Mickey's Linen & Towel Supply, Inc.[1] ***and*** **Chicago Midwest Regional Joint Board, UNITE-HERE.**
Case 13–CA–43153

April 20, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On October 2, 2006, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Charging Party (the Union) filed exceptions and a supporting brief, and the Respondent filed an answering brief. The Respondent filed cross-exceptions and a supporting brief, and the Charging Party filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions, only to the extent consistent with this Decision and Order.[3]

1. The judge found that the Respondent did not violate Section 8(a)(1) of the Act by unlawfully assisting employees in their attempts to decertify the Union when it performed translations for an employee who was soliciting signatures for a decertification petition. For the reasons stated below, we reverse the judge and find a violation.

The Respondent operates a linen cleaning and rental business in Hammond, Indiana. The Union has represented a unit of the Respondent's full-time and part-time laundry employees for the past 20 years. The Respondent's recognition of the Union has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 3, 2003, to February 1, 2006.

In early February 2006,[4] unit employee Judy Wickhorst began soliciting signatures from coworkers to decertify the Union.[5] Because two of her coworkers spoke only Spanish, Wickhorst asked David Cerda, a bilingual supervisor, to translate for her. Although Cerda works at another of the Respondent's facilities, he was at the Hammond plant that day to serve as the Respondent's translator at a mandatory employee meeting, at which the Respondent discussed the status of contract negotiations. When Wickhorst asked Cerda to translate for her, Cerda initially responded that he could not assist her in the decertification process because he was a member of management. Moments later, however, Cerda changed his mind and agreed to translate. Through Cerda, Wickhorst asked the two employees whether they wanted to pay union dues, and told them that they could do better than the Union. After Cerda translated for Wickhorst, the two employees signed the decertification petition in the presence of Cerda and Wickhorst.

The judge found that Cerda's conduct amounted to mere ministerial assistance and, as such, did not violate the Act. In support, the judge observed: (1) Wickhorst initiated the decertification effort without management involvement, (2) Cerda's translations did not specifically address the

[1] The judge inadvertently misspelled the Respondent's name. We have amended the caption to reflect the correct spelling.

[2] The Respondent and the Union have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

For the reasons set forth in his decision, we adopt the judge's findings that the Respondent violated Sec. 8(a)(1) by making unlawful promises of benefits to employees, that the Respondent did not violate Sec. 8(a)(1) by disparately enforcing its no-solicitation and distribution policy or by encouraging its employees to sign the decertification petition, and that the Respondent did not violate Sec. 8(a)(5) by unilaterally changing its access provision. In adopting the judge's finding that the Respondent did not violate Sec. 8(a)(5) and (1) by unilaterally changing the union-access provision contained in the parties' collective-bargaining agreement, we correct the judge's finding at sec. II,C,1, par. 4 and sec. II,C,2, par. 3 that General Manager Rick Ashby returned Business Agent Rebecca Munoz' February 2 phone call. The record does not support this finding. Rather, the record establishes that Ashby did not return Munoz' call requesting access to the facility. Nevertheless, we find that the General Counsel failed to establish that the parties had a past practice under which Ashby's failure to respond to the Union's request for access constituted agreement with that request. Further, there is no evidence that the Respondent's failure to grant the Union's request for access on that occasion was a unilateral change to the union-access provision. The parties' agreement states that the Union "shall have access to the premises, at mutually agreed times with the Employer." The Respondent did not agree to the time requested by the Union, owing to previously scheduled employee meetings. Thus, the Respondent legitimately denied the Union's request. On those facts, the General Counsel has not established that the Respondent's conduct changed the union-access provision. Accordingly, we adopt the judge's finding that the General Counsel failed to establish a violation under Sec. 8(a)(5) and (1).

[3] We shall modify the judge's Conclusions of Law and recommended Order and substitute a new notice to reflect the additional findings of violations and to include the standard remedial language for the violations found.

The judge recommended a broad order requiring the Respondent to cease and desist from violating the Act "in any other manner." We find that a broad order is not warranted in this case. Accordingly, we shall substitute a narrow order requiring the Respondent to cease and desist from violating the Act "in any like or related manner." See *Hickmott Foods*, 242 NLRB 1357 (1979).

[4] All dates hereinafter refer to 2006, unless otherwise specified.

