Garten Trucking LC *and* Association of Western Pulp and Paper Workers. Case 10–CA–304929

May 24, 2024

DECISION AND ORDER

BY MEMBERS KAPLAN, PROUTY, AND WILCOX

On December 7, 2023, Administrative Law Judge Geoffrey Carter issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and Charging Party filed answering briefs, and the Respondent filed a reply brief. The Charging Party filed cross-exceptions and a supporting brief, and the Respondent 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 and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Garten Trucking LC, Covington, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. May 24, 2024

Marvin E. Kaplan, Member

David M. Prouty, Member

Gwynne A. Wilcox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Anthony Fitzpatrick, for the General Counsel.
Agnis Chakravorty and *King Tower, Esqs*., for the Respondent.
David Rosenfeld, Esq., for the Charging Party.

DECISION

GEOFFREY CARTER, Administrative Law Judge. The General Counsel contends that Garten Trucking LC (Respondent) violated the National Labor Relations Act (the Act) by, on about September 29, 2022, telling employees that they would already have received a raise if it were not for their union activities. As explained below, I have determined that Respondent violated the Act as alleged.

STATEMENT OF THE CASE

This case was tried in person in Covington, Virginia, on October 17, 2023. The Association of Western Pulp and Paper Workers (Union) filed the charge in this case on October 11, 2022, and filed an amended charge on April 17, 2023.[1] The General Counsel issued the complaint on June 1, 2023.

In the complaint, the General Counsel alleged that Respondent violated Section 8(a)(1) of the Act by, on or about September 29, 2022, telling employees that they would already have received a raise if it were not for their union activities. Respondent filed a timely answer denying the alleged violations in the complaint.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Union, and Respondent, I make the following

FINDINGS OF FACT[3]

I. JURISDICTION

Respondent, a limited company with an office and place of business in Covington, Virginia, transports paper products and other goods. In 2022, Respondent purchased and received goods at its facility in Covington, Virginia, that are valued in excess of $50,000 and came directly from points outside the Commonwealth of Virginia. Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act since at least January 1,

[1] The Charging Party excepts to the judge's failure to grant several additional remedies. We find no merit to these exceptions and adopt the judge's recommended Order because the cease-and-desist and notice-posting remedies are sufficient to effectuate the policies of the Act in this matter.

Member Prouty would grant the Charging Party's remedial exceptions to the extent of ordering that the Board's remedial notice be read aloud and he would further order that the notice be distributed to employees at the notice-reading meeting. See *CP Anchorage Hotel 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151, slip op. at 9–15 (2022) (Member Prouty, concurring) (urging the Board to adopt a reading of the notice aloud and distribution to employees at a group meeting as a standard remedy for unfair labor practices because "[h]aving the notice to employees read aloud to them in a group meeting, with a copy in hand to follow along if they choose, is a superior means of disseminating and amplifying the Board's message to maximize the extent to which employees hear and comprehend it."), enfd. on other grounds 98 F.4th 314 (D.C. Cir. 2024).

[1] All dates are in 2022 unless otherwise indicated.

[2] The transcript and exhibits in this case generally are accurate, but I grant the General Counsel's unopposed motion to make the following transcript corrections: p. 7, line 13—"course of statement" should be "coercive statement"; p. 11, line 22—"course of statement" should be "coercive statement"; and pp. 41–53 (throughout)—Mr. Tower (and not Mr. Chakravorty) spoke as counsel for Respondent.

[3] Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

2021, and continuing to the present.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

In summer 2021, the Union began an organizing campaign at Respondent's facility. In an ensuing representation election held on August 4–6, 2021, a majority of employees voted against having the Union represent employees in the proposed bargaining unit. The Union subsequently filed unfair labor practice charges and objections to conduct that allegedly affected the results of the election. (Jt. Exh. 1 (par. 6); see also Tr. 14.)

On June 15, 2022, the General Counsel issued a consolidated complaint in Case 10–CA–279843, et al. That case, which included various complaint allegations based on the Union's unfair labor practice charges and also addressed the Union's objections to the election, proceeded to trial on August 22–26 and September 12–14, 2022. *Garten Trucking LC*, 2023 WL 2070300, Case 10–CA–279843, et al., slip op. at 2–3 (February 17, 2023) (Muhl, J.);[4] see also Jt. Exh. 1 (par. 6).

