

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

AMERICAN BOTTLING COMPANY D/B/A
KEURIG DR. PEPPER

And

Case No. 13-CA-344573

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 727

Francis C. Wellin, Esq.
for the General Counsel.

Howard B. Jackson, Esq. (Ford Harrison LLP), Nashville, Tennessee
for the Respondent.

Jayna M. Brown, Elizabeth Lerum, Esqs. (International Brotherhood of Teamsters Local 727)
Park Ridge, Illinois
for the Charging Party.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Chicago, Illinois on April 7-8, 2025. Teamsters Local 727 filed the initial charge in this case on June 17, 2024. The General Counsel issued the amended complaint on March 12, 2025.¹

Jurisdiction and Statement of Facts

Respondent bottles, sells, warehouses and distributes beverages from its facility in Northlake Illinois. At this facility, it receives and/or purchases goods and services valued in excess of \$50,000 directly from points outside of Illinois. Respondent admits and I find that it is an employer within the meaning of Section 2 of the Act. The Charging Party, Teamsters Local 727, is a labor organization within the meaning of Section 2(5) of the Act.

¹ I have read and considered the post-trial briefs filed by the General Counsel, Respondent and the Charging Party Union.

Tr. 344, line 13 should read Kirmel, not Judge Amchan.

This matter concerns Respondent's discharge of Vince Leeloy on or about July 23, 2024, and events leading up to his discharge. Respondent hired Vince Leeloy and Marilyn Hodel on April 8, 2024, as maintenance planners. These positions had been vacant for a while when Leeloy and Hodel were hired. They were supervised by Audrey Ganschar, a senior maintenance manager.

Resolution of this case turns almost exclusively on the credibility of the parties' witnesses. For the reasons set forth below, I do not find Vince Leeloy more credible than Respondent's witnesses, particularly Audrey Ganschar. Given the allocation of the burden of proof, I thus dismiss the complaint in its entirety.

The testimony of both Leeloy and Ganschar is self-serving. As the General Counsel points out in its brief, there are inconsistencies in the Respondent's case. However, Ganschar's testimony is corroborated by the testimony of other witnesses and circumstantial evidence; Leeloy's is not. One would think that in a heavily organized facility, the General Counsel would be able to find an employee witness to vouch for Mr. Leeloy's version of events, particularly since he appears to have interacted regularly with mechanics and possibly machine operators represented by the Union.² Moreover, in order to find that Respondent violated the Act as alleged, I would have to conclude that virtually all of Ganschar's testimony is fabricated. I am not doing that.

Teamsters Local 727 represents over 700 of Respondent's employees in several different bargaining units. It did not and does not represent the 2 maintenance planners or the 2 maintenance coordinators. In April 2024, the maintenance coordinators were Cornelia Williams and Shannon Sorrentino. Sorrentino left Respondent within the next few months, most likely in May or June.

Around May 1, 2024, Vince Leeloy began discussing joining the Union with Williams and Sorrentino. Williams spoke with Mike Hendrickson, Respondent's lead mechanic on the first shift, who is a union steward for one of the Local 727 bargaining units. Williams told Leeloy she had spoken with Hendrickson and Leeloy should expect a call from Erin Delaney, a business agent/organizer for Local 727.

Delaney called Leeloy on May 2, and met with Williams and Leeloy on May 8. Williams and Leeloy signed authorization cards on that date. Marilyn Hodel never expressed interest in joining the Union. At some point, unspecified in this record, Hodel told Audrey Ganschar that she did not want to be in the Union., Tr. 257-58.

Respondent has 6 production lines. Although, not clear from the record, I glean that some lines produced a beverage in cans, and some produced a beverage in bottles. For the first

² The Union represents virtually every department other than maintenance planning and coordination, including the mechanics with whom Leeloy interacted regularly, Tr. 23, 31, 150-51, 219. 238, 323, 326, 328, 351.

If Leeloy was not responsible for keeping the Fuguai Board current or did so, I would think there would be employees to so testify.

month of their employment, Leeloy and Hodel were each responsible for preventive maintenance and the overhaul of equipment on 3 production lines each. On May 15, 2024, Ganschar met with Leeloy and Hodel. At this meeting she changed their responsibilities. Leeloy was to be responsible for assuring that preventive maintenance was performed as required and generating work orders on the machinery on all 6 production lines. Hodel was responsible for the annual overhaul of each machine and other projects. Leeloy and the General Counsel contend that this materially increased Leeloy's workload; Respondent disputes this.³ There is no objective evidence in the record that establishes that Leeloy's work increased and that Hodel's decreased.

