

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL UNION NO. 1420

and

Cases 9-CB-10974
9-CB-11013

AMERIFORM MANUFACTURING, INC.

Mark Mehas, Esq.

for the General Counsel.

Joseph E. Allman, Esq.

(*Macey, Swanson & Allman*),

of Indianapolis, Indiana, for the Respondent.

D. Patton Pelfrey and David Hoskins, Esqs.

(*Frost, Brown & Todd*),

of Louisville, Kentucky, for the Charging Party.

DECISION

Statement of the Case

IRA SANDRON, Administrative Law Judge. This case arises out of an order consolidating cases, a consolidated complaint, and an order rescheduling hearing (the complaint) issued on November 13, 2003,¹ based on charges filed by Ameriform Manufacturing, Inc. (Ameriform or the Company). The complaint alleges that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union No. 1420 (the Union or the Respondent), during the course of a strike against Ameriform that began on June 27, engaged in coercive conduct against nonstriking and replacement employees and thereby violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act). For ease of reference, employees who crossed the picket line will be referred to as “employees.”

Pursuant to notice, I conducted a trial in Carrollton, Kentucky, on January 27 – 29, 2004, during which all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. I have duly considered posthearing briefs filed by the General Counsel and the Union.

Issues

Whether the Union unlawfully coerced employees during the period from July through September by the following conduct:

¹ All dates are in 2003 unless otherwise indicated.

1. Posted a sign near the Company's facility at Milton, Kentucky (the facility), stating that Ameriform was a "closed shop" and that employees would not be permitted to work for the Company if they were not members of the Union.

- 5
2. Photographed or videotaped employees and their vehicles as they entered and exited the Company's facility.
3. Impeded employees' ingress to or egress from the facility.
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4. Damaged employees' vehicles.
5. Spat on employees or their vehicles.
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6. Struck employees' vehicles with hands or objects
7. Engaged in threatening behavior.
8. Verbally threatened employees.

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Facts

Based on the entire record, including the pleadings, testimony of witnesses and my observations of their demeanor, documents, and stipulations of the parties, I make the following findings of fact. Named witnesses were employees unless otherwise identified.

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Ameriform is a corporation engaged in the manufacture and sale of appliance component parts at the facility. Its status as an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act is not in dispute, nor is the Union's status as a labor organization within the meaning of Section 2(5) of the Act.

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The Union has long represented a unit of all production and maintenance employees, including shipping and receiving clerks, at the facility. The most recent agreement, effective from June 27, 2000, expired as of June 27, 2003.²

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Prior to the expiration of the agreement, the parties engaged in negotiations for a new contract. At a meeting at the union hall on June 26, the membership of the Union voted down the Company's last proposals and for a strike, which was authorized by the International Union.

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The strike commenced the next day, June 27.³ Almost all of the approximately 100 unit employees honored the picket line. Replacement employees were immediately hired. Pickets were at the site 24 hours a day, 7 days a week. Pickets, including picket captains, were paid \$200 a week by the International Union from the strike's inception.

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Union officers maintained a constant and continuous presence at the picket line. Thus, President Steven Ellis and Vice President Larry Coghill were on the picket line almost daily, although not necessarily for the entire day. Coghill was in charge of assigning a picket captain

² Jt. Exh. 4.

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³ It was ongoing as of the time of the trial, but to avoid confusion, past tense will be used exclusively hereinafter.

for each shift⁴ and also served as third-shift picket captain. Recording Secretary Judy Jines was second-shift picket captain at all times material. There are four gates or entrances to the facility on Hunter Heights Road (the road),⁵ and the Union kept a camper parked across from gate 2.⁶

5 Based on the above and the record as a whole, I find that the persons alleged in the complaint as “pickets,” whose positions as such is not disputed by the Union, were agents of the Respondent.⁷ The Respondent called only one of them—Rita Marksberry. In the absence of an explanation, I draw an adverse inference from its failure to call the other six. In any event, many
10 of the statements and actions attributed to them by witnesses for the General Counsel went un rebutted.

15 During the course of the strike, in addition to striking employees on official picket line duty, many nonemployee supporters of the strike, such as family members, were present at the picket line, as were striking employees not serving on official picket line duty. In light of the pervasive presence of union officers at the picket line, the impossibility in many cases of knowing who was and who was not on official picket line duty, and the overall circumstances, I find that all three of these groups of persons who maintained a presence at the picket line were
20 cloaked with apparent or ostensible authority as agents of the Union, even if the Union did not specifically authorize their actions. Henceforth, “picket” shall encompass all three categories.

