### 1973

**NLRB v. Rollins Telecasting, Inc.**

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NLRB v. Rollins Telecasting, Inc.

Abstract
Discusses threat to close the plant, replace strikers, promised benefits, and threat of reprisal, Labor Relations Reference Manual (Volume 88): 2737-2739.
rarily or permanently," through replacements; and
(3) That he suggested the employees organize a contract union with Rollins and indicated they would benefit by such a procedure.

Chairman Miller did not agree that the first two statements violated § 8 (a)(1). He concluded that the third statement was unlawful, however, because it "contained a veiled promise of benefit for foregoing unionization and dealing directly with Respondent."

[THREAT TO CLOSE PLANT]

There is no dispute that Roddey made statements on each of the luncheon topics on which the Board focused, but his version of his remarks differed substantially from the Board's characterization. On the first point, he testified that in an endeavor to counter reports circulated by the union that the Teamsters were very tough and could put pressure on Rollins through other contracts with it and other companies, he had said only that he also was a hard bargainer. He also told the Teamsters present an office in Florida that he had ever had with the Teamsters concern for the strike had only been a hard bargain really, he had said. Subsequently, he said, "It had been the Company's decision that rather than submit to the demands that we felt were unreasonable, we would prefer to close that office." On the other hand, four employees who attended the meeting gave a significantly different version of Roddey's remarks. As one of them put it, "He told us that the union did have at least one [unionized shop] in Florida and rather than bargain with the union, they (Rollins) closed the plant." The other three characterized Roddey's remark in similar terms.

If Roddey's testimony stood alone, we would have difficulty in finding a violation could have put pressure on Rollins through other contracts with it and other companies, it would have threatened closure in the event of a union victory. The Board's statement is so cryptic that we cannot tell whether it resolved the conflict against Roddey, or the union reasonably understood Roddey could have, or, as seems more likely, followed the reasoning of the Administrative Law Judge. Assuming that it took the latter course, we cannot fault the decision. An employer who goes so close to the brink takes the risk that employees may honestly misunderstand him: Roddey could easily have avoided the likelihood of being misunderstood by adding that Rollins would not close simply because a Teamster victory but only if the union's demands made continuation impracticable. Gisel, supra, 395 U.S. at 620.

[REPLACEMENT OF STRIKERS]

On the second point, Roddey testified that he had told the people that if they did strike under certain circumstances, that the plant would be replaced temporarily or in other circumstances, they could be replaced permanently. Three of the employees who attended the meeting confirmed that account. Both the Administrative Law Judge and the Board, however, characterized his comment as a threat that the company would replace any strikers. We see no basis for the Board's interpretation, and conclude that Roddey's statement, that economic strikers could be replaced temporarily or permanently within the protection of § 8(e). 1 NLRB v. Herman Wilson Lumber Co., 355 F.2d 495, 61 LRRM 2296 (6 Cir. 1966). If the Board meant to suggest that an employer resisting organization must deliver a lecture on the reinstatement rights of economic strikers under Laidlaw Corp., 171 NLRB 1366, 63 LRRM 1252 (1968), enforced, 414 F.2d 99, 71 LRRM 3054 (7 Cir. 1969), cert. denied, 397 U.S. 920, 73 LRRM 2537 (1970), that goes too far, as the Board recently held, Mississimi Extended Care Center, 202 NLRB No. 139, 82 LRRM 1738 (1973).

[PROMISE OF BENEFITS]

Finally, with respect to the third point, Roddey testified that, in an-

1 The Board did not explain its ruling on this point, although Chairman Miller wrote in dissent: "The Board" in text, supra at 176.

2 NLRB v. Rollins Telecasting, Inc., 176 NLRB 600, 83 LRRM 1252 (1968), and NLRB v. Rollins Telecasting, Inc., 176 NLRB 1254, 83 LRRM 1252 (1968), both found similar statements to have been unlawful. The Board did not make any finding as to the third point, but its reasoning was somewhat akin to that in NLRB v. Rollins Telecasting, Inc., 176 NLRB 1254, 83 LRRM 1252 (1968), supra.
We see no basis for upsetting the Board's resolution of the conflict in the testimony. There is sufficient evidence in the record to support the view that Roddey's talk, both in intent and effect, suggested that the employees could expect wage increases and other benefits if they formed a grievance committee within the station, whereas these benefits would not be so readily available through collective bargaining. The closer question is whether that suggestion unlawfully interfered with the employees' § 7 organizational rights and fell outside the protection of § 8(a).

