

Multicraft International Limited Partnership and Celia Price. Case 10-CA-31101

June 28, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND HURTGEN

On April 20, 1999, Administrative Law Judge Keltner W. Locke issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs.

The National Labor 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,¹ and conclusions and to adopt the recommended Order.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Multicraft International Limited Partnership, Cottondale, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

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

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative 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), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² The General Counsel excepts to the failure of the judge to state the name of the Union in the notice to employees. We have amended the notice accordingly.

WE WILL NOT threaten employees with job loss should they select the United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO (UAW), or any other union, to represent them.

WE WILL NOT threaten employees that it would be futile for them to select a union as their collective-bargaining representative.

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

MULTICRAFT INTERNATIONAL LIMITED
PARTNERSHIP

John Doyle, Esq., for the General Counsel.

Mark Tallafertro Jr., Esq. (Burr & Forman, LLP), of Birmingham, Alabama, for the Respondent.

DECISION

STATEMENT OF THE CASE

KELTNER W. LOCKE, Administrative Law Judge. This case concerns whether or not the general manager of the Respondent's facility in Cottondale, Alabama, made threats to an employee which interfered with, restrained, or coerced employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act (the Act). I find that the general manager did make such threats, and that Respondent must remedy them in the manner described below.

Multicraft International Limited Partnership (the Respondent or the Company) provides auto parts assembly services at a plant operated by another company, Delphi Automotive Systems (Delphi). On July 27, 1998, one of the Respondent's employees, Celia Price (Price or the Charging Party) filed an unfair labor practice charge with the National Labor Relations Board (the Board). This charge alleged that one of Respondent's managers had made statements to her which violated Section 8(a)(1) of the Act.

On November 24, 1998, the General Counsel, through the Acting Regional Director for Region 10 of the Board, issued an Order Consolidating Cases, Consolidating Complaint, and Notice of Hearing (the complaint), which set for hearing certain allegations arising from Price's charge, Case 10-CA-31101, and other allegations raised by a separate charge, Case 10-CA-31233, filed by another employee. Before the hearing, the Respondent and the General Counsel entered into a settlement of this other case. On February 12, 1999, the Regional Director issued an order which severed Case 10-CA-31233 and approved a request to withdraw that charge, closing the case.

Therefore, the only matters before me arise out of the charge Price filed. The parties appeared before me and presented evidence at a hearing on February 16, 1999. At the close of hearing, I granted time for the preparation and filing of posthearing briefs.¹

FINDINGS OF FACT

I. STATUS OF THE PARTIES

Respondent has admitted that it is a Delaware limited partnership with an office and place of business in Cottondale, Alabama, where it is engaged in providing contract labor auto

¹ Certain errors in the transcript have been noted and corrected.

part assembly services to Delphi Automotive Systems (Delphi), which operates a plant manufacturing dashboards for Mercedes automobiles. Respondent also has admitted facts establishing that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I so find.

Respondent has admitted that its general manager, Scott Bayles, and its team leader, Yvetta Stafford, are its supervisors and agents within the meaning of Section 2(11) and (13) of the Act. I so find.

Based on the record, I also find that the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

Celia D. Price, one of Respondent's assembly line employees, contacted the Union in the latter part of April 1998 to begin an organizing campaign at Respondent's facility. When the Union began having meetings with employees when they got off work, Price took the role of lead union organizer.

According to Price, on May 29, 1999, employees on her part of the assembly line experienced some down time around 3:30 or 3:45 that afternoon, and two of them discussed union organizing with her at that time. Team Leader Yvetta Stafford, whom Respondent has admitted to be its supervisor, was also present.

When the employees went back to work, Stafford excused herself. Later that afternoon, Stafford told Price to go to the office of General Manager Scott Bayles. Price then met with Bayles at his office cubicle.

No one else was present during this conversation between Bayles and Price. Their accounts of the meeting differ significantly.

According to Price, the general manager began the conversation by referring to the union organizing campaign. Price testified, in part, as follows:

A. When I walked in he asked me to have a seat. I sat down. He said, "Celia, I've been hearing some disturbing news that you've been talking about the Union out in the plant." I said, "Well, who said that. Bring them in here, I want to see who said it." He said, "I can't do that."