Murray Guard service provided the Company with security service at times material. Its guards had the responsibility of videotaping and documenting incidents of picket line
25 misconduct. Such videotapes are in the record as General Counsel’s Exhibits 3 and 5 through 9. They reflect that when employees approached the entrances, pickets massed near them and subjected them to a collective barrage of shouts, replete with insults such as “scab,” “bitch,” “fag,” “slut,” and “whore.” The Union concedes that pickets used these kinds of appellations. The tapes, when audible, are generally consistent with the testimony of the General Counsel’s
30 witnesses.

Union Instructions to Pickets

35 The Union avers that it took steps to prevent and deter picket line misconduct. On June 26, at the time of the strike authorization, union officials advised members not to engage in threats or violence while engaged in picket line activity, or they could face loss of strike benefits.

40 During the second week of the strike, Jines wrote out rules for pickets and then kept them on the clipboard where pickets signed in.⁸ These included, inter alia, admonitions not to block drivers, drink on the picket line, or make threats.

45 ⁴ Until about August 4, there was one shift, 8 a.m. to 4:30 p.m. On that date, two shifts were instituted; the first from 8 a.m. to 4:30 p.m., and the second from 3 to 11:30 p.m. On about August 18, three shifts were put into effect: 6:30 a.m. to 3 p.m., 3 to 11:30 p.m., and 11 p.m. to 7 a.m.

⁵ See Jt. Exh. 1, a diagram.

⁶ GC Exh. 4.

50 ⁷ Dan Caldwell, Kevin England, Rita Marksberry, Judy Phillips, Rick Phillips, Vanessa Reagan, and Clifton Westrick.

⁸ R. Exh. 5, an undated memorandum.

Ellis, on several occasions, observed pickets walking too slowly back and forth across entrances, and he told them they could not block access.

5 On August 19 (following the filing of charges by the Company alleging picket line misconduct), Ellis had pickets sign the following statement:⁹

10 We . . . have been instructed on several occasions that is unlawful to block the entrances to Ameriform Manufacturing, to throw any thing (sic) at anyone, or to perform any act of violence at the picket line. We understand that the Union does not condone or encourage any such action.

15 Pickets signed strike duty cards when they reported for picket line duty.¹⁰ These cards were also signed by either Coghill or the picket captain, for purposes of the picket getting paid. The back of the card contained general instructions, including being orderly and courteous and not possessing or being under the influence of drugs or alcohol.

20 The Union contends that two pickets on official picket line duty were “disciplined” for picket line misconduct: Kevin England and Clifton Westrick. Coghill sent England home early on two occasions; for chasing someone down the road and threatening him, and for making threats. Both times, England was under the influence of alcohol. Coghill also sent Westrick home early and removed him from the position of picket captain, for making a threat to burn somebody’s house down. However, both England and Westrick were paid for the full day, were not suspended from picketing but resumed official picket duty on their regular rotation, and suffered no loss of any strike benefits. The Union does not assert it has taken any action
25 against any other individuals who have been at the picket line.

Signs the Union Posted
Allegation 6(d)

30 Between 1 and 2 weeks after the strike began, Ellis made and posted a sign on the road, which stated: “This is a closed shop. If you cross picket you will not be a Union member ever. If you are not in Union you can’t work here long.”¹¹ (Emphasis in original; punctuation added.)

35 Ellis testified that he based this language on the union-security provision in the collective-bargaining agreement.

40 Around the same time, Ellis made and posted on the highway a second sign, which stated, “Cross our picket your (sic) marked scab for life. Smile for the camera.”¹² (Punctuation added.) Ellis testified that replacement workers had swerved their cars and gotten too close to pickets, and he wanted to warn them that he was going to take their pictures doing that. The Union provided no evidence that any of its videotapes or photographs showed misconduct by replacement workers.

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⁹ R. Exh. 3.

¹⁰ R. Exh. 2.

50 ¹¹ Jt. Exh. 2.

¹² Jt. Exh. 3.

Both signs were taken down after the Company filed unfair labor practice charges.

Photographing or Videotaping
Allegation 6(e)

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On various occasions In August, Donna Huff saw Ellis, Steward Cheryl Mahoney, and picket Vanessa Reagan with cameras or video camera equipment. On one occasion, Huff observed Reagan aiming the video camera at her as she was in her car and exiting the facility out of gate 2.

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As Rhonda Jordan was leaving work on about August 17, a picket pointed a camera at her as she was leaving work and yelled, "Smile" and "I got you now, scab."