It is plainly not unlawful for an employer to hold a "grape session" during a union campaign; an organizational drive often comes as a rude shock to an employer, and a simple offer to hear any complaints the employees may have, or to set up machinery to that end, is a natural and non-coercive response. Fairchild Camera Corp v. NLRB, 401 F.2d 581, 60 LRRM 2290 (7th Cir. 1968); Funnels Inc. v. NLRB, 157 LRRM 327, 81 LRRM 1388 (1966); ITT Telecommunications, 183 NLRB No. 115, 74 LRRM 1386 (1970); Golden Arrow Dairy, 194 NLRB No. 81, 79 LRRM 111 (1971). It is only when this is accompanied by an employer's promises of benefits contingent on rejection of the union that it becomes suspect under § 8(a)(1). To be sure, the promise of benefits in this case is far milder than the direct wage increases conferred in NLRB v. Exchange Parts Co., 375 U.S. 446, 55 LRRM 2290 (1964). Nonetheless, courts have upheld Board findings of implied promises of benefits in situations very similar to this one. In NLRB v. Drives, Inc., 440 F.2d 354, 364, 76 LRRM 2296 (7th Cir.), cert. denied, 404 U.S. 912, 78 LRRM 2585 (1971), the court upheld the Board's ruling that an employer had violated § 8(a)(1) when he distributed a survey shortly before a representation election requesting employees to make specific suggestions for improvements in working conditions and implying that the improvements would come only if the union were defeated. Similarly, in H. L. Meyer v. NLRB, 426 F.2d 1090, 74 LRRM 2330, 2500 (8th Cir. 1970), the court agreed with the Board that the employer had violated § 8(a)(1) by installing a suggestion box during an organizational campaign and implying, through its answers to the questions submitted, that the employees would get a wage increase if the union lost the election. In NLRB v. Flomatic Corp., 347 F.2d 74, 76-77, 50 LRRM 2535 (2...
Cir. 1965), this court held that various promises of benefits and an invitation to deal directly with the company violated § 8(a)(1). While the promises in Flomatic were somewhat more explicit than those in this case, Roddye's promise to look into the employees' wage complaints, if presented through a committee, together with his characterization of himself as a hard bargainer with unions, strongly suggested that they could expect wage increases if, and perhaps only if, they dealt directly with the company. See also NLRB v. S & H Grossinger's, Inc., 372 F.2d 26, 28, 64 LRRM 2253 (2 Cir. 1967); Conolelo Corp. v. NLRB, 431 F.2d 324, 75 LRRM 2028 (1970), cert. denied, 401 U.S. 908, 76 LRRM 2499 (1971); Texaco, Inc. v. NLRB, 436 F.2d 520, 524, 76 LRRM 2153 (2 Cir. 1971); Vaughan Printers, Inc., 196 NLRB No. 32, 80 LRRM 1030 (1972); Aldon, Inc., 201 NLRB No. 75, 82 LRRM 1399 (1973); Connex Foundry Co. v. NLRB No. 186, 83 LRRM 1390 (1973). Thus, in light of the Board's factual findings, we agree that Roddye made unlawful promises of benefits to the WPTZ employees, which were implicitly contingent on their rejecting the union.

[THREAT OF REPRISAL]

Besides Roddye's talk, the Administrative Law Judge pointed to another incident of allegedly unlawful employer speech. Early in the union's organizational campaign, Chief Enelneer Lincoln Dixon told one of the employees that "it was too bad the only people that would get hurt would be the employees ... that the company was already making arrangements to bring people in in the event of a strike and they could keep running a lot longer than the employees could who would go out on strike." Considering the remark, in context, the Administrative Law Judge deemed it coercive because it helped convey the message that it would be futile for the employees to vote for the union. Although Dixon's comment was apparently an off-hand remark rather than a formal expression of company policy, he spoke in terms of the company's plans and actions, and the employees could reasonably conclude that he spoke as an informed member of management on that point. See Irving Air Chute Co. v. NLRB, 350 F.2d 178, 179, 59 LRRM 3052 (2 Cir. 1965); Trev Packing, Inc. v. NLRB, 405 F.2d 334, 70 LRRM 2025 (2 Cir. 1968), cert. denied, 394 U.S. 919, 70 LRRM 3002 (1969); NLRB v. Patent Trader, Inc., 415 F.2d 190, 190, 71 LRRM 3086 (2 Cir. 1969).

Unlike Roddye, Dixon paid no heed to the critical line between a prediction of the probable economic consequences of unionism and a threat of employer reprisal, see NLRB v. Gisel Packing Co., supra, 305 U.S. at 619; NLRB v. Taber Instruments, Division of Teledyne, Inc., 421 F.2d 642, 644, 73 LRRM 2366 (2 Cir. 1970); NLRB v. General Stencils, Inc., 438 F.2d 894, 900, 76 LRRM 2286 (2 Cir. 1971); NLRB v. Erie Marine, Inc., 465 F.2d 104, 80 LRRM 3330 (3 Cir. 1972); NLRB v. Roselyn Bakeries, Inc., 471 F.2d 165, 81 LRRM 2875 (7 Cir. 1973); Amalgamated Local Union 355 v. NLRB, 481 F.2d 906, 1004 & n.13, 83 LRRM 2849 (2 Cir. 1973).

Dixon did not merely say that the company would be able to replace strikers, he warned that it fully intended to do so, and that plans were already afoot to provide replacements in the event of strike.2 Accordingly, we conclude that the Administrative Law Judge could reasonably find that Dixon's comment constituted a threat of reprisal which violated § 8(a)(1) and was not protected by § 8(c). Cf. Lake City Foundry Co. v. NLRB, 432 F.2d 1162, 75 LRRM 2401 (7 Cir. 1970).

We shall therefore direct that paragraph 1(e) in the Board's order be modified to read: "Threatening employees with loss of their jobs if they vote for union representation." This modification does not require remand with respect to the bargaining order since that order rested on the discriminatory discharges rather than the § 8(a)(1) violations.

Enforced as modified. The Board may recover two-thirds its costs.

A petition for a rehearing having been filed herein by counsel for the respondent, we hereby are DENIED.

2 There is no indication anywhere in the record that the company was, in fact, making any such plans or that the proposed action was based on an analysis of economic necessities in the light of available facts.