[5] Wickhorst credibly testified that she initiated the decertification process on her own, and that she was not asked or directed to do so by management.

decertification petition, and (3) Cerda initially informed Wickhorst that he could not get involved in the decertification process. Contrary to the judge, for reasons set forth below, we find that the Respondent, through Cerda, provided unlawful assistance to the decertification effort.

It is well settled that an employer violates Section 8(a)(1) of the Act by "actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative." *Wire Products Mfg. Co.,* 326 NLRB 625, 640 (1998), enfd. sub nom. mem. *NLRB v R.T. Blankenship & Associates, Inc.*, 210 F.3d 375 (7th Cir. 2000). In determining whether an employer's assistance is unlawful, the appropriate inquiry is "whether the Respondent's conduct constitutes more than ministerial aid." *Times Herald*, 253 NLRB 524 (1980). In making that inquiry, the Board considers the circumstances to determine whether "the preparation, circulation, and signing of the petition constituted the free and uncoerced act of the employees concerned." *Eastern States Optical Co*., 275 NLRB 371, 372 (1985) (citing *KONO-TV-Mission Telecasting*, 163 NLRB 1005, 1006 (1967)); see also *Hall Industries,* 293 NLRB 785, 791 (1989), enfd. mem. 914 F.2d 244 (3d Cir. 1990) (employer violated Sec. 8(a)(1) by actively assisting a decertification effort "in the context of serious unfair labor practices"); *Sociedad Española de Auxilio Mutuo y Beneficia, de P. R., Inc*., 342 NLRB 458, 459 (2004), enfd. 414 F.3d 158 (1st Cir. 2005) (employer violated Sec. 8(a)(1) by advising employees how to collect signatures for a decertification petition, asking them to sign the petition, and telling them they would no longer receive previously promised raises because they had become unionized).

Applying those principles here, we find that the Respondent's conduct constituted more than mere ministerial aid, and was therefore unlawful. Cerda translated for Wickhorst, who was soliciting signatures for a decertification petition, moments after he served as a translator for the Respondent at a mandatory employee meeting that concerned union matters, in particular, the ongoing collective-bargaining negotiations. In addition to simply translating, Cerda stood with Wickhorst while the employees made their decisions and signed the decertification petition. In these circumstances, the employees could reasonably feel coerced into signing the decertification petition.

Contrary to the judge, we find the fact that Wickhorst alone initiated the decertification effort immaterial. Further, we find that, although Cerda initially declined Wickhorst's request to translate for her, this does not shield his later actions. Ultimately, Cerda agreed to translate for Wickhorst, and his translations expressed support of the decertification petition. Cerda then stood with Wickhorst and watched as the employees signed the decertification petition. We are satisfied that, on those facts, Cerda provided "assistance in the . . . signing . . . of [the] employee petition." *Wire Products Mfg. Co.,* supra. Indeed, without Cerda's assistance, there would have been no solicitation of the two employees. In this circumstance, the employees could reasonably feel coerced when Cerda asked whether they wanted to pay dues to the Union and stated they could do better than the Union, and then stayed to watch whether they signed the petition. Accordingly, we reverse the judge and find that the Respondent's assistance violated Section 8(a)(1) of the Act as alleged.

2. The judge also found that the General Counsel failed to prove that the Respondent violated Section 8(a)(1) by interrogating its employees as to whether they had signed the decertification petition. For the reasons stated below, we reverse the judge and find that, on the credited facts, the Respondent engaged in a coercive interrogation. *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

In so finding, we rely, in particular, on the credited testimony of employee Zoila Loredo.[6] Loredo's testimony establishes that, a few days after translating for the Respondent at the all-employee meeting, Supervisor Cerda returned to the Hammond facility and asked to speak with Loredo. Cerda asked Loredo whether she "agreed on keep [sic] having the Union" and whether she was "happy with the Union." Contrary to the judge, we find that, in view of all of the circumstances, those questions constituted a coercive interrogation.

Supervisor Cerda had not only recently served as the Respondent's translator at a mandatory meeting for employees, but, as shown above, he had, on that same day, unlawfully rendered assistance to the decertification effort. On the heels of those actions, Cerda returned to the plant, approached Loredo, and asked whether she agreed to "keep" the Union. In this context, Loredo could have reasonably believed that Cerda was asking her whether she had signed the decertification petition. Accordingly, and contrary to the judge, we find the evidence establishes that the Respondent, through Cerda, coercively interrogated employee Loredo about the decertification petition, and thereby violated Section 8(a)(1) of the Act.

