31, 1968, the Union, by virtue of Section 9(a), has been the exclusive representative of the Employer's employees for collective-bargaining purposes in the following appropriate unit:

All production and maintenance employees of UTC, Hamilton Standard Division at its Schoenposter Road and Hamilton Road, Windsor Locks, Connecticut plants; 17 Bradley Park Road, East Granby, Connecticut plant; 5 Firestone Drive, Suffield, Connecticut plant; 1101 Kennedy Road, Windsor, Connecticut plant; and 97 Newberry Road, East Windsor, Connecticut plant, including trainees, working leaders, and all hourly-rated technicians in the chemical, rubber, metallurgical, vibration, and electronics laboratories; but excluding apprentices, executives, professional employees, salaried technicians in the Engineering Department, foremen's clerks who have access to confidential information, draftsmen, plant protection employees, Medical Department employees, salaried timekeepers, salaried office and salaried factory clerical employees, outside servicemen, truck drivers, watch engineers, group supervisors and all other supervisors as defined in the Act employed at the above Connecticut plants.

The parties have executed a series of collective-bargaining agreements, one of which was effective from May 1, 1989, to May 3, 1992. The most recent agreement became effective on May 4, 1992, and expires on April 30, 1995.

On July 31, 1990, a complaint issued based on the first of several union charges concerning the Respondent's establishment and use of "Continuous Improvement Teams" (CITs). Thereafter, a settlement agreement was entered into by the Respondent and the Region, over the objection of the Charging Party, resolving these complaint allegations associated with the CITs, and was approved by the Regional Director on

November 30, 1990. On February 19, 1991, the General Counsel denied the Union's appeal of the Regional Director's approval of the settlement agreement. After the settlement agreement was entered into, the Union filed other unfair labor practice charges related to similar issues, including a charge on January 10, 1992, alleging that the Respondent had violated Section 8(a)(1), (2), and (5) of the Act by dealing directly with unit employees concerning terms and conditions of employment, unilaterally establishing employee teams, and forming a labor organization among its employees. The General Counsel ultimately did not issue a complaint in that case.

On January 20, 1992, while the latter unfair labor practice charge discussed above was pending, the Respondent distributed an internal correspondence memorandum to its employees, including unit employees. During the almost 2-year period in 1990 through 1992 in which the parties were in disagreement regarding the Respondent's work team approach, both parties communicated with bargaining unit employees through a series of written communications. The Union distributed 14 flyers at the Respondent's plants that were submitted into evidence. Similarly, the Respondent communicated with its employees through a series of letters, memoranda, and bulletins, 10 of which were submitted into evidence.

The Respondent's January 20, 1992 memo was signed by its president and was addressed to "Fellow Hamilton Standard Employee(s)." It stated as follows:

The International Association of Machinists and Aerospace Workers has filed an unfair labor practices charge against Hamilton Standard with the National Labor Relations Board. The charge accuses the company of unlawful use of work teams as an alternative to the union.

Many employees have expressed concern about the future of continuous improvement and team work at Hamilton Standard because of the union's stance. Many of you feel the latest charge is an attempt to block your efforts to help improve our business. If it is, I am confident the attempt will not work.

We all know we must become more competitive to succeed in today's highly competitive global markets. Our employees' interest in this action confirms that Hamilton Standard has no future unless we make the fundamental process changes required by our customers around the world. They, along with our state and federal elected representatives, have urged us to embrace continuous improvement to ensure quality in our products and services. In fact, an increasing number of business agreements with our major customers require it.

We will go forward with continuous improvement at Hamilton Standard. I have seen the success of our core work teams and process improvement teams, which are legal within the definition of the National Labor Relations Act. I am personally committed to establishing more teams, not to violate the terms of our collective bargaining agreement, but so that we can make Hamilton Standard an investable, competitive force in the global market and a secure place for all to work.

We will continue to promote values that empower people and encourage the success and survival of our company. But this charge could slow our progress. It could delay needed improvements and end up costing us business and jobs at one of the most difficult times in our history. I assure you that, while we will abide by the decision of the Board on this issue, we will, with your help, pursue our case and defend our right to improve our business aggressively—for the good of us all.