A. September 29, 2022: The Union Flyer

On September 29, 2022, the Union (through organizer Miles Cook and former employee Jeffrey Baker) distributed copies of a flyer to some of Respondent's employees. The flyer stated as follows:

> AWPPW Presence Creates Raises For Garten Trucking Employees
>
> Have you received a pay increase? If so, how much of a pay increase have you received since the AWPPW has helped you start a union campaign?
>
> Garten Trucking is currently picking and choosing who they are giving pay increases to.
>
> It is illegal for Garten Trucking to give raises without bargaining with the AWPPW and the AWPPW will not bargain without your input and your voice.
>
> As a member of the AWPPW, everybody gets raises! We want raises for every employee, not just a select few.
>
> When the AWPPW begins bargaining percentage raises for everybody, your wages will be larger because the union was here fighting for you.
>
> The court case has now been completed. All sides now have (35) days to get their legal briefs to the presiding judge. After this period, the judge will then deliberate and make a final decision.

(Jt. Exh. 2 (emphasis in original); see also Jt. Exh. 1 (pars. 9–10); Tr. 18–19, 38, 43.)

A. September 29, 2022: Robert (Dizzy) Garten Posts a Response to the Union Flyer

After seeing the Union's flyer, Respondent's owner, Robert Christopher (Dizzy) Garten wrote and posted a response to the flyer on TeamReach, a computer application that Respondent uses to communicate with employees about matters such as job postings and shift coverage. (Jt. Exh. 1 (pars. 7–8) (noting that employees also use TeamReach to communicate with each other about matters such as weather and traffic); Tr. 15–16, 46, 51.) Garten's TeamReach message, posted in the evening on September 29, 2022, stated:

> I have been honest with everyone since day 1 and have done everything I can do to try and help all the employees in every area of GT, GT2, Big Island and the warehouses and I want you to be the first to know that everything that is in that letter that those worthless pieces of trash put in that paper they handed out is pure horseshit. For them to say they have anything to do with a raise for you all is nothing but a lie. They don't even get to talk to anyone at the mill. I can't speak for everyone, but I can say with 100% confidence that I would never let 2 idiots like Jeff Baker and Miles whatever his name is be in charge of your families income. I would resign first. As a matter of fact if it wasn't for them trying to steal money out of your paychecks you would already have your raises.

(Jt. Exh. 3; see also Jt. Exh. 1 (par. 8); Tr. 17–18, 22, 46–47, 51.)[5] There is no dispute that employees saw Garten's TeamReach post, nor is there any dispute that Garten was referring to the Union and the union flyer in the TeamReach post. (See Tr. 22–23, 52–53; Jt. Exh. 3 (showing comments and thumbs-up emojis following Garten's TeamReach post).)

DISCUSSION AND ANALYSIS

A. Credibility Findings

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014) (noting that an administrative law judge may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). To the extent that credibility issues arose in this case, I have stated my credibility findings in the Findings of Fact above.

B. Did Respondent Make any Statements or Engage in Conduct that Violated Section 8(a)(1) of the Act?

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(1) of the Act by, on about September 29, 2022, telling employees that they would have already received a raise if it were not for their union activities.

1. Applicable legal standard

Section 8(a)(1) of the Act makes it unlawful for an employer (via statements, conduct, or adverse employment action such as discipline or discharge) to interfere with, restrain, or coerce

[4] Administrative Law Judge Charles Muhl issued his decision in Case 10–CA–279813, et al. on February 17, 2023. The General Counsel and Respondent have filed objections with the Board, and the Union has filed cross-exceptions. (Jt. Exh. 1 (par. 6).) Since the allegations before me are separate and distinct from the issues that Judge Muhl addressed in his decision, I only refer to Judge Muhl's decision for background and context.

[5] Former employee Baker and Respondent's owner Garten each testified that employees received raises both before and after the union organizing campaign. (Tr. 39–40, 44.)

employees in the exercise of the rights guaranteed in Section 7. The test for evaluating whether an employer's conduct or statements violate Section 8(a)(1) of the Act is whether the conduct or statements have a reasonable tendency to interfere with, restrain, or coerce an employee's union or protected activities. *Farm Fresh Co.*, 361 NLRB at 860 (noting that the employer's subjective motive for its action is irrelevant); see also *NCRNC, LLC d/b/a Northeast Center for Rehabilitation*, 372 NLRB No. 35, slip op. at 10 (2022) (explaining that when analyzing alleged threats, the Board asks whether the threat would reasonably tend to interfere with, restrain, or coerce an employee in the exercise of the employee's Section 7 rights, and noting that the test is an objective one, not based on subjective coerciveness).

1. Analysis

The evidentiary record establishes that on September 29, 2022, the Union distributed a flyer to employees that asserted that the Union helped to create raises for employees. Robert (Dizzy) Garten responded to the Union flyer with a written TeamReach post that told employees that "if it wasn't for them [the Union] trying to steal money out of your paychecks you would already have your raises." (Findings of Fact (FOF), Sec. II(B)–(C).)