[6] Although the General Counsel offered additional testimony, from employee Martha Robles, that Cerda approached her and asked her if she was "aware of what was going on," it is unclear whether the judge credited this testimony. We find it unnecessary to resolve whether this testimony was credited and, if so, whether it establishes a violation, because any finding of an additional interrogation would be cumulative and not affect the remedy.

ORDER

The National Labor Relations Board orders that Respondent, Mickey's Linen & Towel Supply, Inc., Hammond, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising its employees better benefits by asking employees why they need a union and telling employees that they could give them good benefits for the purpose of discouraging membership in and support for the Union, Chicago and Midwest Regional Joint Board, UNITE-HERE.

(b) Unlawfully assisting employees in their attempts to decertify the Union, Chicago and Midwest Regional Joint Board, UNITE-HERE.

(c) Coercively interrogating employees about their union support by asking employees whether they are happy with the Union and whether they have agreed to keep the Union.

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

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

(a) Within 14 days after service by the Region, post at its facility in Hammond, Indiana, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 13, 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 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 3, 2006.

(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.

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 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 with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promise employees better benefits by asking employees why they need a union and telling employees that we can give them good benefits for the purpose of discouraging membership in and support for the Union, Chicago and Midwest Regional Joint Board, UNITE-HERE.

WE WILL NOT unlawfully assist employees in their attempts to decertify the Union, Chicago and Midwest Regional Joint Board, UNITE-HERE.

WE WILL NOT coercively interrogate employees about their union support by asking employees about whether they are happy with the Union and whether they have agreed to keep the Union.

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

MICKEY'S LINEN & TOWEL SUPPLY, INC.

Hyeyoung Bang-Thompson, Esq., for the General Counsel.
Scott V. Kamins, Esq., of Washington, D.C., for the Respondent-Employer.
Rebecca Munoz, of Chicago, Illinois, for the Charging Party

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on July 12 and 13, 2006,[1] in Chicago, Illinois, pursuant to a complaint and notice of hearing in the subject case (complaint) issued on April 27, by the Regional Director for Region 13 of the National Labor Relations Board (the Board).

[7] 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."

[1] All dates are in 2006 unless otherwise indicated.

The underlying charge and amended charges were filed on various dates in 2006, by Chicago and Midwest Regional Joint Board, UNITE-HERE (the Charging Party or the Union) alleging that Mickey's Linen & Towel Supply, Inc. (the Respondent or Employer), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that the Respondent engaged in independent violations of Section 8(a)(1) of the Act including unlawfully assisting employees in their attempts to decertify the Union and unlawfully interrogating employees by asking them if they had already signed the decertification petition. Additionally, the complaint alleges that the Respondent engaged in a violation of Section 8(a)(1) and (5) of the Act by unilaterally changing the union access provision in the parties' collective-bargaining agreement.

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

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation engaged in the business of linen cleaning and rental in Hammond, Indiana, where in the past 12 months it purchased and received at its Hammond facility goods valued in excess of $50,000 from points directly outside the State of Indiana. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Union has represented the Respondent's employees for approximately 20 years. That recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 3, 2003, to February 1.

An employee of the Respondent filed a RD (decertification petition) in March 2006 with the Board asserting that a majority of the employees no longer wanted the Union to represent them for collective-bargaining purposes. Because of the outstanding 8(a)(1) and (5) allegations in the subject complaint, Region 13 dismissed the RD petition.

B. The 8(a)(1) Allegations.

The Board has held that interrogation is not a per se violation of Section 8(a)(1) of the Act. *Rossmore House,* 269 NLRB 1176 (1984), affd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB,* 760 F.2d 1006 (9th Cir. 1985). In determining whether an interrogation is unlawful, the Board examines whether, under all the circumstances, the questioning reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Rossmore House,* above at 1177–1178. *Emery Worldwide,* 309 NLRB 185, 186 (1992). Under the totality of circumstances approach, the Board examines factors such as whether the interrogated employee is an open and active union supporter, the background of the interrogation, the nature of the information sought, the identity of the questioner, and the place and method of interrogation. *Rossmore House,* above at 1178 fn. 20; *Bourne v. NLRB,* 332 F.2d 47, 48 (2d Cir. 1964); *Sunnyvale Medical Clinic,* 277 NLRB 1217, 1218 (1985).