On May 15, Ganschar sent an email to both Leeloy and Hodel. Under a bullet point "Feedback," the email appears to be critical of both. The tasks listed below "Feedback" are tasks for which only Leeloy would be responsible after the May 15 meeting, R. Exh. 3. However, if Ganschar was finding fault with the failure to replicate machinery on lines 3 and 6 prior to May 15, the fault lay with Hodel, not Leeloy. The record contains little or no other evidence of dissatisfaction with Hodel, which the General Counsel attributes to the fact that she made it known to Respondent that she was opposed to the Union.

I find the record is insufficient to raise an inference that Respondent increased Leeloy's workload in retaliation for his union activity. First of all, I find that the General Counsel has not established that Respondent was aware of Leeloy's union activities on May 15. Assuming Leeloy's workload was greater than Hodel's, I credit Respondent's explanation for making the change in their respective duties, i.e., that the two would be better able to learn the requirements of their jobs this way.

Leeloy testified that at the end of the May 15 meeting, Ganschar told Hodel to leave, closed the door and told Leeloy she had heard from human resources that he wanted to join a union. Ganschar admits that she asked him why he wanted to join a union on some unspecified date, Tr. 163. Leeloy also testified that on May 15, Ganschar told him he should have talked to her first⁴ and that she felt that he was not going to be a good fit for his position due to communication issues, Tr. 47-448, She did not have a similar conversation with Hodel.

Ganschar generally denied the assertions made by Leeloy by answering leading questions from Respondent's counsel, Tr. 161-164.

On May 20, 2024, Respondent sent Leeloy and Hodel to the company facility in Irvine, Texas for 5 days of training. The 2 maintenance coordinators, Williams and Sorrentino, were apparently on vacation during this period. During a training session, Ganschar called Leeloy. He did not answer the call, so she called Hodel, who gave her phone to Leeloy. Leeloy put the call on speaker.

³ According to Respondent, this change was intended to be temporary. Eventually, Leeloy and Hodel's responsibilities would revert to both being responsible for the same duties. Respondent's witnesses testified that Leeloy was charged with responsibility for preventative maintenance because he had prior relevant work experience in preventative maintenance and Hodel did not.

⁴ I assume this means talking to her before contacting the Union.

On May 31, Ganschar presented Leeloy with a memorandum, G.C. Exh. 3 & R Exh. 4, that she had prepared the day before, Tr. 194. The memo lists “behavior that needs to be corrected.” Respondent contends this memo is not disciplinary. In this memo, Ganschar complained that Leeloy was not responding to emails. She complained of his delayed response to her inquiry on May 22, while Leeloy and Hodel were in Texas. On that date, Ganschar called about the parts number and price of a gearbox on production line 6. Ganschar’s memo concluded that Leeloy was acting unprofessionally by avoiding speaking to her. Afterwards, Respondent changed Leeloy’s work schedule from 8:00 a.m. to 5:00 p.m. to 9:30-6:30 p.m. I find that the General Counsel has not established that this change was material.

On June 7, 2024, the Union requested that Respondent recognize the maintenance planner/coordinator bargaining unit of 3 employees. It also filed for a representation election predicated on 3 authorization cards from Leeloy and Williams. Pursuant to a stipulated election agreement signed on June 14, a representation election was scheduled for August 1, 2024. The voter list for the election had 3 names: Leeloy, Williams and Hodel.

According to Respondent, but disputed by Leeloy, Ganschar gave Leeloy a 60-day review on or about June 13. That review stated that his deliveries were not hitting the mark weekly, that he needed to improve communication with her by answering emails, and giving feedback, R. Exh. 5.

Ganschar met with Leeloy weekly on Fridays. On June 28, she summarized the discussions at that day’s meeting.⁵ Her notes indicate that she communicated her concerns about Leeloy not completing tasks, not communicating with her adequately, being unprepared for a preventative maintenance meeting, not updating the Fuguai Board (Fuguai is Japanese for abnormality), and not replicating corporate procedures for preventive maintenance on a particular machine. The Fuguai Board is a white board on which Respondent keeps track of when parts needed for preventative maintenance are expected to arrive at Northlake. Replication is a procedure for incorporating any changes from corporate headquarters as to maintenance procedures into the standard operating procedures for Northlake.

Leeloy testified that Ganschar continually asked him about the Union on June 28 and asked him how he would vote in a representation election scheduled for August 1. He further testified that he informed Ganschar that he intended to vote. According to Leeloy, Ganschar responded, “Don’t count on it, you won’t be here much longer,” Tr. 59. I do not credit this testimony. It does not make sense since Ganschar already knew that Leeloy supported the Union and there is no evidence that he ever told her otherwise.

