

Electronic Data Systems Corporation and Nettie C. Eaton. Case 3–CA–19975

June 15, 2000

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND
BRAME

On December 23, 1996, Administrative Law Judge Wallace H. Nations issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed 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, and conclusions, as modified below, and to adopt the recommended Order.

We agree with the judge that the Respondent did not violate Section 8(a)(1) when it discharged Charging Party Nettie Eaton. In adopting the judge's dismissal of the complaint, we find that Eaton solicited employees to engage in a partial work stoppage and that her conduct in this respect was not protected under Section 7 of the Act.

The Respondent provides communication services to Xerox Corporation (Xerox) and contracts with service vendors to resolve various technical problems for Xerox. Charging Party Eaton worked as a service representative in the Respondent's customer support centers (CSC) and was responsible for taking calls from Xerox employees and customers concerning computer problems. When these problems involve a telephone or a system line, CSC employees transfer these types of issues to the Respondent's network operations center (NOC), whose sole function is to resolve circuit problems for Xerox customers. The service vendor responsible for maintaining circuits and telephone lines for the Xerox account is Rochester Telephone Company. The Respondent's NOC employees interact daily with Rochester Telephone, sometimes as many as 12 times each day, to resolve problems for Xerox.

On the afternoon of January 31, 1996, Eaton spoke with her husband, who was an employee of Rochester Telephone, and learned that Rochester Telephone employees might shortly go on strike. Later that afternoon, Eaton sent two computer e-mail messages to her fellow employees¹ and then had direct conversations with several NOC employees regarding the situation at Rochester Telephone. The credited testimony establishes that in

¹ Eaton's initial e-mail message was sent to NOC employees and stated that "Local 1170 will be on strike as (of) 12:01 tonight. Please help support them in their effort against Rochester Telephone." Eaton's second e-mail message was sent to CSC employees and stated that "Local 1170 will be on strike from Rochester Telephone as of 12:01 tonight. Please be aware that anyone or any person crossing their picket line will suffer the consequences. Local 1170 will be fighting for their jobs."

these conversations Eaton told NOC employees not to call, refer service requests to, or interact with Rochester Telephone. Thereafter, the Respondent discharged Eaton for soliciting the Respondent's NOC employees to refrain from dispatching calls to the Respondent's vendor, Rochester Telephone, and for sending a message containing physical threats to anyone crossing picket lines.

The judge found that Eaton's actions were not concerted and bore no "legitimate relationship to the interests of employees, either her fellow EDS employees or the Unionized employees of [Rochester Telephone]." It is well settled, however, that "employees' conduct on behalf of the employees of another employer who are engaged in protected concerted activity is itself protected concerted activity." *Office Depot, Inc.*, 330 NLRB 640, 642 (2000), citing *Boise Cascade Corp.*, 300 NLRB 80, 82 (1990). Thus, Eaton's e-mail solicitation of fellow employees to support the striking Rochester Telephone employees was clearly concerted activity. Because she went further, however, and asked other employees not to call or refer service requests to Rochester Telephone, we agree with the judge that Eaton solicited the Respondent's NOC employees to stop performing an important portion of their jobs—referring telephone service and circuit problems of Xerox customers to Rochester Telephone—and that this amounted to the solicitation of an intermittent, partial work stoppage by the NOC employees. Thus, Eaton essentially sought to convince the NOC employees to stay on the job and perform a portion of their usual duties, but to ignore the several daily dispatches that pertained to telephone and systems problems normally referred to Rochester Telephone.

It is well established that a partial refusal to work, in contrast to a complete work stoppage, is unprotected activity because it constitutes an attempt by employees to set their own terms and conditions of employment while remaining on the job. *Audubon Health Care Center*, 268 NLRB 135 (1983). When the form of conduct at issue, as here, is unprotected, it logically follows that the solicitation or inducement of such conduct also is unprotected. See, generally, *Illinois Bell Telephone Co.*, 255 NLRB 380, 381 (1981) ("protection may be lost when the evidence demonstrates that [employees] induced employees to engage in a work stoppage that is part of a plan or pattern of intermittent action which is inconsistent with a genuine strike").² Accordingly, in these circumstances,

² The present case is distinguishable from a one-time refusal to work mandatory overtime, which is protected because it is not an attempt to determine unilaterally employees' own conditions of employment. *Sawyer of Napa*, 300 NLRB 131, 137 (1990). Nor is the present case akin to the refusal of a delivery driver to cross a picket line, a traditional form of permissible support, but which may subject the driver to replacement in the interest of balancing an employee's protected activity with an employer's efficient operation of its business. *Torrington Construction Co.*, 235 NLRB 1540 (1978), overruled in part on other grounds by *Chambersburg County Market*, 293 NLRB 654 (1989); *A & L Underground*, 302 NLRB 467, 468 (1991). See also *Redwing*

we find that the Respondent's discharge of Eaton did not violate the Act.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and the complaint is dismissed.

