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**National Association of Letter Carriers and Office and Professional Employees International Union, Local 2, AFL-CIO.** Case 5-CA-29667

April 23, 2003

**DECISION AND ORDER REMANDING**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On December 11, 2001, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Union filed exceptions and a supporting brief and the Employer filed a reply 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 remand this case to the administrative law judge to provide further analysis. The administrative law judge recommended that the complaint be dismissed, but did not clearly explain his reasoning, beyond observing that the Board decisions cited by the General Counsel and the Charging Party Union did not apply to the circumstances of this case. Accordingly, on remand, the administrative law judge should set forth a complete legal analysis, including relevant case law, on the issue of whether the Respondent lawfully prohibited employees from (1) wearing large fluorescent poster-board signs in its national headquarters office, and (2) displaying the same signs on the exterior walls of the employees' workplace cubicles.

**ORDER**

The administrative law judge shall prepare a supplemental decision setting forth his analysis, conclusions of law, and a recommended Order, as appropriate, on remand. Copies of the supplemental decision shall be served on the parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C. April 23, 2003

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Wilma B. Liebman, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN BATTISTA, dissenting.

I do not agree with my colleagues' decision to remand. I believe that the record facts, plus the judge's decision and the briefs of the parties, provide an adequate basis

for the Board to now perform any supplementary legal analysis and to now decide this case.

Dated, Washington, D.C. April 23, 2003

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Robert J. Battista, Chairman

NATIONAL LABOR RELATIONS BOARD

Elicia L. Marsh-Watts, Esq., for the General Counsel.

Charles W. Gilligan and Daniel J. McNeil, Esqs. (O'Donoghue & O'Donoghue), of Washington, D.C., for the Respondent Employer.

David R. Levinson, Esq., of Washington, D.C., for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

MARION C. LADWIG, Administrative Law Judge. This case was tried in Washington, D.C. on October 18, 2001.<sup>1</sup> The charge was filed April 12, and the complaint was issued July 26.

The National Association of Letter Carriers, AFL-CIO (the Employer) has a strict dress code for employees in its national headquarters office, requiring "neatness and professional good taste" in dress and appearance to provide a "professional office environment" for "the impression we make on visitors to the building." It also has a longstanding policy prohibiting the posting of material on the exterior of cubicles, in which most of the employees work. Its visitors include not only its members, but also representatives of other Federal unions, Congressional staffs, and sometimes members of Congress. (Tr. 21, 23-27, 45-46; GC Exh. 4.)

The Employer permits employees to wear union buttons and insignia on their clothing while at work and to post union material both on the three union bulletin boards and in their individual cubicles, as well as at the desks of secretaries not working in cubicles (Tr. 21, 26, 28, 31, 35-36, 49, 58-68, 73, 155, 214, 228; R. Exh. 1.)

In early September 2000—when the Employer was engaged in bargaining with Local 2 of the Office and Professional Employees International Union, AFL-CIO (the Union or OPEIU Local 2) for a successor to their agreement that expired January 31, 2000—employees began posting white, 8½ x 11 inch signs in their cubicle and at secretaries' desks. The computer-printed signs recited the number of days the OPEIU Local 2 members were working without a contract. The number of elapsed days was changed daily. (Tr. 103-104, 108; GC Exh. 2.)

Bargaining continued, but by January 31, 2001, still no agreement had been reached. Early that morning before work, employees met at Shop Steward Arline Terry's desk and made large 11 x 14 handwritten signs, with bold black printing on fluorescent poster board. They were in orange, pink, and other bright colors. (Tr. 29-30, 32-33, 38, 111, 113, 153-155; GC Exhs. 3, 5, 6.) They read, for example:

ONE  
YEAR  
WITHOUT A  
CONTRACT  
OPEIU LOCAL 2

<sup>1</sup> All dates are in 2001 unless otherwise indicated.

At 9 a.m., January 31, in flagrant disregard for the dress code and the policy against posting material on the exterior of employees' cubicles, employees began wearing the large fluorescent signs over their clothes and posting them on the exterior of their cubicles as well as elsewhere in the building (Tr. 43, 90, 111–112, 114.)

Upon discovering the glaring bright signs, the Employer immediately instructed that they be removed. The employees complied. (Tr. 37, 43, 87–88, 115–117, 124.)

The counsel for the General Counsel contends in her brief (at 9) that “employees were directed to remove all signs from the office.” This would include not only the oversized fluorescent signs being worn over employees' clothing and posted on the exterior of their cubicles, but also the white computer-printed without-a-contract signs that the employees had been displaying inside their cubicles and at secretaries' desks for about 5 months.