On July 1, Leeloy and Cornelia Williams met with human resources manager Sylvia Alcozar and Ganschar. Alcozar informed Leeloy and Williams that non-union employees would be getting 40 hours of paid time off, an increase of 10 hours. This change was being made pursuant to a Chicago city ordinance that became effective that day.⁶ According to Leeloy, after this meeting, Cornelia Williams told him she was no longer interested in the Union.

⁵ Leeloy denies that Ganschar discussed the items set forth in R. Exh. 6 with him.

⁶ Contrary to the Charging Party’s brief at 39, G.C. Exh. 5, the notice posted by Respondent on July 1, 2024, informs Respondent’s employees that the increased 30 hours of paid time off was initiated in part

The availability of these additional PTO benefits were the subject of a facility-wide posting on July 1, G.C. Exh. 5, R. Exh. 17, Tr. 311. The KDP posting informed all employees at the facility that the additional PTO benefits were due to the Chicago ordinance and were only available to non-union employees. The Chicago Ordinance does not appear to exempt unionized employees. The record does not reflect whether or not KDP's collective bargaining agreements satisfied the Chicago Ordinance before July 1.

Also, on or about July 1, 2 unidentified corporate officials met with Leeloy, Williams and Hodel. I infer this was related to the scheduled representation election. Sometime in July, the Union withdrew its representation petition.

Leeloy met again with Ganschar and Tommie Keith, a night shift manager, on July 9. Ganschar complained about Leeloy's failure to update the Fuguai Board(s) as required and his failure to replicate corporate maintenance instructions for Northlake staff. She gave him until July 22 to improve his performance.

Ganschar met with Leeloy again on July 16 and sent her notes of that meeting to human resources manager Sylvia Alcozar.

Ganschar also testified about complaints she received from technicians about Leeloy's performance. She testified that Mike Hendrickson told her he only dealt with Marilyn Hodel because Leeloy did not understand what Hendrickson was saying, and tasks were not being completed on time, Tr. 234-35. In addition to being a lead mechanic, Hendrickson is the union steward who contacted the Union to call Leeloy, Tr. 31-32.⁷

Alex Kirmel, a maintenance supervisor, testified that Leeloy was never or often unprepared for meetings with him and other staff. Kirmel and Gonschar testified that Kirmel reported his concerns to Gonschar. HR manager Alcozar testified that Kirmel and Hendrickson also complained to her about Leeloy. Kirmel explained the importance of the Fuguai Boards. When kept up to date, it allows him to easily determine what work can be performed and when it can be performed.

On July 23, 2024, Respondent terminated Leeloy. Gonschar testified that the termination decision was made by her, Alcozar and Gonschar's boss, Justin Koester. Respondent did not provide Leeloy with a written termination notice until it sent him an email on August 12, 2024,

due to a Chicago ordinance enacted in 2023 which became effective on July 1, 2024.

⁷ Mike Hendrickson did not testify. The accuracy and truth of what he said to Ganschar is hearsay evidence. The fact that Hendrickson said these things to Ganschar is not. The parties have stipulated as follows: . Mike Hendrickson is employed by Keurig Dr. Pepper as a Lead Mechanic. Mr. Hendrickson is also an appointed Union Steward of Local 727. Union Stewards at Local 727, including Mr. Hendrickson, are not employees of Local 727. The Charging Party Union's brief describes Hendrickson as "a known Union Steward and strong union supporter," CP brie at 18. I decline to consider Respondent's subpoena to Hendrickson which is attached to its brief.

G.C. Exh.. 6. Later Respondent contested Leeloy's claim for unemployment insurance benefits on the grounds that he had been terminated for misconduct.

Analysis

In order to establish a violation of Section 8(a) (3) and/or (1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002); *General Motors*, 369 NLRB No. 127 (2022).

As I stated at the outset, this case is purely a matter of whose version of events I credit. There are no disinterested witnesses. There is no question that Vince Leeloy engaged in union activity and that Respondent was aware of this when it discharged him and probably much earlier. However, apart from Leeloy's testimony, there is no evidence that Respondent was aware of Leeloy's union activity prior to June 7. Some of the alleged discriminatory conduct occurred before June 7; the change in Leeloy's duties and the May 30/31 memo admonishing Leeloy for his job performance.