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During the weeks of July 21 and 28, Dawn Schoolcraft saw Ellis and other pickets photographing license plates of employees.

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The Union concedes that on numerous occasions since July 21, the Union videotaped or photographed employees and their vehicles as they entered and exited the facility. Ellis and Jonathan Day, the Union's financial secretary, testified that the purpose was to discourage any provocations by employees. Again, the Union provided no videotapes or photographs showing employees engaging in misconduct.

Impeding Access
Allegations 6(f), (j), (n)(i), and (p)

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There was no testimonial evidence regarding impeded access in August, as alleged in paragraph 6(f) and (j), and I therefore recommend dismissal of those allegations.

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Dawn Schoolcraft testified that during the week of July 23, one of the pickets walked very slowly as she tried to enter the facility and that she had to stop. She gave no indication for how long and averred nothing else happened at the time.

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Sharon Hopkins testified that as she was exiting through gate 3 in early September, Marksberry, who was on the side of the road, rushed over to get in front of her car. Hopkins slammed on the brakes to keep from hitting her and had to stop briefly. Marksberry then hit the top of the car with her hand and accused Hopkins of almost hitting her. No other words were exchanged at the time. Marksberry testified, not necessarily inconsistently with Hopkins, that Hopkins sped out of the parking lot and almost hit her. According to Marksberry, she placed her hands on the hood of the car to keep her balance. Based on the totality of evidence, I find that their near collision resulted both from Marksberry's conduct and from Hopkins' speed as she left the parking lot. In any event, this was the only impediment to access alleged in early September.

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The following employees testified that they were impeded on September 27:

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Tim Elliott was leaving work through gate 3 and making a left turn, when a woman blocked his path and kept saying, "Come on, come on, hit me." He kept nudging forward, and she finally moved out of his way. He was delayed for not over 2 minutes.

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Hopkins was going back inside the facility (presumably, to file a report against Marksberry), when picket Rick Phillips blocked her from entering by standing in front of her car. He told her, "Go ahead, go ahead." She was delayed for less than a minute.

Bill Colwell was exiting out of gate 3 when pickets stretched out across the entrance and into the road, blocking his egress. When he started to turn, Phillips stood directly in front of him. Phillips' statements to him at that time will be described under the allegations pertaining to threats. Colwell was delayed for a total of about 4 minutes.

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Consistent with the above accounts, Sherry Knoy, at all times material the Company's human resources manager, observed pickets at the gate walking very slowly to get out of the way of vehicles, but they did not actually stop in front of them.

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As noted earlier, Ellis conceded that on several occasions, pickets walked too slowly back and forth across entrances.

Damaging Vehicles Allegations 6(h)(i), (m), (t), (w)

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Various witnesses observed nails in the parking lot and at entrances on the road, particularly in the time period between July and September. The Union denies any involvement therein, and no one saw who placed them there.

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The only guard who testified about the nails, Nicole Brittain, was called by the Union. She found nails near an entrance on only one occasion, in mid-August. They were tinged with rust and appeared to have been there for some time. She collected them and turned them in to Knoy.

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On four occasions when Rhonda Jordan left work, she noticed she had flat tires. Two of those occasions were in August. In September, Knoy discovered one flat tire in her vehicle in the parking lot.

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Knoy testified that about 25 employees reported flat tires in the parking lot and that the Company paid for at least some of the repairs. The record was left open for the receipt of additional guards' reports, and the Company submitted a number of them. Dated from July 2003 to January 2004, they contain notations of nails found on many occasions, the large majority at the shipping and receiving entrance to the facility.

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Phillips told Colwell during their confrontation on September 27 that he knew where Colwell lived. When Colwell returned home that evening, he found nails all over the front of his driveway and discovered two flat tires in a vehicle parked there. Each tire had three nails in it. The following Thursday, he again found nails in his driveway. This happened again on several occasions, the last around Christmas. He never saw who placed them.

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When Kim Aldridge and Venus Perry came to work together on September 3, picket Dan Caldwell called them "faggot whores" and pounded the side of Aldridge's vehicle with an unknown object, causing a dent that cost \$300 to repair.¹³

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Finally, on the morning of September 30, when Elliott was on the road and approaching gate 2, an unknown object struck the windshield of his pickup truck, cracking it about 10 inches. He slammed on his brakes and then proceeded to gate 3. The Company paid for the repair.

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¹³ See GC Exh. 11, incident report.