In her brief, citing the testimony of Shop Steward Terry (Tr. 115), the counsel asserts: “Specifically, [Secretary-Treasurer] Jane Broendel approached Arline Terry and told her that employees had to take down *all* [emphasis in original] the signs that *were posted* [emphasis added].” The counsel omits, and ignores, Terry's following answer (Tr. 115–116) to the question whether Broendel “was referring to these bright colored” signs. Her answer was

*Yes. I expected that's what she was referring to because I had been told that somebody put them in the elevators and on the ladies room.*

*So here's my partition and I was sitting right here and this sign was right here. She was standing right there and I believe she gestured to the sign. She said, “You guys have got to take down all of these signs you put up.” [Emphasis added.]*

That same morning, as Terry credibly testified, Secretary-Treasurer William Yates came to her desk, where she was wearing two of the fluorescent signs, one in front and one on her back (Tr. 112), and said (Tr. 124):

*You guys have to take those signs off. You can't be wearing the signs. You can walk up and down all you want outside wearing signs but not in the office. We have visitors who come to the office and it doesn't look good. It's a violation of the dress code.*

Terry further testified that she complied and that later that day (Tr. 126):

*[Yates] said, “We have a very specific dress code,” which we do. We have a dress code that's posted on the time clock and it tells you exactly what items of apparel are appropriate. “These don't look good. They're not professional [and] we're not going to have you wearing them in the building.”*

The General Counsel contends (br. at 24, 31) that the employees' previous white signs did not attract significant attention and that “It was ultimately the size and color of the display of January 31, 2001, that finally *grabbed the attention of management.*”

The primary issue is whether it was unlawful for the Employer to prohibit employees from wearing and displaying the large fluorescent poster-board signs in its national headquarters office—contrary to both the Employer's dress code standard for a professional office environment in its national headquarters

office and its policy prohibiting posting material on the exterior of the employees' cubicles—violating employee Section 7 rights and Section 8(a)(1) of the Act.

In the absence of any credible evidence disputing Shop Steward Terry's admission that the Employer was prohibiting the display of only the fluorescent signs—not the previously posted white without-a-contract signs, as discussed below, I reject the allegation in the complaint that the Employer was prohibiting employees from “posting union-related signs around [its] offices in places where they had previously been permitted.”

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and OPEIU Local 2, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent Employer, a labor organization, is an unincorporated association in Washington, D.C., where it receives over \$50,000 in dues and initiation fees from affiliated locals outside the District of Columbia. The Employer admits and I find that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### 1. Professional office environment

The Employer's dress code, issued by Secretary-Treasurer William Yates in 1997 (GC Exh. 4), sets the standard for “a professional office environment” at its national headquarters office in Washington, D.C. It requires “neatness and professional good taste” in dress and appearance for “the impression we make on visitors to the building.” It specifically prohibits the wearing of denim jeans, T-shirts with any slogan or imprint, sweat suits, jogging suits, bicycle pants, and shorts.” It states that shoes should be businesslike, but the Employer's practice is to permit the wearing of sandals and athletic shoes. (Tr. 39–40, 144; GC Exh. 4.)

The Employer's policy prohibiting posting of material on the exterior of cubicles has been in effect since before 1994, when Yates succeeded the former secretary-treasurer who advised him that the policy was uniformly enforced. Although the policy is not in writing, the evidence indicates that the policy is well understood. (Tr. 31–32, 227–228.)

Shop Steward Terry admitted that, with only one exceptions, there was no material posted on the exterior of any of the cubicles (Tr. 160). The exception was a cartoon of a cow, which was still posted at the time of trial. It is posted on the exterior of the cubicle of employee Dorothy Hereford, alluding to her surname, evidently in a jocular vein—not a union sign (Tr. 129, 132, 160).

The General Counsel's brief cites a large number of clearly inapplicable precedents. None of the cases is relevant to a case such as this, in which the Employer freely permits the wearing of union buttons and insignia at work and the posting of union material at their work stations and on the union bulletin boards.

Neither the General Counsel nor the Union cites any case that even suggests that an employer, under the circumstances of this case, would be infringing on employee Section 7 rights by enforcing legitimate rules to maintain a professional office environment.

## 2. Conflicting testimony discredited

As indicated, I find no credible evidence disputing Shop Steward Terry's admission that the Employer on January 31, was prohibiting the display of only the large fluorescent signs—not the previously posted white without-a-contract signs.

Only one witness, General Counsel's employee witnesses Wayne Nicely, testified otherwise. Nicely also gave other conflicting testimony.