Q. What happened then?

A. He said, "The Union is not like it was in the 60's. All they're good for is taking Union dues." He made the statement that Delphi had a contract with Mercedes that they wouldn't let a Union happen. He said that if a Union happened, if it got formed that Delphi would lose their contract with Mercedes and Multicraft would leave and we would lose our jobs.

Bayles acknowledged that he called Price into his office on May 29, 1998, after Team Leader Yvetta Stafford spoke with him. Bayles first testified that Stafford reported that Price "had gathered her employees off their stations during work time and was conducting personal business." Later in his testimony, however, Bayles said that "Yvetta came to me and said that Celia had her employees in the corner of the electrical center talking about personal stuff *and Unions* on work time." (Emphasis added.)

Stafford did not testify. According to Bayles, Stafford did not tell him that been talking to other employees during "down time."

In Bayles' version of the May 29, 1998 conversation with Price, he told her "That basically when you're on my time . . . the work needs to be done. You can talk about anything you want to or do what you want to within reason during lunches and breaks. That's your time."

Bayles denied saying anything to Price which would suggest that employees would lose their jobs if they joined a union. He also denied telling her that Multicraft would leave if employees formed a union. On cross-examination, however, Bayles testified that he believed Mercedes "would want their suppliers to be non-Union."

He denied saying that all unions were good for was taking dues. When asked if he said anything to the effect that the Union was "not like it used to be in the 60's," Bayles replied, "Not that I recall."

Bayles did admit that the subject of unions arose once in his conversation with Price, and, apparently, at the very start of the conversation. Bayles testified that he explained to Price that, "Yvetta Stafford came to me and said that you were talking—you had the employees back to the site talking about personal stuff and Unions." However, according to Bayles, that was the only mention of unions in the entire conversation.

To the extent the testimony of Bayles conflicts with Price's, I credit Price. The record suggests that Respondent knew about the Union's organizing effort before Bayles spoke with Price on May 29, 1999, and therefore, that management would be alert for signs of union activity. Thus, Bayles admitted on cross-examination that when he became aware of the union organizing campaign, from another of the team leaders under him, he reported it to higher management. This awareness of the union effort apparently preceded the May 29 meeting, because by then, Bayles already had received from a company attorney a handout on what to do, and what not to do, during a union campaign.

The promptness of Bayles' reaction when he learned that Price had been talking with other employees about "personal stuff and unions" suggests that management had its eye out for union activity the way a frog has its eye out for flies. To dispatch such an elusive target, the frog must wield its tongue quickly. Bayles certainly wasted little if any time summoning Price after receiving Team Leader Stafford's report.

Bayles admitted that he told Price, "you were talking—you had the employees back to the site talking about personal stuff and Unions." I find it difficult to believe that Bayles would have reacted so quickly if Price only had been talking about "personal stuff" but not unions. At least, the record does not establish that Bayles made a habit of cautioning employees whenever they spoke with fellow workers about personal matters not involving unions.

General Manager Bayles directly supervises 6 team leaders who, in turn, supervise 119 employees. It seems unlikely that he would feel the need to call a rank-and-file employee into his office simply to tell that person to stop talking and get back to work. That is a task first-line supervisors ordinarily do. Although I need not consider motive in determining whether a particular statement violates Section 8(a)(1) of the Act, it is appropriate to consider possible motives in deciding which witness to credit.

The evidence strongly suggests that the subject of Price's conversation, unions, motivated Bayles to call her in for a meeting. In light of that purpose, it seems unlikely that he

would mention the Union only once. I credit Price rather than Bayles.

Respondent asserts that Price actually confounded two separate conversations. For example, Bayles testified that a few days after his May 29, 1998 conversation with Price, she became nauseated and faint while working, and went to the office of the onsite emergency medical technician. When Bayles learned that Price was sick, he went down to the EMT's office to see her.

