**Honeywell, Inc. *and* Honeywell Engineers and Technicians.** Case 18-CA-6791

July 29, 1982

## DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND ZIMMERMAN

On February 10, 1982, Administrative Law Judge Burton S. Kolko issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in response to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The sole issue in this case is whether Respondent violated Section 8(a)(1) of the Act by maintaining and disparately enforcing a rule prohibiting the posting of certain union-related materials on bulletin boards located throughout Respondent's facilities. The Administrative Law Judge found that Respondent's bulletin board policy was reasonable and was neither promulgated nor enforced in a discriminatory manner, and dismissed the complaint. We reverse.

The facts, which are essentially uncontroverted, are fully set forth in the Administrative Law Judge's Decision. As found by the Administrative Law Judge, Respondent maintains four different types of bulletin boards at its facilities, including company, employee, departmental, and union bulletin boards.[1] Robert Williams, Respondent's manager of employee services, is in charge of the company and employee bulletin boards, and responsible for enforcing Respondent's established rules relating to their use. All notices to be posted on "company" bulletin boards must be approved by Williams. Employees may post certain types of material on "employee" bulletin boards without prior approval of Williams, such as notices for garage sales, merchandise for sale, carpool information, lost and found, and the like, but other materials must be approved by Williams prior to posting. The standard used by Williams in determining whether to approve postings on company and, to the extent required, employee bulletin boards simply is whether the posting is for an organization which is "company-sponsored or company-approved." If the proposed posting is for such an organization, Williams initials the material and causes copies to be distributed for posting among Respondent's approximately 400 bulletin boards. Materials which do not meet the standard are returned to the employee who submitted them for approval. Respondent's "departmental" bulletin boards are used solely for posting of departmental notices. The "union" bulletin boards were established pursuant to a collective-bargaining agreement with the union representing Respondent's production and maintenance employees, and their use is limited to that union. In June 1980, Michael Lebowsky, an employee of Respondent and member of Honeywell Engineers and Technicians (H.E.A.T.), a labor organization, requested permission from Williams to post a notice of a council meeting of H.E.A.T. representatives on "bulletin boards located throughout the company." Williams denied Lebowsky's request on the ground that H.E.A.T. was not a "company-sponsored or company-approved" organization.[2] Thereafter, H.E.A.T. filed the instant charge.

The legal principles applicable to cases involving access to company-maintained bulletin boards are simply stated and well established. In general, "there is no statutory right of employees or a union to use an employer's bulletin board."[3] However, where an employer permits its employees to utilize its bulletin boards for the posting of notices relating to personal items such as social or religious affairs,[4] sales of personal property,[5] cards, thank you notes, articles, and cartoons,[6] commercial notices and advertisements,[7] or, in general, any nonwork-related matters,[8] it may not "validly discriminate against notices of union meetings which employees also posted."[9] Moreover, in cases such as these an employer's motivation, no matter how well meant, is irrelevant.[10]

[1] At some facilities, one bulletin board is used for all of these purposes. At other facilities, four separate bulletin boards are utilized.

[2] We disavow the Administrative Law Judge's finding that the union bulletin boards were available to H.E.A.T. As Respondent concedes in its brief, H.E.A.T. is not permitted the use of these boards. We therefore find it unnecessary to pass on the Administrative Law Judge's citation, in fn. 2 of his Decision, to *McGurran v. Veterans Administration*, 665 F.2d 321 (10th Cir. 1981).

[3] *Container Corporation of America*, 244 NLRB 318, fn. 2 (1979). Accord: *Union Carbide Corporation-Nuclear Division*, 259 NLRB 974 (1982); *Axelson, Inc.*, 257 NLRB 576 (1981); *Arkansas-Best Freight System, Inc.*, 257 NLRB 420 (1981).

[4] *Axelson, Inc., supra* at 579.

[5] *Arkansas-Best, supra* at 423; *Midwest Stock Exchange, Incorporated; et al.*, 244 NLRB 1108, 1116 (1979); *Container Corporation of America, supra* at 321.

[6] *Vincent's Steak House, Inc.*, 216 NLRB 647 (1975).

[7] *Container Corporation of America, supra* at 321.

[8] *Continental Kitchen Corporation*, 246 NLRB 611, 613 (1979).

[9] *Axelson, Inc., supra* at 579, and cases cited therein.