Spitting on Employees or Their Vehicles
Allegations 6(h)(ii), (q), & (u)

5 On September 27, as they separately left work through gate 3, Alfred Denning and Hopkins were spat on. Denning's window was open, and spittle landed on the side of his face and arms. Hopkins' window was ajar, and some of the spittle hit her on the side of the head. Denning identified the perpetrator as a man holding a child, whereas Hopkins did not see who spat.

10 The following day, Lorenzo Bowlin exited at gate 3, near which there was a group of seven or eight pickets. He noticed speckles all over his windshield and side window and, since it was not raining, assumed the substance was spittle. He turned on his windshield wipers and wiped it off.

15 Striking Employees' Vehicles with Hands or Objects (No Damage)
Allegations 6(b), (i)(i), (k), (l), (n)(ii), (r), and (v)

20 Dawn and Michael Schoolcraft and Huff left from work together on July 23 at shortly after 7 p.m. As Ms. Schoolcraft drove out of gate 2, Caldwell and another picket approached the vehicle, called them "scabs," and told them to go home. Caldwell threw something that looked like mayonnaise or Cool Whip™ at her car, and it hit her windshield. She swerved to the right and ducked, and then drove back inside the facility to file a report.¹⁴ She had the substance washed off at a car wash.

25 On the morning of August 15, as Don Hardin was entering the facility, an unidentified picket kicked or hit the back of his pickup truck.

30 Also on August 15, when Huff left work through gate 2, there were pickets massed at gate 1. As she passed them, England came within arms' length of her car and threw a slice of pizza onto the center of her windshield. It did not affect her driving.

In late August or early September, after Stanley Mack exited out of gate 3, a raw egg hit the top of his car when he passed the Union's camper near gate 2. He continued driving.

35 The incident in early September involving Hopkins and Marksberry was previously described, in the section dealing with impeding access. On September 27, Hopkins was again leaving out of gate 3, when Marksberry hit the left side of her car with her hand or her fist.

40 Guard Ike Scroggins was on duty as an inside guard on the night of September 28. Between 10 and 11 p.m., he heard and observed marbles bouncing off the building. When he went outside, he saw playing marbles flung or tossed from the general area of gate 2 (where the union camper was located) but did not actually see anyone throwing them. He collected 20-30 marbles and turned them in the next morning to Knoy.¹⁵ There is no evidence that any vehicles were hit by the marbles.

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¹⁴ GC Exh. 12

50 ¹⁵ See GC Exh. 2, incident report. The report does not state from where the marbles were flung.

Coercive Conduct
Allegations 6(g) and (o))

5 When Rhonda Jordan exited from the facility on August 11, she observed a pickup truck parked next to the Union's camper. She had never seen it before. The truck proceeded to follow her for about 20 minutes and 17 miles, staying one car length behind her. When the female driver finally left, she gave Jordan the finger. Jordan never saw the woman again, but in December, she did see the truck in the vicinity of the pickets.

10 On September 24, Scott Gavelek was dropped off at gate 1 by taxi. As he got out of the cab, he observed England, coming from a group of people, run toward him at full speed and scream. Gavelek ran on to the Company's property and asked a guard to call the police. Gavelek did not testify about the words England used, and in any event testified that he was frightened not because of what England said but by England's charging toward him.¹⁶

15 Verbal Threats
Allegations 6(a), (c),(h)(iii), i(ii), and (s)

20 When Huff left work one day during the week of July 21 – 25, she was walking across the parking lot toward her vehicle, when Jines yelled that she (Huff) would not have a job when they (the pickets) came back. Jines denied making such a comment but conceded that she yelled at Huff when Huff crossed the picket line. Huff appeared credible, and I believe she would have had a more precise recall of Jines' exact words. Accordingly, I credit Huff's account.

25 On July 28, after Aldridge and Perry had entered the facility and had gotten out of their vehicle, Westrick yelled "bitch" and other insults, that he would burn their houses down, and that he could find out where they lived.¹⁷

30 On about August 5, after Jordan had parked and was walking toward the building to report to work, there were a group of 10–12 female pickets standing near gate 3. One of them yelled names at her and added, "I know where you live." She does not know the identity of the person.

35 Michael Schoolcraft testified that on August 7, after he and his wife had parked on the far side of the lot, picket Judy Phillips yelled, "We're going to get you when you get off work tonight. Make sure you wear your tennis shoes." His wife did not testify about this incident. However, Schoolcraft appeared candid and to have good recall, and Phillips was not called as a witness and therefore did not rebut his testimony. For these reasons, I credit his account.