William F. Trezevant, Esq., for the General Counsel.

Vicki L. Harden, Esq., of Plano, Texas, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Rochester, New York, on September 25 and 26, 1996. The charge was filed on March 28, 1996,¹ and the complaint was issued on May 7, alleging that Electronic Data Systems Corporation (EDS or Respondent) violated the National Labor Relations Act (the Act) by unlawfully discharging its employee, Charging Party Nettie Carol Eaton.² Respondent filed a timely answer wherein it admitted, inter alia, the jurisdictional allegations of the complaint and the supervisory status of certain of its employees.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, maintains its headquarters and principal place of business in Plano, Texas. As pertinent to this proceeding, it maintains an operational site in Rochester, New York, where it provides information technology services to Xerox Corporation. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Communications Workers of America, Local 1170 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts and the Issue for Determination

The EDS employees at its Rochester facility, which will be referred to as the Xerox/EDS Canalview facility, provide communication services to one customer, Xerox. Carol Eaton was employed at the Canalview facility by Xerox from September 29, 1980, to July 1994. In 1994 EDS entered into a 10-year, \$3 billion contract with Xerox to manage Xerox's communications services. Thus, in August 1994 Eaton, along with several other

Carriers, Inc., 137 NLRB 1545 (1962), *enfd.* 325 F.2d 1011 (D.C. Cir. 1963), *cert. denied* 377 U.S. 905 (1964); *Newbery Energy Corp.*, 227 NLRB 436 (1976).

³ We do not rely on the judge's application here of *NLRB v. Electrical Workers IBEW Local 1229*, 346 U.S. 464 (1953), inasmuch as the present case raises no issues pertaining to the disparagement of the Respondent's product or services to third parties. Further, because we have found that Eaton's solicitation of a partial strike was unprotected, we do not reach the issue of whether Eaton's e-mail message that persons crossing a picket line "will suffer the consequences" constituted a threat.

¹ All dates are in 1996 unless otherwise indicated.

² Eaton's name is spelled in this record as "Carol" and "Carole." Not knowing which is correct, I have chosen Carol for use in this decision.

Xerox employees at the Canalview facility became an EDS employee. On February 1 Eaton was discharged by EDS because of certain activity engaged in by Eaton on January 31. On that date, she sent two messages to fellow employees over the Respondent's internal computer system and then allegedly urged certain fellow employees to cease utilizing one of the Respondent's vendors. The primary question for resolution is whether Eaton's actions were protected concerted activities within the meaning of the Act. The circumstances surrounding the sending of the messages and subsequent events will be discussed below. In this regard, the parties stipulated that Eaton is not a member of the Union, that the Union represents no employees at EDS Canalview facility nor does any other union. There was no union organizing activity at EDS facility at any time relevant to this proceeding.

While employed by EDS, Eaton worked as a customer service representative in the area known as the customer support center (CSC). CSC employees are responsible for taking calls from Xerox employees regarding problems they might be having with their computers and, if possible, assisting them with their problems. If the problems the Xerox customers are experiencing are the result of a telephone line or system going down (a "site" problem), the CSC employees function as a clearing house and hand-off these problems to another group of EDS employees at Canalview known as the network operations center (NOC).

The sole function of the employees in the NOC is to resolve circuit problems for the Xerox customers. To resolve these problems, NOC employees must interact with the particular vendor (as most pertinent, Rochester Telephone Company (RTC)) that is responsible for maintaining the circuits involved. When the problem involves circuits or telephone lines in the Rochester area, the vendor that the NOC employees must interact with to resolve these problems is Rochester Telephone. NOC employees interact with Rochester Telephone on a daily basis, sometimes up to 12 times a day. In short, the NOC employees at EDS Canalview facility cannot do their jobs without interacting with (or in their words "dispatching") Rochester Telephone.