1. Allegations concerning David Cerda

The General Counsel alleges in paragraph 5(a) of the complaint that Respondent, by David Cerda,[2] unlawfully assisted employees in their attempts to decertify the Union by asking employee sentiment about the Union and telling employees they could do better than being represented by the Union.

a. Facts

Judy Wickhorst, an employee at Respondent and a member of the collective-bargaining unit, testified that she independently commenced soliciting signatures from coworkers to decertify the Union in early February 2006. Wickhorst and a number of coworkers were dissatisfied with the Union and often complained about paying union dues when they were receiving little or no support. Wickhorst titled the petition "No Union-No Unite." When Wickhorst obtained a majority of signatures, she told Respondent's general manager, Richard Ashby, about the employee petition. Wickhorst informed the employees that if they dropped the Union they would no longer have to pay dues and that the employees could always bring another union into the facility. Since two coworkers seemed to have trouble understanding Wickhorst's explanation of the petitions purpose, she approached Cerda after the February 3 all-employee meeting, and enlisted his help to translate her questions in Spanish to the two employees. Wickhorst specifically requested Cerda to ask the employees whether they wanted to pay dues to a union and to tell them that Wickhorst believed that they could do better than the Union. After Cerda made the explanation in Spanish, both employees signed the petition in the presence of Wickhorst and Cerda.

Wickhorst further testified that no manager of Respondent requested or directed her to solicit signatures for the decertification petition. Likewise, Wickhorst stated that Cerda informed her that he could not get involved in the decertification petition process.

b. Analysis

I am not convinced that the Respondent violated the Act for the following reasons. First, the General Counsel did not establish that Cerda unlawfully assisted employees in there attempts to decertify the Union. Rather, I find that Wickhorst solely initiated the petition effort by herself and only requested Cerda to translate her questions in Spanish to the two employees. I note that the questions translated by Cerda did not specifically state that the petition was to remove the Union as the employee's collective-bargaining representative. Second, Wickhorst credibly testified that Cerda informed her that he could

[2] Cerda is an admitted supervisor at another of Respondent's facilities who came to the plant on February 3 to serve as an interpreter for an all-employee meeting to explain the Respondent's position on the status of contract negotiations to the Spanish speaking employees.

not get involved in the decertification petition process and the General Counsel presented no evidence to the contrary.[3] Lastly, I find that Cerda's conduct did not go beyond the mere ministerial act of assistance and did not constitute an attempt to have or induce Wickhorst to file the decertification petition. *Amer-Cal Industries,* 274 NLRB 1046 (1985).

Accordingly, I find that the General Counsel did not sustain the allegations in paragraph 5(a) of the complaint and recommend that they be dismissed.[4]

2. Allegations concerning David Cerda

The General Counsel alleges in paragraph 5(b) of the complaint that Cerda (i) made unlawful promises of benefits to employees by asking them why they needed a union and informing them that the Respondent could give them good benefits, (ii) encouraged employees to sign the decertification petition, and (iii) unlawfully interrogated employees if they had signed the petition.

a. Facts

The General Counsel presented the testimony of employee Zoila Loredo to sustain the allegation in paragraph 5(b)(i) of the complaint. Loredo testified that sometime during early February 2006 Wickhorst approached her on three occasions in the same day and asked whether she wanted to sign a petition to remove the Union as the employee's collective-bargaining representative. Around that same time, Loredo testified that she attended a companywide meeting in which Cerda served as an interpreter to explain the Respondent's position to the Spanish speaking employees about the status of ongoing collective-bargaining negotiations.

Loredo further testified that several days after the all-employee meeting, Cerda returned to the facility and just before her break requested to speak with her. According to Loredo, Cerda asked her if "she agreed to keep the Union at the facility and was she happy with the Union." Additionally, Loredo testified that Cerda told her that "Respondent could give the employees good benefits." Loredo told Cerda that I need the Union because I want a good contract.