40 Julie Turnbaugh entered through gate 3 on August 11. As she got out of her car, a female picket told her that they were going to see her license plate and find out where she lived.

45 On the afternoon of September 27, Colwell exited the facility out of gate 3. As described earlier, he was momentarily delayed by pickets. When he thereafter started to turn, Rick Phillips, who was accompanied by about 15 others, approached, leaned across his windshield, and stared at him. Colwell motioned for him to get out of the way. Phillips shook his finger, and

50 ¹⁶ Gavelek had another encounter with England a few nights earlier, in which England swore at him. This incident is not specifically alleged in the complaint.

¹⁷ See GC Exh. 10, incident report.

said, "Fuck you!" and "I'll kill you, boy!" and that he knew where Colwell lived. When Phillips came around the side of the car, Colwell got clear and pulled away. Pickets ran behind Colwell as he drove off.

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Legal Analysis and Conclusions

General Precepts

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When a union authorizes a picket line, it has an affirmative obligation to exercise control over the actions of its pickets. *Auto Workers Local 695 (T.B. Wood's)*, 311 NLRB 1328, 1335 (1993); *Boilermakers Local 696 (Kargard Co.)*, 196 NLRB 645, 647-648 (1972). A union does not escape responsibility for the misconduct of pickets on the basis that their acts were not specifically authorized or that no union officials or picket captains were immediately present at the time of the misconduct, since pickets are clothed with apparent or ostensible authority to act on its behalf. *Avis Rent-A-Car System*, 280 NLRB 580, 583 fn. 3 (1986); *Hospital Employees District 1199 (Frances Schervier Home)*, 245 NLRB 800, 804-805 (1979). This principle applies even if the specific identity of the picket who engaged in the misconduct is not known. *Avis Rent-A-Car*, id.; *Frances Schervier Home*, id at 804.

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Therefore, even if the Union did make good-faith efforts to instruct pickets not to engage in misconduct, as it avers, it nevertheless still bore responsibility for the actions of those on the picket line. For reasons stated previously, this included striking employees not on official picket duty and nonemployee supporters. Holding otherwise would run contrary to established common-law principles of agency and to Board precedent.

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The test for determining restraint and coercion is whether the conduct, under all the circumstances, may reasonably tend to coerce or restrain employees in the exercise of their Section 7 rights. *Longshoremen ILA Local 333 (ITO Corp.)*, 267 NLRB 1320, 1321 (1983); *Laborers Local 496 (Newport News of Ohio)*, 258 NLRB 1105 fn. 2 (1981); *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979).

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I note that the fact that some employees apparently responded in kind to obscene gestures and profanities from pickets does not serve to exculpate the pickets from misconduct. There is no evidence that any employees initiated any of the confrontations that occurred. Further, as reflected in the videotapes and record evidence, many of the pickets were quite provocative.

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On the other hand, when determining whether the conduct of pickets was coercive, the context must be considered. Picket line settings are normally tense, with strikers naturally viewing those going to work as threats to the success of the strike and, potentially, to their future employment. In this light, employees not honoring the strike can expect hostility from pickets, and not all expressions of such can be deemed to rise to the level of coercion or restraint. The Board has long recognized this reality. See *Longview Furniture Co.*, 100 NLRB 301, 304 (1952), enf'd. as modified 206 F.2d 274 (4th Cir. 1953).

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The Union's Signs

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The first sign Ellis posted, around the first week of July, clearly referred to those who crossed the picket line and were working at Ameriform. It announced that Ameriform was a "closed shop," that those who crossed the picket line could never be a member of the Union, and that they would loss their jobs. This was clearly coercive. I therefore sustain allegation 6(d) of the complaint.

The second sign about those crossing the picket being “marked scab for life. Smile for the camera” is not specifically alleged as a violation. It does relate to the circumstances surrounding the videotaping and photographing of employees.

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Photographing or Videotaping

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Pickets’ videotaping or photographing of employees and their vehicles when they cross a picket line is not per se violative of Section 8(b)(1)(A), but such activity exceeds the bounds of legitimate conduct when, in connection with other actions of the pickets, it indicates that the union might act adversely to those employees. *Interstate Cigar Co.*, 256 NLRB 496, 500–501 (1981); *Dover Corp.*, 211 NLRB 955, 958 (1974). Pickets’ shouting obscenities as employees enter and exit the company’s premises has been held to create an atmosphere making photographing coercive. *Teamsters Local 890 (Basic Vegetable Products)*, 335 NLRB 686 (2001). Also relevant to the inquiry is whether the union has established that, in conducting its photographing activities, it acted consistently with its proffered reasons for engaging in such. *Vegetable Products*, supra at 687; *T.B. Wood’s*, supra at 1336.