The question is whether Respondent bore animus towards his union activity and increased his workload, changing his work schedule, disciplined and discharged him as a result. Resolving this issue turns in part as to whether I believe Leeloy's version of events or that of Audrey Ganschar. Respondent's defense has some weaknesses.⁸

⁸ Among the shortcomings of Respondent's case are the following.

Much of Ganschar's testimony is in response to leading questions.

Respondent did not give Leeloy a written termination notice until August 12, 2024, and even then did not specify the reasons for which he was discharged. Other employees received such written notice on the day they were terminated. However, the employee whose termination is the subject of R. Exh. 11 appears to have received his discharge notice 10 days after the incident for which he was discharged. Respondent did not tell Leeloy that he had failed his probation period, as indicated in R. Exh. 16.

Respondent did not adequately explain why the May 15 memo R-Exh. 3 was directed to Leeloy and Hodel and why there is no evidence of any follow-up regarding Marylyn Hodel—other than testimonials to her performance.⁸

Respondent did not adequately explain why it gave preventive maintenance responsibilities to Leeloy, if the objective of splitting up the job tasks was to provide a learning experience for Leeloy and Hodel, who had no prior experience relative to preventative maintenance.

Respondent represented to the Illinois unemployment insurance agency that Leeloy was fired for misconduct. However, one could interpret misconduct to include failing to follow instructions and failing to adequately perform one's job.

However, they are not sufficient for me to credit Leeloy over Ganschar. Thus, I dismiss the entire complaint.⁹

In assessing credibility, I am influenced by the fact that Respondent's facility is heavily organized. This in my experience makes discriminatory discharge of a single employee far less likely than in a case of a non-unionized employer. I am also greatly influenced by the evidence that Mike Hendricksen, the union steward who initially put the Union in contact with Vince Leeloy, complained about Leeloy's job performance. I decline to credit Leeloy's uncorroborated testimony regarding anti-union animus. Furthermore, Respondent's decision to send Leeloy to Texas for 5 days of training is inconsistent with it having a discriminatory motive for his termination.

On the other hand, the record establishes that his supervisor, Audrey Ganschar, interrogated him at least once about why he wanted to join a union. It is also established that corporate representatives came to Northlake around July 1. I infer they were at least subtly encouraging the maintenance planners and coordinators to vote against union representation.

Finally, there is Erin Delaney's testimony about human resources manager Sylvia Alcozar's hostility towards the Union, offset to some extent by Alcozar's testimony that her relations with the Union are "decent."

Unlike many other ULP cases I have heard, there are no recordings of the conversations between Ganschar and Leeloy. There is also no corroboration for Leeloy's assertions, or as I have pointed out previously, no testimony from any unionized mechanics or machine operators contradicting Respondent's assertions that he was a poor employee.

Failure to rebut the assertions by union organizer Delaney that HR Manager Alcozer has a hostile relationship with the Union.

Audrey Ganschar's copious notetaking regarding meetings with Leeloy and no evidence of such notes regarding Hodel.

Failure of Ganschar to specifically rebut certain assertions by Leeloy, e.g., the closed-door meeting on May 15, Tr. 47-49.

Failure to explain why Ganschar met with Leeloy and Willians, but not Hodel to discuss the availability of additional PTO for non-union employees.

What appears to be inaccurate testimony as to whether Leeloy or Hodel was responsible for the failure to replicate the corporate maintenance instructions on the Jones Maxim machine on production line 3. While Ganschar blamed Leeloy, this machine appears to have been Hodel's responsibility between April 22 and May 15. Nevertheless, there appears to have been issues with the replication of the Jones Maxim machine between May 15 and June 28, R. Exh. 6. During that period, Leeloy was responsible for this task.

⁹ The fact that hiring manager Brittany Blanchard was happy that the planners and coordinators were not going to be organized, G.C. 25, is insufficient to prove that Leeloy suffered discrimination due to his union activity.

Leeloy worked for Respondent for a very short period of time. There is no dramatic change in Respondent's assessment of his performance that begins with union activity as opposed to a stellar work record prior to it. In fact, the negative assessments begin before the date on which the General Counsel has established Employer knowledge of Leeloy's union activity

Conclusions of Law

Respondent did not violate the Act in:

Terminating Vince Leeloy;

Increasing Vince Leeloy's workload

Interrogating Vince Leeloy about his union activities.

Impliedly promising employees an increase in paid time off hours if they did not choose union representation.

In any other respect alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The complaint is dismissed.

Dated, Washington, D.C., May 21, 2025



Arthur J. Amchan
Administrative Law Judge

¹⁰ 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.