Cerda testified that he returned to the facility on February 10, at Ashby's request, to further explain to the Spanish speaking employees the Respondent's position on the status of their final proposal in contract negotiations. He admits that he spoke with the majority of the Spanish speaking employees on February 10, but asserts that the conversations were limited to the Respondent's offer for health insurance and wages within the context of collective-bargaining negotiations. He assured the employees that contrary to rumors in the plant and information that the Union was spreading the Respondent had no intention of taking away their health insurance or reducing wages. Cerda admits talking with Loredo, but testified that he only asked her, "Were you happy with the information that you were getting from the Union." Cerda denied that he asked Loredo about her need for the Union or informed her that the Respondent could give the employees good benefits.

With respect to paragraphs 5(b)(ii) and (iii) of the complaint, the General Counsel presented the testimony of employee Martha Robles to sustain these allegations.

Robles testified that Cerda came to her workstation around 1:30 p.m. and asked her "[i]f she was aware of what was going on." In her pretrial affidavit (R. Exh. 2), Robles testified that Cerda asked her, "Did you already sign to get rid of the Union." However, both on direct and cross-examination, Robles testified that Cerda "never asked her whether she signed the decertification petition that Wickhorst distributed to the employees."

b. Analysis

Cerda testified that while he spoke to a number of Spanish speaking employees on February 10 he did not urge employees to sign the decertification petition nor did he ask employees whether they had already signed the petition.

I found Loredo to be an impressive witness who stuck to her story on direct and cross-examination in addition to responding to questions that I asked her about the conversation that she had with Cerda on February 10. Loredo's testimony had a ring of truth to it and seems plausible under the circumstances. Cerda had unfettered access to the Spanish speaking employees and was the only manager that was bilingual. He was fully aware that a decertification petition was being circulated in the facility and I find that his discussions with the Spanish speaking employees was a method to glean information on the strength of the sentiment in the bargaining unit to remove the Union as the collective-bargaining representative. While I did not credit Robles' testimony that Cerda interrogated her about signing the decertification petition for reasons discussed below, nevertheless, I believe a pattern developed with Cerda asking a number of the Spanish speaking employee's similar questions to those that he asked Loredo and Robles.

For all of the above reasons, I find that Cerda made unlawful promises of benefits to employees by asking them why they needed a union and informed employees that the Respondent could give them good benefits. Therefore, I find that the Respondent violated Section 8(a)(1) of the Act based on the allegations set forth in paragraph 5(b)(i) of the complaint.

With respect to paragraphs 5(b)(ii) and (iii) of the complaint, I cannot find that the General Counsel has established a violation of the Act for the following reasons. First, while the General Counsel represented that Loredo would support these allegations, my review of her testimony does not establish that she

[3] The General Counsel argues in its posthearing brief in support of a violation that the administrative law judge in *St. George Warehouse, Inc.* (JD (NY) 02–05) determined that the Employer violated Sec. 8(a)(1) of the Act when one of its supervisors translated for the decertification petitioner in an effort to obtain employees' signatures on the decertification petition. In that case, the supervisor translated while the employee explained that he had a petition against the union and that he was asking the three employees to sign the petition. It is also noted that the supervisor took the employees away from their workstation and brought them to his office to translate. Unlike the facts in that case, the present situation is distinguishable. Here, there was no discussion about the decertification petition that took place during the course of the translation and Cerda specifically informed Wickhorst that he could not get involved in the decertification process. Additionally, the questions asked by Wickhorst and translated by Cerda were significantly different from what took place in the cited case.

[4] I note that par. 5(a) of the complaint alleges Cerda engaged in the unlawful conduct in January 2006. The evidence confirms that Cerda was only at the Respondent's facility on February 3 and 10 (R. Exh. 6).

testified about these allegations. As it concerns Robles, I find it impossible to credit her testimony that Cerda encouraged her to sign the decertification petition or interrogated her about signing it. In this regard, Robles' testimony was inconsistent and conflicted with her own prior testimony on this point. Indeed, she was not certain of what Cerda said to her about the decertification petition during there February 10 conversation. Such conflicts in her pretrial affidavit and her testimony on direct and cross-examination undermines her credibility.

Under these circumstances, I find that the General Counsel's witnesses did not support the allegations in paragraphs 5(b)(ii) and (iii) of the complaint and recommend that they be dismissed.