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Here, on a regular basis, pickets shouted obscenities at those crossing the picket line. Ellis’ second sign connected the Union’s photographing of employees with their being marked as “scabs” for life. When a picket pointed a camera at Jordan, he essentially reiterated the language of the sign, yelling, “Smile” and “I got you now, scab.” The other sign Ellis posted told employees who crossed the picket line that they could never become union members and would lose their jobs. Despite the Union’s claim that the videotaping and photographing was for the legitimate purpose of documenting misconduct by employees, no videotapes or photographs were produced showing this.

In all of these circumstances, I conclude that the photographing and videotaping of employees and their vehicles was coercive. I therefore sustain allegation 6(e) of the complaint.

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Impeding Access

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Blocking ingress to and egress from an employer’s premises constitutes coercive conduct. *Tube Craft*, 287 NLRB 491, 492–493 (1987); *Longshoremen ILA Local 1291 (Trailer Marine)*, 266 NLRB 1204, 207 (1983). However, isolated instances of brief impediments to entry or exit do not violate Section 8(b)(1)(A). *TKB International Corp.*, 240 NLRB 1082, 1099 (1979); *Service Employees Local 50 (Evergreen Nursing Home)*, 198 NLRB 10, 12 (1972).

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It is not disputed that pickets often walked slowly across the entrances, to the point where even Ellis had to remind them to pick up their pace. Nevertheless, as the above cases reflect, merely slowing down persons arriving and leaving does not per se rise to the level of coercive and illegal conduct.

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As to Dawn Schoolcraft’s delay in entering during the week of July 23, this is not specifically alleged in the complaint. Even if it were, the record does not disclose the length of the delay, and no other alleged picket line misconduct occurred at the same time. Therefore, I would not find a violation based on that incident.

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The early September incident involving Hopkins and Marksberry was the only alleged incident of impeding access during that timeframe. Other than Marksberry accusing Hopkins of almost hitting her, no words were exchanged, and it appears that Marksberry’s hitting Hopkins’ vehicle was reactive rather than deliberative. Hopkins was stopped only briefly. In these circumstances, I conclude that this constituted an isolated instance of a brief impediment and

was not coercive. Accordingly, I recommend dismissal of allegation 6(n)(i).

In contrast, On September 27, pickets delayed several employees and made comments to them at the same time. Thus, Phillips threatened to kill Colwell and goaded Hopkins to hit him, and another picket goaded Elliot to hit her. In such circumstances, I conclude that these impediments to access, combined with words, amounted to coercive conduct. I therefore sustain allegation 6(p) of the complaint.

Damaging vehicles

Misconduct, such as throwing of nails, can be found through strong circumstantial evidence. *Teamsters Local 812 (Sound Distributing Corp.)*, 307 NLRB 1267 fn. 2 (1992); *Teamsters Local 812 (Pepsi-Cola Newburgh)*, 304 NLRB 111 fn. 1 (1991). On the other hand, circumstantial evidence is not always enough to establish such misconduct. See, e.g., *Harvey Engineering Corp.*, 270 NLRB 1290 (1984); *Hotel Holiday Inn*, 265 NLRB 1513 (1982).

It is undisputed that nails were found in the parking lot and at entrances on the road, particularly in the time period between July and September, and the guards' reports reflect that nails were placed at the shipping and receiving entrance on a regular, not isolated or sporadic, basis. In August, Jordan had flat tires from nails on two occasions. Although no one witnessed who placed the nails, no one but the pickets would have had a reason to do so. I also take into account that other picket line misconduct occurred. Accordingly, I conclude that the circumstantial evidence is strong enough to impute the placing of the nails to the pickets. Therefore, I sustain allegation 6(h)(i).

Damage from nails is also alleged in paragraph 6(t) and relates to Colwell. Here, too, there were no eyewitnesses to who left nails in his driveway. However, the timing and the statements made by Phillips constitute strong circumstantial evidence that pickets were responsible. Thus, Colwell found nails in his driveway for the first time on the day that he had a heated altercation with Phillips, who specifically stated that he knew where Colwell lived. Cf. *Olathe Healthcare Center*, 314 NLRB 54 (1994) (discriminatory motive in issuing discipline in 8(a)(3) cases may be inferred from its timing). Accordingly, I sustain allegation 6(t).

