Automatic Screw Products Co., Inc. *and* John Hartman. Case 8–CA–23830

April 2, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

Upon a charge filed by John Hartman, an individual, on August 15, 1991, the General Counsel of the National Labor Relations Board issued a complaint on September 25, 1991, against the Company, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Subsequently, the Respondent filed an answer, admitting in part and denying in part the allegations of the complaint, asserting the affirmative defense that the complaint fails to state a claim upon which relief can be granted, and requesting that the complaint be dismissed.

Thereafter, on January 21, 1992, the General Counsel, by counsel, filed with the Board in Washington, D.C., a Motion for Summary Judgment, with exhibits attached. The General Counsel submits that there is no genuine issue about any material fact and that summary judgment should be granted. The General Counsel requests that the Board find that the Respondent has violated Section 8(a)(1) of the Act and issue an order requiring the Respondent to cease and desist and to take appropriate affirmative action.

On January 27, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. On February 7, 1992, the Respondent filed a brief in opposition to the General Counsel's Motion for Summary Judgment.

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

Upon the entire record in this proceeding, the Board makes the following

Ruling on the Motion for Summary Judgment

In its answer to the complaint and in its opposition to the Motion for Summary Judgment, the Respondent admits the following complaint allegations: (1) about March 1, 1991, the Respondent verbally promulgated, and, since that date, has maintained a rule prohibiting discussions among its employees about their salaries; (2) in June or July 1991, and also on July 26, 1991, the Respondent's president, Bruce Bacik, advised an employee that it prohibited discussions among employees about salaries; and (3) on July 29, 1991, Bacik advised employee John Hartman that he had violated the rule and the Respondent discharged him for that reason. The Respondent, however, denies the complaint allegations that (1) it discharged Hartman ''in order to discourage'' employees from engaging in activities protected by Section 7 of the Act, and that (2) the alleged behavior constitutes unfair labor practices under Section 8(a)(1).

The General Counsel contends that the Respondent's answer admits all facts necessary to support finding all unfair labor practices alleged and that thus no hearing is necessary. We agree.

The Respondent, in its response to the Notice to Show Cause, offers to show only that no union organizing activities were ongoing at its facility either when the rule at issue was first promulgated or when Hartman was discharged for violating it. The Respondent's legal contention is therefore that the proscribed behavior was not concerted because neither the rule nor the discharge was intended to prevent its employees from engaging in activities protected by Section 7.

We find that the Respondent's contention is without merit because it raises an issue that is irrelevant. In *Triana Industries*, 245 NLRB 1258 (1979), the Board addressed this precise issue and found it

> irrelevant that [respondent's statement forbidding discussion of wages] did not occur during a period of organizational activity. An employer who restrains employees in the exercise of rights guaranteed them under Section 7 violates the Act no less because his employees have chosen to exercise their rights independent of union representation. Furthermore, such discussion may be necessary as a precursor to seeking union assistance and is clearly concerted activity.

Thus, the Respondent in this case has presented no material facts at issue which require a hearing, as all material facts have been admitted and we have rejected its legal argument.

Accordingly, we grant the Motion for Summary Judgment and we find that the Respondent violated Section 8(a)(1) by promulgating and maintaining a rule prohibiting employees from discussing their salaries—an inherently concerted activity clearly protected by Section 7 of the Act. *Triana*, supra; *Scientific-Atlanta, Inc*., 278 NLRB 622, 624–625 (1986). It follows that the Respondent also violated Section 8(a)(1) by advising specific employees of the content of the unlawful rule, because such conduct has a natural tendency to restrain them in the exercise of their Section 7 right to learn about and assess such a vital term and condition of employment as the salaries paid by their employer. Finally, we find that the Respondent violated Section 8(a)(1) by advising employee John Hartman that he had violated its rule against discussing salaries and discharging him for that reason. It is axiomatic that it is an unfair labor practice to discipline an employee for breaching a rule that is itself unlawful under the Act. *Scientific-Atlanta*, supra, 278 NLRB at 626.

On the basis of the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Ohio corporation with an office and place of business in Cleveland, Ohio, is engaged in the manufacture and distribution of screws, fittings, seals, and related products. Annually, in the course and conduct of its business operations, the Respondent sold and shipped from its Cleveland, Ohio facility products, goods, and materials valued in excess of $50,000 to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE UNFAIR LABOR PRACTICES

As set forth above, the actions of the Respondent in promulgating and maintaining a rule prohibiting discussions among employees about their salaries, advising employees that it prohibited such discussions, and by discharging employee John Hartman because he violated that rule, constitute interference, restraint, and coercion of its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

Accordingly, we find that such actions are unfair labor practices within the meaning of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Automatic Screw Products Co., Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By promulgating and maintaining a rule prohibiting discussions among employees about their salaries, by advising employees on several occasions that it prohibited such discussions, and by discharging employee John Hartman because he violated that unlawful rule, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to offer employee John Hartman immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall order the Respondent to remove from its files any references to the unlawful discharge of John Hartman and to notify him in writing that this has been done and that the discharge will not be used against him in any way. We shall also order the Respondent to rescind its rule prohibiting discussions among its employees about their salaries.

ORDER

The National Labor Relations Board orders that the Respondent, Automatic Screw Products Co., Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and maintaining rules prohibiting discussions among employees about their salaries.

(b) Advising employees that it prohibits discussions among employees about their salaries.

(c) Discharging employees for engaging in protected concerted activity.

(d) 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 policies of the Act.

(a) Offer John Hartman reinstatement to his former job or, if that job no longer exists, offer him a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharge of John Hartman and notify him in writing that this has been done and that the unlawful action will not be used against him in any way.

(c) Rescind the rule which prohibits discussions among employees about their salaries.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Cleveland, Ohio location copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Regional Director for

[1] 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.''

Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

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

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

WE WILL NOT promulgate and maintain rules prohibiting discussions among employees about their salaries.

WE WILL NOT advise our employees that we prohibit discussions among them about their salaries.

WE WILL NOT discharge employees for engaging in protected concerted activity.

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

WE WILL offer John Hartman his former job or, if such job no longer exists, offer him a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL make him whole for his loss of earnings and other benefits resulting from his discharge, with interest.

WE WILL remove from our files any reference to the unlawful demotion or forced resignation of John Hartman and notify him in writing that this has been done and that the unlawful action will not be used against him in any way.

WE WILL rescind the rule which prohibits discussions among employees about their salaries.

AUTOMATIC SCREW PRODUCTS CO., INC.