3. Allegations concerning Al Polewski

The General Counsel alleges in paragraphs 5(c)(i) and (ii) of the complaint that Respondent, by Al Polewski, unlawfully assisted employees to decertify the Union by acknowledging the solicitation was occurring but refused to cease the activity and discriminatorily applied its no-solicitation and distribution rule by allowing employees to solicit signatures for the decertification petition on worktime in work areas.

a. Facts

Employee Erika Vela, who was employed at the Respondent during the operative period and served as the union steward, testified that she observed Wickhorst talking to coworkers in work areas on worktime with a yellow pad in her hand that contained a number of signatures thereon. Vela was under the impression that employees were prohibited from visiting and talking to coworkers in there work areas during worktime.

Vela informed Polewski that Wickhorst was talking to employees outside of her regular work area during worktime. Polewski responded that it was not his position to act on it.

Vela acknowledged on cross-examination, however, that the Respondent routinely permitted employees to sell cookies, solicit for parties and Avon products in work areas other then there own during worktime as long as it did not unduly impact productivity. When Vela was confronted with a section of the Employee 2005 Handbook (GC Exh. 3, p. 29), that covered solicitation, she admitted that not only was she not aware of its provisions but the policy was not enforced by the Respondent.

Both Polewski and Ashby testified that the Respondent does not enforce its solicitation policy on the shop floor and would only curtail the solicitation if it dramatically impacted productivity. Indeed, Polewski noted that he was not aware of the handbook provision prohibiting solicitation in work areas on worktime.

Polewski further testified that he heard a rumor about a decertification petition being distributed in the facility but he never observed Wickhorst soliciting signatures from employees on work or nonworktime. He also noted that it was not unusual for Wickhorst to have a yellow pad in her possession, as part of her job was to take orders which she often placed on a yellow pad.

b. Analysis

The General Counsel's witness proffered to support these allegations did not conclusively establish that Polewski knew that the signatures on the yellow pad represented a decertification petition. Indeed, the General Counsel did not rebut Polewski's testimony that he never observed Wickhorst soliciting signatures from employees nor that he observed the decertification petition. Likewise, Vela was unable to contradict Polewski and Ashby's testimony that the Respondent's no-solicitation and distribution rules were not routinely enforced. To the contrary, Vela acknowledged that employees were permitted to solicit and sell products to other coworkers in work areas other than their own on worktime as long as it did not impact on productivity.

Under these circumstances, and particularly noting that Vela did not know what was on the yellow pad with the exception of signatures, it cannot be established that the Respondent violated the Act as alleged and I recommend that paragraphs 5(c)(i)and (ii) of the complaint be dismissed.

4. Allegations concerning David Cerda

The General Counsel alleges in paragraph 5(d) of the complaint that Cerda unlawfully assisted employees in their attempts to decertify the Union by asking employees if they wanted to pay union dues.

a. Facts

The General Counsel presented the testimony of Wickhorst to sustain this allegation. Wickhorst testified that she asked Cerda on February 3[5] to translate several questions for two coworkers who did not speak English. One of the questions that Cerda translated was whether the two employees wanted to continue paying union dues. Additionally, the General Counsel argues that because the Respondent did not respond to this specific allegation in its answer to the complaint the allegation must be found to have been admitted and a violation of the Act found.

b. Analysis

As I previously found above, the question proffered to the two Spanish speaking employees was initiated by Wickhorst, a bargaining unit employee. Cerda merely asked the question in Spanish so Wickhorst could obtain a response.

Under these circumstances, I do not find that Cerda independently asked the two employees whether they wanted to continue paying union dues.

With respect to the Respondent's failure to specifically respond to this complaint allegation, I find that its answer states that the Respondent denies each and every factual allegation contained in the complaint that is not expressly admitted herein.

Therefore, based on the foregoing and particularly noting that the General Counsel did not sustain this allegation, I recommend that it be dismissed.

C. The 8(a)(1) and (5) Allegation

The General Counsel alleges in paragraph 6(h) of the complaint that since February 3 Respondent unilaterally changed the union access provision contained in article 12 of the parties' collective-bargaining agreement.[6]

[5] I note that the General Counsel's complaint allegation alleges the violative conduct took place on February 26.

[6] Art. 12.3 states:

> It is further understood and agreed that a representative of the Union shall have access to the premises, at mutually agreed times with the Employer, to confer and to adjust grievances or hear

1. Facts

Munoz is the business agent for the Union and has serviced the employees in the unit for approximately 4 months. During this period, Munoz developed a practice of contacting Ashby at least 24 hours in advance of her desire to access the facility and meet with employees.[7] Once such notice is given, Munoz is not required to apprise Ashby of the nature or reason for her visit to the facility. Likewise, there is no requirement that Ashby must confirm the visit with Munoz.