Caldwell's \$300 damage to Aldridge's vehicle on September 3 was clearly misconduct violating Section 8(b)(1)(A). As to the damage to Elliot's vehicle on September 30, the object causing it came from the vicinity of gate 2, near which the pickets' camper was parked. The record does not reflect that anyone other than pickets were in the area. In these circumstances, I conclude that the circumstantial evidence is sufficient to support a conclusion that pickets were responsible. Accordingly, I sustain allegations 6(m) and (w).

Spitting on Employees or their Vehicles

Spitting on employees by pickets is considered a form of coercive conduct. See, e.g., *Pepsi-Cola Newburgh*, supra; *Service Employees Local 87 (Pacific Telephone)*, 279 NLRB 168 (1986).

No one testified about being spat on on August 13, as alleged in paragraph 6(h)(ii), and I therefore recommend dismissal of that allegation.

Both Denning and Hopkins were spat upon as they exited the facility and passed pickets on September 27. Their testimony supports the allegation in paragraph 6(q), which I therefore conclude has been sustained.

Bowlin on September 28 never actually saw anyone spit on his car, as alleged in paragraph 6(u). However, he logically assumed the “speckles” were spittle and wiped them off with his windshield wiper. I conclude this allegation also has been sustained.

5 Striking Employees’ Vehicles with Hands or Objects (No Damage)

Hitting employees’ vehicles can be a form of coercion, even in the absence of any damage. *Machinists Local 758 (Menasco)*, 267 NLRB 1147 (1983); *Carpenters Local 209 (Wylie Const. Co.)*, 256 NLRB 95 (1981).

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Nevertheless, in some situations, the action of pickets merely hitting or pounding a vehicle has been found not to rise to the level of coercive. See, e.g., *Medite of New Mexico*, 314 NLRB 1145, 1146–1147 (1994), *enfd.* 72 F.3d 780 (10th Cir. 1995), cited by the Respondent; *Preterm*, 273 NLRB 683, 698, 704 (1984). The early September incident when Marksberry hit Hopkins’ car falls into this category. Regardless of apportionment of fault, it is agreed that Hopkins almost ran into Marksberry. Marksberry’s subsequent hitting the vehicle was directly related to this and appears to have been spontaneous rather than a planned act of hostility. Accordingly, I recommend dismissal of allegation 6(n)(ii).

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In contrast, the following conduct of pickets must be considered to have been deliberate, with no extenuating circumstances having been shown. On July 23, Caldwell threw a white substance on Dawn Schoolcraft’s windshield as she exited the facility. On August 15, England threw a slice of pizza onto the center of Huff’s windshield, as she left work. In late August or early September, someone in the vicinity of the Union’s camper at gate 2 threw a raw egg on the top of Mack’s car as he drove by. An unidentified picket kicked or hit the back of Hardin’s pickup truck on August 15, as he entered the facility. On September 27, as Hopkins was leaving, Marksberry hit the left side of her car with her hand or her fist.

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These contacts with employees’ vehicles occurred in an atmosphere in which pickets subjected employees crossing the picket line with a barrage of shouts replete with expletives, and in an environment where many other instances of strike misconduct occurred. I conclude, in light of such factors, that these acts of physical contact on employees’ vehicles were coercive. I therefore sustain the allegations in paragraph 6(b), (i)(i), (k), (l), and (r),

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On the evening of September 28, Guard Scroggins observed and heard marbles being flung into the parking lot, but he did not see who was responsible, and the incident report does not indicate from where they came. In the absence of evidence of where the marbles originated, of any damage to any vehicles in the parking lot, and of surrounding circumstances of coercion at that point of time, I recommend dismissal of paragraph 6(v).

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Coercive Conduct

On August 11, a pickup truck that had been parked next to the Union’s camper tailed Jordan’s vehicle after she left the facility, for about 20 minutes and 17 miles. When the female driver finally left, she gave Jordan the finger. This conduct was clearly intimidating. See *Service Employees District 1199 (J.J. Jordan Geriatric Center)*, 312 NLRB 90 (1993); *Menasco*, supra. I therefore sustain paragraph 6(g), insofar as it alleges that the following of an employee was coercive. However, although the obscene gesture reflected hostility, I do not conclude that, in and of itself, it rose to the level of coercive. See *Longview Furniture Co.*, supra.