The contract between EDS and Xerox contains "level of service" agreements, which require EDS to insure consistent stability in the telephone lines needed to support Xerox's computer and telephone networks. Since the inception of the contract, EDS has not met the level of service agreements consistently. As a result, at the time of Eaton's termination, there were problems in the EDS/Xerox business relationship. At the time of Eaton's termination, Xerox was going through year-end financial closing. Because this was a crucial time for Xerox's business, it was imperative that their data communication ability (hence, the service provided by EDS Canalview employees) be at its peak. Therefore, at the time of Eaton's termination, EDS was even more concerned than usual with ensuring customer satisfaction.

B. The Events of January 31 and February 1, Which Resulted in Eaton's Discharge

While at work on January 31, at approximately 4 p.m., Eaton spoke with her husband who was a Rochester Telephone employee and a member of the Union, which represented a unit of employees at Rochester Telephone. He informed her the Union "might be going out on strike." On this date the contract between Rochester Telephone and the Union was set to expire

and the parties had not reached an agreement on a successor contract. The negotiations between these parties had been the subject of media coverage in the area, presumably because there had been a bitter strike following an earlier, failed negotiations. Eaton testified that because of her husband's job with Rochester Telephone, and the media coverage, several of her coworkers had asked her about the negotiations on several occasions prior to January 31. She also testified that these questions were asked during worktime and that she would respond, telling the questioner what she knew of the situation.

That same afternoon, after speaking to her husband, Eaton sent two computer messages. The first went to all employees in the NOC and read, "*Local #1170 will be on strike as (of) 12:01 tonight. Please help support them in their effort against Rochester Telephone . . . Carol.*" The second message went to all CSC employees and read, "*Local #1170 will be on strike from Rochester Telephone as of 12:01 tonight. Please be aware that anyone or any person crossing their picket line will suffer the consequences. Local #1170 will be fighting for their jobs. . . Carol.*" Eaton testified that she sent the two messages in response to the questions some fellow employees had asked about the labor situation at Rochester Telephone. This position is somewhat belied by the fact that Eaton chose to send the messages to all NOC and CSC employees, not just the ones who had expressed interest in the RTC situation. She could have contacted her curious coworkers one on one or one at a time via the computer. Second, the clear import of the messages is not simply informational, it requests in one for the recipients to actively support a union strike at another employer and in the second threatens the recipients with unspecified harm if the union's picket line is crossed.³

Eaton sent both of these messages after 4 p.m. on January 31, one immediately following the other. She sent them via the Company's "broadcast" or "hot" message system. Messages sent via this system appear on the recipient's computer screen automatically, leaving the recipient no choice but to read the message. According to Respondent, the broadcast message system was used at the Canalview facility solely for business purposes, such as to inform NOC and CSC employees when systems go down or to announce team-building events. This appears to be the case though use of the Company's computer system in general is made for personal business, sometimes with management's knowledge and sometimes without such knowledge. Although, there was a substantial amount of evidence adduced about various personal uses to which EDS computers are put, it is not an issue. Eaton was not terminated for making personal use of the hot message system. It was the manner in which she used the system and her subsequent actions that resulted in her termination.⁴

Eaton denied in her testimony that she intended by the messages to have her fellow employees stop working, not do their jobs, or engage in insubordination against EDS. She denied that she intended to threaten coworkers by the messages. She also testified that following the sending of the messages she had conversations about the subject matter of the messages with

various fellow employees. She testified that NOC employee Tony Boler asked her if her husband had heard anything about the RTC negotiations or possible strike. She told him what her husband had told her earlier that day. Eaton testified that NOC employee Gus Masotti then called her to his desk. According to Eaton, Masotti told her that he had to dispatch calls to RTC and she responded, "Just do what you have to do." Eaton denied that she ever gave Masotti any explicit direction to not dispatch calls to RTC.⁵

Her fellow employees told a different story of the post message conversations. Specifically, NOC employee Ken Neal, a friend of Eaton's, testified that Eaton told him and NOC employee Tony Boler not to call Rochester Telephone. Neal testified that he responded by asking Eaton if she were crazy because EDS employees made their living calling vendors such as RTC. In addition, in an affidavit given to the Board in April, Tony Boler, another friend of Eaton's swore that in response to Eaton's message, he asked her, "What should people do, not call Rochester Telephone?" Boler testified in his affidavit and at the hearing that Eaton's response was, "Well, if you have to." Boler understood Eaton to be telling him not to call Rochester Telephone.⁶ Eaton also told NOC employee Gus Masotti not to dispatch calls to Rochester Telephone since they were going on strike. This comment disturbed Masotti, prompting him to make a note of it and to inform his manager, Bill Kane, of the comment the following morning.