One example concerns Terry's credited testimony that employee Hereford's cow carton was the only material posted on the exterior of any of the cubicles. Nicely claimed that in the membership department, there was also a white without-a-contract sign posted on the exterior of employee Jerry Reardon's cubicle (at star 5 on GC Exh. 9, near star 6, where the cow cartoon was displayed) (Tr. 180–181). I discredit the claim.

Concerning his conflicting testimony about what signs were prohibited on January 31, Nicely claimed that "after [Secretary-Treasurer] Yates spoke to [Membership Supervisor Marylee] Greenlee and said that all bargaining unit signs had to come down," he and Reardon "removed all of the signs we had up" in the membership department (Tr. 184).

I discredit, as false, both his claim that Greenlee said all the white signs had to come down and also his claim that he and Reardon removed all of them.

After so testifying, Nicely conceded that they had not removed all the signs, admitting that the white signs in two of the employees' cubicles had not been taken down (Tr. 200). This indicates that Greenlee, his supervisor, did not required that the white signs be removed.

Nicely's unsupported testimony also conflicts with Yates' credited testimony that when he spoke to Greenlee, "The only thing I told her was to please . . . have them take off the [fluorescent] signs if they were wearing them" and that he did not instruct Greenlee to have the white signs taken down because he was not aware that white signs were posted on the exterior of cubicles (Tr. 213–215). As Shop Steward Terry admitted, none of the white signs were posted on the exterior of any of the cubicles—only the cartoon of a cow on Hereford's cubicle.

Yates credibly recalled that Assistant Secretary-Treasurer Jane Broendel told Greenlee to have fluorescent signs hanging on the outside of cubicles removed (Tr. 215). Broendel credibly testified that she told employees on January 31, to remove the fluorescent signs—not the white signs—from the exterior of cubicles, because they looked unprofessional and because there had never been any signs permitted on the exterior of the cubicles (Tr. 88).

Thus, neither Yates nor Broendel said anything about removing the white signs. By their demeanor, both Yates and Broendel appeared to be truthful witnesses, whereas Nicely impressed me as being less than candid.

There remains the question why Nicely and Reardon removed most of the white signs in the membership department without being instructed to do so. From all the circumstances—including the failure of the supervisor to enforce her purported ban on the white signs, the absence of evidence that any white signs were removed from cubicles in any of the other departments or from secretaries' desks, and the credited testimony that the Employer was prohibiting the wearing and display of only the fluorescent signs—I infer that his motivation was to build a false case against the Employer.

## 3. Contentions and concluding findings

Besides citing many inapplicable precedents and arguing that the large fluorescent poster-board signs were necessary for "grabb[ing] the attention of management," the General Counsel contends (br. at 24, 30–31) that the Employer's prohibiting the wearing of the 11 x 14 signs was "directly tied to the employees' obvious expression of their discontent of working without a contract for a full year" and to an "outward expression that the employees, as a group, decisively engaged in to show solidarity within the unit," interfering with and restraining the exercise of Section 7 activity in violation of Section 8(a)(1) of the Act.

OPEIU Local 2 contends (br. at 1, 6, 11) that the employees' efforts were to support and assist the Union in obtaining a successor collective-bargaining agreement and that "there is no showing or even specification of any employer business interest here that would outweigh the employees' substantial protected interest in demonstrating their support for Local 2's demand for a satisfactory labor agreement. . . . Nor was the employees' use of some brightly colored poster board so far outside the bounds as to forfeit its protection."

The Employer contended at the trial (Tr. 245–246) that "this case represents one of the most extraordinary failures of prosecutorial discretion," citing evidence that the Employer has "permitted people to wear all kinds of union buttons, to post all kinds of union signs in their cubicles, and to have three bulletin boards on which they . . . vigorously express their feelings with respect to the Employer's conduct in bargaining." It also contends that "[c]learly people have got to conform to professional norms in an office space," that "[c]learly the Employer has a right to maintain a certain degree of decorum in its building," and that "there has been absolutely no coercion with respect to people asserting their rights under the Act."

After weighing all the evidence and considering the contentions of the parties, I find that the Employer lawfully prohibited employees from wearing and displaying the fluorescent signs.

### CONCLUSIONS OF LAW

The Respondent Employer did not violate Section 8(a)(1) of the Act on January 31, 2001, as alleged, when it prohibited bargaining unit employees from wearing and displaying on the exterior of their cubicles the union-related placards, which were large 11 x 14 handwritten signs, with bold black printing on fluorescent poster board in orange, pink, and other bright colors and which offended both its dress code standard for a professional office environment in its national headquarters office and its policy prohibiting posting material on the exterior of the employees' cubicles.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

### ORDER

The complaint is dismissed.

Dated, Washington, D.C. December 11, 2001

<sup>2</sup> 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.