It is well established that an employer violates Section 8(a)(1) of the Act when it blames the Union (or employees' union activity) for the lack of raises. See, e.g., *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130, slip op. at 5 (2023) (employer unlawfully blamed the union for a delay in wage increases); *Valmet, Inc.*, 367 NLRB No. 84, slip op. at 1 (2019) (employer unlawfully threatened to withhold scheduled wage increases if employees selected the union to represent them); *Invista*, 346 NLRB 1269, 1270 (2006) (employer unlawfully told employees that there would be no more bonuses or raises while the union was trying to get in). Robert Garten's statement to employees here falls squarely under that line of cases, as he communicated to employees that their raises were delayed because of the Union's efforts to organize employees at the facility.

I am not persuaded by Respondent's argument that Robert Garten's statement to employees was merely an expression of opinion (or hyperbole) that is protected by Section 8(c) of the Act.[6] (See R. Posttrial Br. at 5; see also Section 8(c) of the Act (stating that the "expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act . . ., if such expression contains no threat of reprisal or force or promise of benefit"). While it is true that Garten made his post because he believed that he needed to respond to the flyer that the Union distributed to employees earlier in the day, Garten went too far in his response. Specifically, instead of (for example) objectively pointing out inaccuracies in the union flyer, Garten asserted that any delay that employees encountered in receiving raises was because of their union activities. By making that statement, Garten told employees that they were paying a price for their union activities, and thereby violated Section 8(a)(1) of the Act by communicating a message that had a reasonable tendency to interfere with, restrain, or coerce employees' union or protected activities.

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, on about September 29, 2022, unlawfully telling employees that they would have already received a raise if it were not for their union activities, Respondent violated Section 8(a)(1) of the Act.

4. The unfair labor practice stated in conclusion of law 3, above, affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

The General Counsel and Union have requested, as a special remedy, that I require Respondent to have Robert (Dizzy) Garten read the notice aloud to employees at a meeting or meetings that are scheduled to ensure the widest possible attendance of employees (or alternatively, to have a Board agent read the notice to employees in Robert (Dizzy) Garten's presence). The Board has found a notice-reading remedy appropriate where the employer's violations are sufficiently numerous and serious that a reading of the notice is warranted to dissipate the chilling effect of the violations on employees' willingness to exercise their Section 7 rights. *Amerinox Processing, Inc.*, 371 NLRB No. 105, slip op. at 2 (2022), enfd. 2023 WL 2818503 (D.C. Cir. 2023); *Gavilon Grain, LLC*, 371 NLRB No. 79, slip op. at 1 (2022). I decline the notice-reading request here, as I find that the Board's standard notice remedy will suffice to inform employees of Respondent's unlawful conduct (particularly considering that this case addresses one unlawful statement).

I also decline the General Counsel's and Union's requests for the following additional special remedies: notice posting for 3 years; a public apology letter written by Robert (Dizzy) Garten; and training for Respondent's supervisors and managers on employees' rights under the Act and compliance with Board Orders. Most of those additional special remedies are not supported by current Board law, and in any event I find that the Board's standard notice remedy will suffice to address the violation at issue in this case.[7]

In these findings of fact and conclusions of law and on the

[6] Respondent also contended that Robert Garten's statement did not violate the Act because the General Counsel did not present evidence that employees felt threatened by the statement. (See R. Posttrial Br. at 7.) That argument is without merit, as it conflicts with established Board law that the test for whether a statement violates Sec. 8(a)(1) is an objective one and is not based on subjective coerciveness. (See Discussion and Analysis, sec. II(B)(2), supra.)

[7] In considering the special remedies that the General Counsel and the Union requested, I decline the General Counsel's request that I rely on the administrative law judge's decision in Case 10–CA–279843, et al. as a basis for finding that special remedies are warranted here. Given the limited allegations in this case, this case is not the vehicle for awarding special remedies. The parties may present (and perhaps already have presented) argument to the Board about whether special remedies are appropriate in Case 10–CA–279843, et al.

I also decline the Union's request that I rule: that Respondent's conduct supports a bargaining order in Case 10–CA–279843, et al.; that employees may use the TeamReach application to communicate about union matters and/or protected concerted activity; and that Respondent must report the expense of maintaining the TeamReach application on a Form LM–10. The Union's requested rulings are beyond the scope of what is before me, and thus I decline to address them.

entire record, I issue the following recommended[9]

ORDER

Respondent, Garten Trucking LC, Covington, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that they would have already received a raise if it were not for their union activities.

(b) 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) Within 14 days after service by the Region, post at its facility in Covington, Virginia, copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means (including, but not limited to, the TeamReach application), if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at the facility at any time since September 29, 2022.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 10 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.

Dated, Washington, D.C., December 7, 2023.

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 tell employees that they would have already received a raise if it were not for their union activities.

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.

GARTEN TRUCKING LC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/10-CA-304929 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C.20570, or by calling (202) 273-1940.

[9] 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.

[10] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID–19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]."

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."