According to NOC employee Dale Aldrich, on the morning following the sending of the messages, Eaton approached him and asked him not to support Rochester Telephone. Following the conversation, Aldrich remembers thinking that he could not support RTC because that is how he made his living. With regard to this conversation, Eaton testified that she overheard Aldrich and another NOC employee discussing the messages. According to her, Aldrich then spoke to her across a partition which divided the NOC and CSC work areas and asked, "What was going on with that?" She testified that she went to his work area and told him about the negotiations at RTC and what her husband had told her and that the strike had not occurred. She denied telling Aldrich not to interact with RTC.

With respect to the matter of Eaton's postmessage interaction with NOC employees as set out above, I credit the testimony of the NOC employees over that of Eaton. They had absolutely no reason to lie, appeared very credible, and their testimony is borne out by all documented subsequent events. Thus, I find that, as she admits, Eaton did send both messages. I further find that after sending the messages she requested that the NOC employees not dispatch calls to RTC and/or limit their interaction with RTC.

Tom Lawson, the manager of the NOC, brought the fact of the message sent to the CSC employees to his manager's

³ EDS CSC employee, Kathleen Enck, testified that the message made her angry because she considered it threatening. CSC Supervisor Kathy Schlotzer also considered the message to be threatening.

⁴ Indeed, Eaton's manager, and the person who terminated her employment, Bill Kane, in his affidavit given to the Board indicated that if Eaton had only sent the message that went to the NOC employees and nothing else she would not have been terminated.

⁵ There was substantial evidence put in the record to document that Eaton and Masotti had a history of personality conflicts. Be that as it may, I credit Masotti's version of what was said between himself and Eaton as it comports with the testimony of other witnesses who were clearly friendly with Eaton.

⁶ A temporary employee, Norman Murray, who works in a cubicle next to Eaton, overheard Eaton telling either Neal or Boler, or both, to not call RTC if there was a problem. He remembers one of the men replying that calling RTC was part of their job and they had to call. Another fellow employee, Polly Davin, in the week prior to January 31, heard Eaton say that RTC was unfair to its employees and that EDS should not do business with RTC.

(Kane's) attention on the afternoon the message was sent. That same afternoon, Kane learned that a message had also been sent to NOC employees, a copy of which Kane obtained the next morning. Kane also received a phone call from Masotti, who informed him that Eaton had approached Masotti and requested that he not interact with Rochester Telephone. Kane asked Masotti to send him a note documenting Masotti's conversation with Eaton, which Masotti did.⁷ Thereafter, Kane spoke to the other members of the NOC, two of whom—Ken Neal and Tony Boler—confirmed that Eaton had also requested that they not interact with Rochester Telephone.⁸ Kane prepared brief notes of these interviews and had them typed. The typed version reads:

“Employees interviewed 2/01/96. Each employee was interviewed separately.

Gus Masotti, Tony Boler, and Ken Neal

Carol went to Gus, Tony & Ken's work area on 1/31/96 between 1600 & 1700 and asked them to limit their interactions with Rochester Telephone Company (RTC). She also had other dialogue in attempting to solicit their support regarding RTC's employee's work stoppage.

Jerry Ormsby 2/01/96

Carol did not have dialogue with Jerry regarding this topic as he was busy when she approached his work area.

Bob Reeves 2/01/96

Carol did not have dialogue with Bob regarding this topic as he was busy when she approached his work area.

Ann Marie DiGuseppe 2/01/96

Carol did not confront Ann Marie 1/31/96 as she completes her shift at 1600 and when home.

Dale Aldrich 2/01/96

Carol did not confront Dale on 1/31/96 as he completes his shift at 1600. Carol did have dialogue with Dale on 2/01/96 regarding RTC possible work stoppage.”