While they were chatting, Price became critical of Team Leader Stafford and, according to Bayles, he told Price he was surprised, because he understood that both Stafford's husband and Price's husband were coal miners. In response, Price told Bayles that her husband was not a coal miner, but was self-employed. Contrary to Bayles, Price testified that she and Bayles discussed her husband's occupation during the May 29, 1998 meeting.

I do not find it significant that Bayles may have had a second conversation with Price or that they may have discussed her husband's occupation during such a second conversation, rather than on May 29, as Price recalled. And even if, contrary to Price's recollection, the subject of Price's husband's work arose during a second conversation later, it hardly would demonstrate that Price had a memory impairment so great that her other testimony should be discredited.

Respondent also challenges Price's credibility by establishing that she has also filed a charge against the Company with the Equal Employment Opportunity Commission, is pressing a workers' compensation claim, and has sued the Respondent. Such actions could certainly raise the possibility that bias affected her testimony.

However, the complaint in this proceeding does not allege that Respondent discriminated against Price. The General Counsel only asserts that Respondent made unlawful statements to her. Therefore, Price does not stand to gain any obvious benefit from her testimony in this case.

Moreover, her demeanor as a witness did not suggest vindictiveness. It appears more likely that she, rather than Bayles, was telling the whole truth and I credit her testimony.

In sum, I find that on May 29, 1998, Bayles told Price, "Celia, I've been hearing some disturbing news that you've been talking about the Union out in the plant." I find that he also said to her, "The Union is not like it was in the 60's. All they're good for is taking Union dues."

Further, I find he told her that Delphi, the company for which Respondent was a subcontractor, had a contract with Mercedes that they wouldn't let a union happen. I find that he also said, during this conversation, that if a Union got formed that Delphi would lose their contract with Mercedes and Multicraft would leave and employees would lose their jobs.

It is therefore necessary to determine whether these statements interfered with, restrained and coerced employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act.

In this case, the general manager, not the employee, had initiated the conversation by summoning Price. Although Bayles apparently had only a cubicle, rather than an office, I still conclude that it was a locus of authority, because it was where Respondent's highest ranking official at the plant worked. As such, Bayles presumably spoke with authority when he told Price that the contents of the Mercedes contract with Delphi would not "let a union happen."

Bayles' position as general manager gave credence to his statements that this contract would not allow unionization, and that Respondent would lose its subcontract if a union "got formed," resulting in a loss of jobs.

In these circumstances, I find that Bayles' statements clearly constituted a threat of job loss and a threat that unionization would be futile, as alleged in complaint paragraphs 7 and 8, respectively. Further, I find that these statements reasonably would chill the exercise of rights protected by Section 7 of the Act. Therefore, I conclude that these statements violated Section 8(a)(1) of the Act.

In its answer, Respondent raised as a defense that the "allegations of the complaint are barred by the applicable statute of limitations." The applicable statute of limitations is the 6-month period specified in Section 10(b) of the Act, which states, in pertinent part, that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . ." 29 U.S.C. § 160(b).

The conduct I have found violative took place on May 29, 1998. Price filed a charge concerning this conduct on July 27, 1998, which is well within the 6-month period. Therefore, I reject Respondent's assertion that the complaint is barred by the statute of limitations.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to post the notice to employees set forth below in Appendix A, and comply with the other requirements of the recommended Order.

CONCLUSIONS OF LAW

1. Multicraft International Limited Partnership is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By the statements alleged in paragraphs 7 and 8 of the complaint, and established by the evidence here, Respondent violated Section 8(a)(1) of the Act, as alleged in paragraph 13 of the complaint.

4. The unfair labor practices described above in paragraph 3 affected commerce 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 in this case, I issue the following recommended²

ORDER

The Respondent, Multicraft International Limited Partnership, Cottdale, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with job loss if they selected a union to represent them.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, these 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.

(b) Threatening employees that it would be futile for them to select the Union as their collective-bargaining representative.

(c) In any like or related manner interfering with, restraining, or coercing its employees, in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

(a) Within 14 days after service by the Region, post at its facilities in Cottondale, Alabama, copies of the attached notice marked "Appendix A."³ Copies of the notice, on forms pro-

³ 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."

vided by the Regional Director for Region 10, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 29, 1998.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps that the Respondent has taken to comply.