B. Contentions of the Parties

The General Counsel and the Charging Party contend that the January 20, 1992 memorandum of the Respondent's president, set forth above, interferes with, restrains, and coerces employees in their exercise of Section 7 rights in violation of Section 8(a)(1) of the Act. They note that the memorandum specifically addressed the filing of the unfair labor practice charge and stated that the charge could slow the Respondent's progress, delay improvements, and cost jobs. They maintain that, under Board law, the free speech rights of an employer must be balanced against the employees' Section 7 rights and that neither coercive statements nor threats of reprisal are protected. In this connection, they assert that the Board will find unlawful statements if they imply that union action would put employees out of work or tend to dissuade employees from filing unfair labor practice charges. Applying these principles, the General Counsel and the Charging Party argue that the Respondent's memorandum, by predicting, without objective supporting evidence, that the Union's pursuit of its latest charge could result in job loss—thus linking the Union's pursuit of its unfair labor practice charges to job security—crossed the line from protected to unprotected speech. They further contend that the natural consequence of the Respondent's prediction would be to dissuade employees from filing unfair labor practice charges or from cooperating in the Board's investigation of charges.

The Respondent argues that the Board should look at the memorandum as a whole and in context to determine if it contains any unlawful threat. It notes that it is not unusual for both the Union and the Respondent to communicate with unit employees through the distribution of written letters, memoranda, and the like.

Further, the Respondent notes that the unfair labor practice charge mentioned in the memorandum at issue was ultimately determined to be meritless, a reference to the Regional Director's refusal to issue complaint on the charge. Finally, the Respondent stresses that its president took pains in the memorandum to assure employees that it would continue to act lawfully and abide by any Board decision.

In light of all the above, the Respondent asserts that its memorandum was not unlawful but was rather protected speech under the Act as an expression of its views, containing no threat of reprisal. The Respondent notes in this regard that the Union, in its flyers mentioned above, was consistently critical of the Respondent's work team programs, indicating that the employees' participation in such programs might be damaging to the Union's ability to negotiate improved job security for unit employees, and that the Union filed a series of unfair labor practice charges over the CITs and related issues. The Respondent further asserts that its memorandum made no connection between the mere filing of charges and possible job losses, but instead reflected its view that if the Union's charge was successful (that is, if the Board ordered the Respondent to limit its programs), this could adversely affect business. Thus, the Respondent argues that, at most, its memorandum contained mere statements of opinion concerning the possible effects of third party action, rather than threats.

C. Discussion

The issue here is whether the Respondent's January 20, 1992 memorandum distributed to its employees, including unit employees, was unlawful because it threatened employees with reprisals, specifically job loss, based on the Union's opposing the Respondent's institution of work teams and filing an unfair labor practice charge concerning this issue. In agreement with the Respondent's position, we conclude that it is not.

In determining the lawfulness of the Respondent's conduct, we look not only at the statements alleged to be unlawful but at the Respondent's memorandum as a whole and in context as well. See, e.g., *Mantrose-Haeuser Co.*, 306 NLRB 377 (1992). We note in this regard that there are no other unfair labor practices alleged and no unfair labor practices found against the Respondent in this case. Thus, the Respondent's comments in the memorandum occurred in an atmosphere free of threats, coercion, or other unlawful activity. We also find it significant that, as the Respondent points out, both it and the Union had a history of imparting information to bargaining unit employees through written communications, including their respective strongly expressed positions concerning the hotly contested issue of the Respondent's institution of CITs and work

teams. In this regard, both the Union and the Respondent have made clear their positions, over a long period, in a series of communications to employees, with the Respondent taking the position that CITs and work teams are essential to its future viability while the Union expressed the view that these approaches adversely affected employees' job security. Thus, the statements made in the memorandum did not exist in a vacuum but were consistent with the ongoing "war of words" between the Respondent and the Union over the work team issue.

Regarding the memorandum itself, we note that its primary thrust is clearly to persuade its employees of the importance of the use of continuous improvement teams. In this regard, it is similar to the statement found lawful by the Board in *Crafts Precision Industries*, 305 NLRB 894 (1991). In that case, the Board considered an employer's statement to a union representative that if the union did not accept its bargaining proposal the employer had other options available, including eliminating a department. The Board found the statement was not unlawful but simply an expression of the employer's view that its position was essential to increase management efficiency. Thus, the Board concluded that such a statement, without more, was insufficient to establish a threat in violation of Section 8(a)(1).