After speaking with the NOC employees, Kane met with Kathy Schlotzer, Eaton's immediate supervisor, and another supervisor, Sandra Tarrant, to discuss Eaton's activities. During this meeting Kane informed Schlotzer and Tarrant that he was very concerned with the threatening notations in the message sent to CSC employees and with Eaton's asking the NOC employees not to interact with the telephone company.

Subsequent to their meeting, Kane, Schlotzer, and Tarrant met with Eaton. During this meeting Kane read Eaton the exact text of the computer messages and asked her whether she had in fact sent them. Eaton confirmed that she had. Kane then asked Eaton whether she had approached NOC employees and asked them not to dispatch Rochester Telephone. Eaton admitted that she had approached employees and Kane remembers her agree-

⁷ This note reads: “After having received a network message from Carol Eaton regarding the RTC strike, Carol Eaton came over to the NOC and said that we should be nice to RTC and not dispatch any problems to them since they were going on strike. I told Carol that we had a business to run and if there were circuit problems I would call them into whomever was responsible whether they were on strike or not.”

⁸ Employee Dale Aldrich told Kane that Eaton had approached him and discussed the possible strike at Rochester Telephone. However, Kane could not recall at the time of the hearing whether Aldrich had told him that Eaton specifically asked him not to dispatch Rochester Telephone. Alrich likewise could not remember whether Eaton made this specific request.

ing that she had asked them not to dispatch RTC. Kane remembered that later in the meeting Eaton denied that she had done anything wrong, stating that she was just sharing information. Kane then excused Eaton. According to Eaton she was shocked to find that she had offended or threatened anyone and asked if she could apologize to her coworkers. Kane said no. She denied to Kane ever asking anyone not to do their job. In her testimony Eaton testified that she had not meant to threaten anyone by her warning of the consequences of crossing a union picket line. She testified that she was just sharing information of possible dangers of crossing picket lines based on her experience gained during a previous strike between RTC and the Union. I find this explanation improbable. The only way an EDS employee would cross an RTC picket line, if one actually went up, would be to visit the phone company as a phone customer. In the previous strike, the only persons who were subject to any abuse were RTC employees who crossed the picket line. On the other hand, consistent with her request of NOC employees not to dispatch RTC, Eaton's threat could mean that CSC employees were not to do business with RTC without running the risk of adverse consequences. Certainly the wording of the message to the CSC employees is threatening in nature, regardless of its intention.

Thereafter, Kane informed Schlotzer and Tarrant that he felt that he had grounds for termination. Thus, Eaton was called back into the meeting, and Kane told her that she was being terminated for making threats to her fellow employees and for asking her fellow employees not to interact with Rochester Telephone. Kane testified that Eaton was terminated because of threatening connotations of the message to CSC employees and because she asked NOC employees not to interact with Rochester Telephone. Following the termination meeting, Kane prepared documentation of the termination, listing as the reason for termination: “Violation of EDS Policies and/or Philosophies.” Specifically, Kane noted in his letter to his manager, Andy Johnson, that Eaton was terminated for soliciting her fellow employees' support for a work stoppage at Rochester Telephone by asking “that they limit their interactions with RTC for resolving Xerox/EDS network outages” and for sending a message that “conveyed language that indicated physical threats to anyone crossing RTC picket lines.”⁹

C. Conclusions

I believe, and find, that Respondent terminated Eaton for the exact reasons articulated by Kane in the documentation surrounding her termination. That is, for sending a message to CSC employees that management considered threatening in violation of EDS policy against workplace violence, and for soliciting NOC employees to not dispatch calls to EDS vendor, Rochester Telephone Company.

Section 7 of the Act provides that “[e]mployees shall have the right . . . to engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection.”

⁹ About 2 days before she sent the involved messages, Eaton had received a copy of the Company's policy on violence in the workplace. This policy specifically states that “EDS will not tolerate any threat, direct or implied . . . which harasses, disrupts, or interferes with another's work performance, or which creates an intimidating, offensive or hostile environment.” In addition, the policy specifically states that “EDS employees who violate this policy may be subject to discipline, termination of employment, civil or criminal charges, or any combination thereof.”