[10] *Arkansas-Best, supra* at 423–424.

Applying these principles to the instant case, it is undisputed that Respondent permits the posting of various types of personal notices by its employees on its bulletin boards,[11] and further permits the posting of various notices relating to "company-approved or company-sponsored" organizations such as United States Savings Bonds, the United Way, and the Boston Pops Orchestra. Under these circumstances, Respondent's maintenance and enforcement of a policy prohibiting the posting of notices relating to the H.E.A.T. council meeting was a denial of employees' Section 7 rights and a violation of Section 8(a)(1) of the Act.

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By promulgating, maintaining, and enforcing a rule which prohibits employees from posting union-related materials on bulletin boards that are available for general use by employees, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that Respondent violated Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order that Respondent rescind its unlawful bulletin board policy insofar as that policy restricts employees' posting of union-related materials on bulletin boards that are available for general use by employees.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Honeywell, Inc., Minneapolis, Minnesota, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining or enforcing any rule which discriminatorily prohibits its employees from posting union-related materials on bulletin boards which are otherwise available for general use by employees.

(b) Prohibiting its employees from posting union-related materials on bulletin boards which are otherwise available for general use by employees.

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

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

(a) Withdraw and rescind any rules or policies which discriminatorily restrict employees' use of Respondent's bulletin boards which are otherwise available for general use by employees.

(b) Post at each of its facilities in the Minneapolis, Minnesota, vicinity copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 18, after being duly immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customary posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[11] We find it unnecessary to determine whether Lebowsky, in requesting permission to post the H.E.A.T. notice, asked for approval to post that notice on the company or the employee bulletin board. Lebowsky did not specify which Board he was interested in and, as both boards were under the exclusive control of Respondent, Williams' denial of Lebowsky's request extended to all bulletin boards under his control.

[12] In the event that 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."

## APPENDIX

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

WE WILL NOT maintain or enforce any rule or policy which discriminatorily prohibits our employees from posting union-related materials on our bulletin boards which are otherwise available for the general use of employees.

WE WILL NOT prohibit our employees from posting union-related materials on our bulletin boards which are otherwise available for the general use of employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to engage in

union or concerted activities, or to refrain therefrom.

WE WILL withdraw and rescind any of our rules or policies which discriminatorily restrict employees' use of our bulletin boards which are otherwise available for the general use of employees.

HONEYWELL, INC.

## DECISION

### STATEMENT OF THE CASE

BURTON S. KOLKO, Administrative Law Judge: the Respondent, in Honeywell, Inc., was charged by Honeywell Engineers and Technicians (H.E.A.T.), a labor organization, with maintaining and disparately enforcing a discriminatory rule prohibiting H.E.A.T. from posting its union notices on bulletin boards at Respondent's facilities.

The Board complaint, alleging a violation of Section 8(a)(1) of the National Labor Relations Act (the Act) by reason of such conduct, was issued on February 25, 1981.

In its answer, Respondent denied any wrongdoing.

The case was heard before me on September 24, 1981, in Minneapolis, Minnesota. The General Counsel and Respondent have filed briefs.

Upon the entire record, including my observation of the witnesses and consideration of the briefs of the parties, I make the following:

### FINDINGS OF FACT

#### I. JURISDICTION

As Respondent admits, it is a corporation engaged in the manufacture and nonretail sale and distribution of electronic and computer equipment and related products, and has been and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

#### II. THE UNFAIR LABOR PRACTICE

##### A. *Background*

In the summer of 1980, Michael Lebowsky, a member of H.E.A.T., contacted Robert Williams, Honeywell's manager of employee services, to request approval of a bulletin announcing a council meeting of union representatives for posting on company bulletin boards. There is some discrepancy as to whether Lebowsky called Williams before he sent Williams the posting. I credit Williams' testimony that he spoke with Lebowsky after he received the notice to be posted. Williams told Lebowsky that he (Williams) would have to check with the legal department at Honeywell before approving or disapproving the notice for posting. Williams stated that he had a policy that only company-sponsored or company-approved events could be posted on company bulletin boards, but that when a question arose, he contacted the legal department. After consulting with that department, Williams informed Lebowsky that the notice would not be approved for posting on the company bulletin boards. Lebowsky asked that his copy of the notice be returned to him and the two had no further conversation.