Although the memorandum at issue does speak to the Union's charge, it does so in the context of describing the Union's latest manifestation of its opposition to the Respondent's work team approach. Thus, the Respondent's statements about the unfair labor practice charge are not directed at the Union's filing of the charge and the utilization of the Board's processes per se, but instead are directed at the charge only as a potential impediment to its goal of maintaining its work teams and CITs. In this regard, we note that the memorandum refers to the possible consequences of the charge, i.e., the charge could delay improvements and could result in a loss of business and jobs. In our view, these statements simply reflect the Respondent's position that: (1) its program is designed to bring about improvements and to foster business and jobs; and (2) the program would not be maintained if the charges are not resolved in a manner favorable to the program. The Respondent promised to defend its legal position concerning the program and to abide by the Board's decision. Thus, the Respondent's statements, far from threatening retaliation for resort to the Board, actually express a willingness to abide by Board processes and to honor the Board's decision.

Further, we find that the memorandum is devoid of any threats, express or implied, directed against employees or the Union for filing the charge itself and does not contain any language threatening that the Respondent would retaliate because the charges were

filed. In this regard, we view *Equitable Gas Co.*, 303 NLRB 925 (1991), enfd. in pertinent part 966 F.2d 861 (4th Cir. 1991), relied on by the General Counsel, to be readily distinguishable. In that case, the employer stated in a speech that it would fight back against the union for filing so many charges and that unless management got a more cooperative approach from the union it would eliminate jobs by automation, exercise its contractual right to contract out unit work, insist on the elimination of dues checkoff and union security in future negotiations, and begin to communicate directly with unit employees. The Board held these remarks unlawful because they clearly drew a connection between the union's efforts to represent employees vigorously and the employer's implementation of various adverse actions. In contrast, here the Respondent's memorandum contained no threat that the Respondent would take adverse action on its own against its employees or the Union connected with the Union's filing of the unfair labor practice charge.

The General Counsel further relies on *Harrison Steel Castings Co.*, 293 NLRB 1158 (1989). The Board determined in that case that a statement in a newsletter, circulated by the employer and suggesting that if it became unionized it might become non-competitive with a resulting loss of business and jobs, had a tendency to coerce employees when viewed against the background of its other unlawful conduct. We point out, however, that the Board specifically noted in that case that in another context devoid of animus or other unlawful threats, it might well have found a similar statement to be within an employer's rights. *Id.* at 1159. Therefore, *Harrison Steel Castings*, supra, is distinguishable because there, unlike here, the respondent's other conduct provided a totally different context in which to judge the statement at issue. Indeed, that case actually provides support for our finding here that, in the absence of other unlawful conduct,

the statements made by the Respondent in its memorandum are not unlawful.

Finally, in our view, this case is analogous to *Mantrose-Haeuser*, supra at 378, in which the Board found a solitary statement—that during bargaining wages and benefits “typically” remain frozen—contained in a 19-page document in a context free of other unfair labor practices was not unlawful. The Board there particularly noted that the word “typically” reduced the possibility that the statement would be perceived by employees as a threat. We find the use in the Respondent's memorandum of the word “could” in the phrases “this charge could slow our progress” and “could delay needed improvements” would have a similar effect on employee perception.

In light of all the above, and considering the particular facts and the entire context here, we conclude that the Respondent's memorandum was simply a legitimate statement of the Respondent's views, with no threat or coercion, which is protected under Section 8(c) of the Act. See, e.g., *Pincus Elevator & Electric Co.*, 308 NLRB 684, 691 (1992). Accordingly, we shall dismiss the complaint.

CONCLUSIONS OF LAW

1. The Respondent, Hamilton Standard Division of United Technologies Corporation, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local Lodge #743, District #91, International Association of Machinists and Aerospace Workers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has not engaged in the unfair labor practices alleged in the complaint.

ORDER

The complaint is dismissed.