In the instant case, I do not believe that the activity that resulted in Eaton's termination was protected concerted activity. Generally, to be protected, employee activity must be "concerted," that is, undertaken together by two or more employees, or by one on behalf of others. The Board has found that a conversation, although it involves only a speaker and a listener, may constitute concerted activity if it has some relation to group action in the interests of employees. In the instant case, Eaton clearly acted alone and not in concert with any other employee of EDS. Further, I am at a loss to understand how Eaton's actions for which she was terminated bore any legitimate relationship to the interests of employees, either her fellow EDS employees or the unionized employees of RTC. Kane admitted that the mere sending of the message to NOC employees informing them of an impending strike at RTC and asking for support for the Union would not have caused her termination. It was Eaton's subsequent conversations with NOC employees where her vision of support for the Union meant limiting or ceasing doing business with RTC that gave the Employer concern. Similarly, it was not the informational portion of the message sent to CSC employees that caused the Employer a problem, it was the threat contained in the message that resulted in action against Eaton.

As noted earlier, the involved EDS facility is not represented by a union. Thus, Eaton's message could have nothing to do with collective bargaining. Eaton's threatening message and her conversations with NOC employees do not involve anything that would amount to group action in the interest of employees. As noted by Eaton herself, limiting interaction with RTC would not benefit EDS employees and would not benefit RTC employees represented by the Union. Her threat to the CSC employees certainly promotes no legitimate interest of EDS employees, and contrary to the position of the General Counsel, I do not find this portion of the message merely informational. I therefore find that the activity engaged in by Eaton and for which she was terminated was not concerted and not protected by Section 7 of the Act. *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), and *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986).

Even in the event that the Board would find that Eaton's conversations with the NOC employees and the entire message sent to the CSC employees does constitute concerted activity, it is well settled that "[n]ot all concerted activity is protected." *Washington Adventist Hospital*, 291 NLRB 95, 102 (1988). Improper conduct—such as disrupting an employer's operations, threatening fellow employees, engaging in actions harmful to an employer's business, or deliberately defying company work rules—falls outside the protection of the act in this regard, I agree with Respondent that requesting fellow employees not to do their job is not protected activity nor is sending messages which threaten employees protected concerted activity.

I have found that Eaton specifically solicited the NOC employees to limit their dispatching of calls to RTC. This action is a direct request not to do an important portion of their job. If they had followed her direction, it could have significantly and adversely impacted EDS relationship with its contractual customer, Xerox. An employee loses the protection of Section 7 of the Act if he or she engages in activities tending to injure or disparage her employer's business. *Jefferson Standard Broadcasting Co.*, 94 NLRB 1507 (1951), enf. sub nom. *NLRB v.*

Electrical Workers IBEW Local 1229, 346 U.S. 464 (1953). As the Supreme Court noted, an employee "cannot collect wages for his employment, and, at the same time, engage in activities to injure or destroy his employer's business." Id. at 476 fn. 12. (Citations omitted.) Based on the cases cited, I find that Eaton's solicitation of NOC employees do not interact or dispatch RTC is not protected by the Act.

I have also found that a portion of the message sent to the CSC employees contains a threat of unspecified reprisal as a consequence of crossing the union's picket lines. My reading of this threat would certainly include bodily harm as one such consequence. At least one employee, Kathleen Enck, found this message threatening and disturbing. I believe it clearly may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act. One of those rights would be the right to cross a picket line. See *Clear Pine Mouldings*, 268 NLRB 1044, 1046 (1984); *Carpenters (Reeves, Inc.)*, 281 NLRB 493, 498 (1986). In line with the Board's holding in the two cited cases, I find that the threatening portion of the message Eaton sent to CSC employees is not protected by the Act. Thus, Respondent did not unlawfully discipline Eaton for violation of its policy against workplace violence, which the message clearly violated.¹⁰

I do not find that any other activity engaged in by Eaton motivated her discharge nor do I find that union animus played any part in her discharge. Virtually all documentation in this record as well as the testimony reflects that at all times, management was concerned with the two aspects of Eaton's activity which formed the basis for her discharge, the threat in the CSC message and the solicitation of a partial work stoppage by the NOC employees. Having found the activity for which Eaton was discharged not protected, and as such conduct was in violation of company policies, Respondent's act of discharging Eaton was not in violation of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Electronic Data Systems Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union, Communications Workers of America, Local 1170 is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent did not engage in conduct in violation of the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The complaint is dismissed.

¹⁰ Whether one agrees with the degree of discipline assessed against Eaton is not the question. That is a matter within the discretion of the Employer.

¹¹ 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.