##### B. *The Bulletin Board Policy*

There are several different types of bulletin boards at the Honeywell plants: company, employee, departmental, and union bulletin boards. Williams is in charge of the company bulletin boards. In addition, he oversees the employee bulletin boards. All notices to be posted on company bulletin boards must be approved by Williams. Employee bulletin boards may be used to post for sale signs, lost and found information, and the like, but may not be used to post notices by any organization that is not company-sponsored or company-approved. This standard is the same standard used by Williams in approving or disapproving a notice for posting on company bulletin boards.

Williams appoints one person in each area where a company bulletin board is located to put up notices and to remove notices not approved for posting. When Williams has occasion to pass by any bulletin board, he, too, removes notices not approved by him.

Esther Saarela, a communications and human resource development coordinator at the Honeywell plant in Hopkins, testified as to the system of monitoring the boards. She is in charge of the boards at seven plants in the Minneapolis area. In turn, she appoints one person near each board in each plant to be in charge of that board and has instructed the monitors to remove any notice that does not comply with the company policy. She was given this assignment in the summer of 1981.

Loren Kruger, vice president of H.E.A.T., testifed that he had had a discussion with Saarela concerning the inability of employees to discern a company bulletin board from an employee bulletin board, where items for sale, carpool information, etc., were allowed to be posted. He also related to her at this time that some bulletin board monitors did not seem to know the difference either. (Kruger had stopped one monitor who was posting a notice from the National Labor Relations Board concerning a recent settlement agreement and asked her where she was posting the notices. The monitor replied that she did not know.) I credit Kruger's testimony despite the fact that Saarela does not remember the conversation.

Richard Brueckner, an employee relations communications coordinator, has bulletin board responsibilities at two Honeywell sites. Notices that he had removed in accordance with company policy a few weeks before the hearing began were entered as exhibits during the hearing. Brueckner stated that the problem of unauthorized postings is a continuous one but, to the best of his knowledge, no memorandum had ever been circulated to employees explaining the bulletin board policy.

The policy on bulletin boards has been disseminated through an employee handbook for salaried employees

and a Personnel Practices and Procedures Manual, given to office and technical supervisors and managers. Plant or department managers have the discretion to put up separate bulletin boards for company, departmental, and employee news or even to combine all the news on one board. Employee boards are used for ride-sharing. Interest groups are not supposed to use the board. The Company does not discipline employees who violate the posting policy.

Some bulletin boards have signs posted on them alerting employees to the procedure to be followed in having notices approved for posting; some do not.

Williams polices this policy by talking personally with the people responsible for posting all the bulletins in the plants when he visits the plants, and he instructs them when they call him with questions about a particular posting.

The employee bulletin boards do not appear to be handled in such an organized way. Employees may post "for sale" notices, but may not post notices of events or group-sponsored activities (Resp. Exh. 4). It is unclear who monitors these boards.

### C. *The 8(a)(1) Finding*

Honeywell has 25 plants in the Minneapolis region, with nearly 18,000 employees. There are 410 company bulletin boards and numerous employee bulletin boards scattered throughout the plants. I find that Honeywell has adopted a reasonable policy in regard to the bulletin boards, one that was neither promulgated nor enforced in a discriminatory manner. The allegation of a 8(a)(1) finding is, therefore, dismissed.

In *Container Corporation of America*, 244 NLRB 318, fn. 2 (1979), the Board noted:

> It is well established that there is no statutory right of employee or a union to use an employer's bulletin boards. . . .

The right to use the board receives protection under the Act if the employer restricts its use in a discriminatory manner.

The General Counsel has sought to prove that Honeywell's bulletin board policy is a discriminatory one in that it permits its employees to post some materials without its approval and because it does not enforce the alleged bulletin board policy.

However, Respondent has shown through the testimony of Williams that what determines whether Honeywell will approve a certain notice to be posted on its company bulletin board is not whether that notice is authored by or mentions the Union. Rather, Respondent has delineated two categories: one which includes car pool information, lost and founds, for sale notices, and the like, and the other which includes political or religious activities and any group activity that is not company-sponsored. The union meeting notice clearly belongs to the latter category and as such was denied approval for posting on the company bulletin boards.

If Williams felt that there was some question as to which category a posting belonged, he would contact the legal department. He could not recall a single time when he had called the legal department with this question and they had given an okay to have a notice posted.[1] This may be a hard line policy, but it is consistent. The union notice was not turned down because it was a *union* notice.