On February 2, Munoz instructed her secretary to contact Ashby and let him know that Munoz wanted to visit the facility on February 3, around noon. Since the secretary was unable to personally talk with Ashby, she left a message for him and also notified another manager that Munoz intended to visit the facility the next day.

Ashby noted that the parties' collective-bargaining agreement expired on February 1 and since that time there has been no agreement that alters the union access provisions. Ashby admits that on February 2 he received a telephone message from his secretary in which Munoz requested to come to the facility the next day around noon (GC Exh. 4).

Ashby testified that he returned Munoz' telephone call around 2:30 p.m. on February 2, and left a message that February 3, was not a good date for her to visit and that she should call back to reschedule. Ashby did not receive a return telephone call from Munoz, and when she arrived at the facility on February 3, around 11:50 a.m., Ashby informed Munoz that he had left a telephone message for her that he could not meet with her that day since it was not a mutually agreeable time. Ashby credibly testified that the Respondent had scheduled two meetings that day with separate groups of employees to give a status update on the course of collective-bargaining negotiations from the Employer's standpoint.

Ashby asserts that when he informed Munoz on February 3, that she could not have access to the premises, she called him an "asshole" and gave him the "middle finger." Ashby responded that since the contract had expired, he did not want to see her on the premises again. Ashby testified, however, that he made the statement in the heat of passion and on February 6, he permitted Munoz access to the premises to conduct union related business. Indeed, after the misunderstanding on February 3, the parties agree that the provisions of article 12.3 have been followed without incident.

2. Analysis

It is hornbook law that once a collective-bargaining agreement expires, the terms and conditions of employment remain in full force and effect until a new agreement is reached or the parties reach a good-faith bargaining impasse. Indeed, the Respondent apprised the employees during the all-employee meeting on February 3 that they have been operating with the expired agreement and will continue to do so (R. Exh. 7).

The evidence establishes that Munoz fully complied with the provisions for advance notice under article 12.3 of the parties' agreement. Ashby credibly testified that once Munoz complies with the advance notice provisions contained in the agreement he would routinely call her back to confirm that the visit was mutually agreeable. Typically, if Munoz wanted to meet with Ashby, and it was not an agreeable time, Ashby would request that the visit be rescheduled. Ashby could not recall an instance when the Union left a message requesting a definite time to visit the facility that he did not return the telephone call and confirm whether the visit would be mutually agreeable.

It is noted that article 12.3 states that a representative of the Union shall have access to the premises only at a mutually agreed time with the Employer. While Munoz provided advance notice under article 12.3 of the parties' agreement to access the premises, Ashby had legitimate business reasons for denying her access and so informed her by a return telephone call on February 2. Munoz did not testify to the contrary.

Under these circumstances, I find that the Respondent adhered to the provisions of article 12.3 of the parties' agreement and did not unilaterally change its provisions without notice or bargaining with the Union. Therefore, I recommend that paragraph 6(h) of the complaint be dismissed as the General Counsel did not establish an 8(a)(1) and (5) violation 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. Respondent violated Section 8(a)(1) of the Act when it asked an employee why she needed a union and informed the employee that they could give the employees good benefits.

4. Respondent did not violate Section 8(a)(1) of the Act when it asked employees about there sentiment for the Union and told them they could do better than being represented by the Union, by encouraging employees to decertify the Union and asking them if they had already signed the decertification petition, by permitting employees to solicit signatures for the decertification petition on worktime and in work areas and by asking employees whether they wanted to pay union dues.

5. Respondent did not violate Section 8(a)(1) and (5) of the Act since it did not unilaterally change the union access provision in the parties' collective-bargaining agreement.

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.

[Recommended Order omitted from publication.]

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complaints. The meetings shall not take place in work areas or during worktime of the employee involved, unless mutually agreed upon in advance by the Employer and the Union. Union representatives shall, whenever possible, provide at least four (4) hours of advance notice of their intent to visit the premises (GC Exh. 2).

[7] Ashby's testimony and record evidence confirms this practice (R. Exh. 3).