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On September 24, after Gavelek was dropped off by taxi, England ran toward him and screamed. Afraid for his safety, Gavelek sought refuge on the Company’s premises. Gavelek

did not testify about the words England used, only testifying that England was shouting. England's charging at Gavelek was obviously coercive. Accordingly, I sustain allegation 6(o) to the extent that it alleges England intimidated an employee who was entering the facility by running toward him and yelling.

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Verbal Threats

I conclude that the following statements of pickets were, on their face, coercive as threats.

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1. Jines telling Huff, one day during the week of July 21 – 25, that she would not have a job when the pickets came back to work.

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2. Westrick, on July 28, telling Aldridge and Perry that he would burn their houses down and could find out where they lived.

3. Judy Phillips telling Michael Schoolcraft, on August 7, "We're going to get you when you get off work tonight. Make sure you wear your tennis shoes."

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4. Rick Phillips, on September 27, telling Colwell that he knew where Colwell lived and would kill him.

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The Board has distinguished between picket line threats of harm and statements that are too vague to be coercive. *Briar Crest Nursing Home*, 333 NLRB 935 at 4 (2001); *Wayne Stead Cadillac*, 303 NLRB 432, 436 (1991), cited by the Respondent. When the statement contains ambiguity, its context is of great importance. *Briar Crest*, supra at 5. I conclude that the following statements of pickets, viewed in the context I described above, were coercive as verbal threats:

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1. An unknown picket, on about August 5, telling Jordan, "I know where you live."

2. An unknown picket, on August 8, telling Turnbaugh that the pickets were going to see her license plate and find out where she lived.

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I therefore sustain the allegations in paragraphs 6(a), (c), (h)(iii), i(ii), and (s) of the complaint.

Conclusions of Law

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1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

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3. By the following conduct its pickets directed against employees who crossed the picket line at the Company (employees), the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(b)(1)(A) of the Act.

- (a) Posted a sign threatening employees with loss of employment.
- (b) Photographed and videotaped employees and their vehicles.
- (c) Impeded employees' access to or from work.
- (d) Damaged, threw substances on, spit on, or kicked or hit employees' vehicles.
- (e) Spit on employees.
- (f) Placed nails at entrances to the Company and on the driveway of an employee's residence.
- (g) Followed an employee after she left work.
- (h) Ran toward and yelled at an employee.
- (i) Threatened employees with loss of employment, burning down their houses, death, or unspecified reprisals.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁸

ORDER

The Respondent, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union No. 1420, Hanover, Indiana, its officers, agents, and representatives, shall

Cease and desist from

- (a) Posting signs that threaten employees who cross a picket line (employees) with loss of employment.
- (b) Photographing and videotaping them and their vehicles.
- (c) Impeding their access to or from work.
- (d) Damaging, throwing substances on, spitting on, or kicking or hitting their vehicles.
- (e) Spitting on them.

¹⁸ 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.

(f) Placing nails at entrances they use to enter or leave work, or on the driveways of their residences.

(g) Following them after they leave work.

(h) Running toward and yelling at them.

(i) Threatening them with loss of employment, burning down their houses, death, or unspecified reprisals.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days after service by the Region, post at its union office in Hanover, Indiana, copies of the attached notice marked "Appendix."¹⁹ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. The Respondent shall take reasonable steps 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, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all its current members and former at any time since July 11, 2003.²⁰

(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 Region attesting to the steps that the Respondent has taken to comply.

It Is Further Ordered that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. April 30, 2004

Ira Sandron
Administrative Law Judge

¹⁹ 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."

²⁰ This date is based on Ellis' testimony that he posted the sign found unlawful, a week or two after the strike began on June 27.

APPENDIX

NOTICE TO MEMBERS

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 Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT post signs threatening employees who cross our picket line with loss of employment.

WE WILL NOT photograph and videotape them and their vehicles.

WE WILL NOT impede their access to and from work.

WE WILL NOT damage, throw substances on, spit on, or kick or hit their vehicles.

WE WILL NOT spit on them.

WE WILL NOT place nails at entrances they use to enter or leave work, or on the driveways of their residences.

WE WILL NOT follow them after they leave work.

WE WILL NOT run toward and scream at them.

WE WILL NOT threaten them with loss of employment, burning down their houses, death, or unspecified reprisals.

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.

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INTERNATIONAL UNION, UNITED AUTOMOBILE
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL UNION NO 1420

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(Labor Organization)

Dated _____ By _____
(Representative) (Title)

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35 The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

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550 Main Street, Federal Office Building, Room 3003, Cincinnati, OH 45202-3271
(513) 684-3686, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

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THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (513) 684-3750.

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