Honeywell's enforcement system is elaborate and apparently extensively thought out. Although it does not work perfectly and notices by organizations that are not company-sponsored or company-approved do sometimes appear on the boards, this is certainly not enough evidence to find a violation of the Act.

The cases relied on by the General Counsel can be distinguished from the present case. *Container Corporation of America, supra*, involved a newsletter from the union president to union members that was posted on a board set aside for "official union business." The Company had felt that the newsletter, which contained derogatory remarks about the Company, was not "official union business" and took the newsletter down. In *Container Corporation*, the Board had noted that the right of the Union to use the bulletin board was founded in part by the employer's permission to do so. At Honeywell there was never any permission to use the company bulletin boards for such purpose. In fact, the record indicates that there were union bulletin boards available. Thus, there was no denial of Section 7 rights.[2]

The General Counsel also sought to prove that Honeywell's policy had not been disseminated to the employees. Evidence presented at hearing indicated that employees could find out about the bulletin board policy in three ways:

1. The employee handbook, which is vague but does alert the employee to the fact that there are restrictions.
2. Through their supervisors, who have detailed instructions in their Personnel Practices and Procedures Manual.
3. Labels and guidelines that are posted on most bulletin boards.

Honeywell's effective dissemination of its policy is not impugned by one bulletin board monitor's ignorance of which bulletin board she was to post a National Labor Relations Board settlement notice on, especially since no evidence had been presented that she had had to post such a notice before. In addition, the law does not require that all employees are cognizant of a policy, but that an employer make a reasonable effort to disseminate it.[3]

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[1] Organizations such as the Muscular Dystrophy Association and Heart Association are regularly denied posting privileges. Church festival, religious group announcements, and bulletins for American Legion baseball tournaments have been removed from the boards when posted without permission.

[2] In *McGurran* v. *Veterans Administration*, 665 F.2d 321 (10th Cir. 1981), the court notes in a case dealing with a union's display of posters that "the availability of alternatives is a relevant factor." Here there were alternatives for the Union to use. In contrast, in *Aexelson, Inc.*, 257 NLRB 576 (1981), there was neither company nor union bulletin board access for employees wishing to post prodecertification material, and a violation of their Sec. 7 rights was found.

[3] Cf. *Group One Broadcasting Co., West*, 222 NLRB 993 (1976), where a violation was found when a station manager had removed a posting of a union meeting from the station's bulletin board. The violation was found in part because the Employer had not disseminated a policy concerning the board to its employees.

By "asking around," Lebowsky had found out that an approval by Williams was needed before a notice could be posted on the bulletin boards. This is a fair indication that Honeywell's policy was disseminated sufficiently.

In *Challenge Cook Brothers of Ohio, Inc.*, 153 NLRB 92 (1965), cited by the General Counsel to support its position, the Company had repeatedly taken down all notices of union meetings at the same time it allowed notices of social and religious affairs. The Administrative Law Judge in that case wrote, "I have no doubt that if the Respondent has consistently not allowed its employees to use the bulletin boards to publicize their personal affairs, the Respondent could properly have prohibited the posting of notices of union meetings." The modified order set down by the Sixth Circuit (374 F.2d 147, 1967) indicated that management must have a "valid reason relating to the management, production or discipline of the plant" in order to prohibit employees from posting materials. At hearing here, it was indicated that Honeywell's policy was necessary in order to keep the postings under control. In commenting on a flyer announcing a flag raising ceremony that was not approved for posting Brueckner explained, ". . . this could open the door to almost anyone coming in [with notices to post]. In 3 weeks time before the hearing, Honeywell collected flyers that had been posted without authorization from two bulletin boards (Resp. Exhs. 13-A-13-D and 15-A-15-H). It may be inferred that without such a strict policy the boards would be in a greater state of disarray and their usefulness would be in jeopardy.

Importantly, in most cases where the Board had found the denial of posting of union materials a violation, the company had consistently displayed union animus. There is no evidence that Honeywell has made such a display. Further, the General Counsel was not able to show that Honeywell treated the Union's notice any differently than it had treated similar notices.[4] No violation of Section 8(a)(1) can be found.

Dismissed.

[4] See, for example, *Challenge Cook Brothers of Ohio, Inc., supra, Group One Broadcasting Co., West, supra*; and *K-Mart Corporation*, 255 NLRB 922 (1981).