

JBS MANUFACTURING: INTERROGATION, SURVEILLANCE, AND TERMINATIONS

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Management and employee labor unions often have an adversarial relationship, especially when a union attempts to organize a non-union employer. There is a constant struggle between management, which seeks to dissuade employees from joining a union, employees who believe that forming a union might be beneficial, and employees who do not want to be represented by a union. The National Labor Relations Act (NLRA) establishes the “rules” for the interaction of these parties, and the National Labor Relations Board (NLRB) enforces those rules. It is often not clear what actions by these parties will be considered unlawful during a union organizing drive. This case illustrates several actions by managers and supervisors which were alleged to be unlawful after a union lost a representation election.

BACKGROUND

JBS Manufacturing began in 1955 in a small metal building in central Mississippi. The company's first product was wooden stock racks for pick-up trucks. The company grew slowly, and after five years, rear step bumpers for pick-up trucks were added to the product line. By the end of 1962, JBS was supplying these bumpers to one of the big USA automobile manufacturers. During the 1970s and 1980s, the company continued to grow. New manufacturing plants were opened in Texas, Illinois, and Ohio. The company continued to add new products including brush guards, light grilles, and winch mounts. During the 1990s and 2000s, the company added 9 more plants and a long list of new products including some made of plastic such as ground effects, rocker panels and wheel covers. By 2012, JBS was manufacturing a wide range of automobiles parts and assemblies in 13 plants located in 12 states. The company sold its products to nearly all automobile manufacturers both foreign and domestic.

In late June 2010, Chris Randall, a 7 year employee and currently IT Team Leader, called the United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) union to see if the union could improve terms and conditions of

employment for workers at the Ft. Worth, Texas plant. There are 80 employees at this plant which produces dashboard assemblies for a nearby GM SUV plant. The Plant Manager, Mark Lampert, reports to the General Manager, Paul Collins, who is located at a larger JBS plant in Stillwater, Oklahoma. Randall, along with Rick Landers and Adam Ingram, both Team Leaders in the plant, openly supported the union. The three men wore union shirts and buttons, passed out literature, and talked with other employees about the benefits of joining the UAW. Between June 2010 and September 2010, these three employees served as *inside union organizers* talking with other employees about the union, holding union meetings, passing out union literature, and finally asking employees to sign union authorization cards.

During the union organizing drive, the company also communicated with employees about why they should stay union free. Management distributed leaflets and flyers asking employees to reject the union. A mandatory meeting was held each Thursday where JBS management would talk to employees about reasons to stay union free. Managers also distributed company shirts and stickers which said "No means no."

In August 2010, the UAW determined that they had received the required number of employee signatures on the authorization cards and petitioned the NLRB for a representation election. The election was held in September 2010 and a majority of JBS employees voted not to be represented by the UAW.

UNFAIR LABOR PRACTICE CHARGES

A couple of weeks after the election, the UAW filed several unfair labor practices with the NLRB. They alleged that the company had engaged in coercive actions, illegal discharge of employees because of their union activities, threats and promise of benefit, and interrogation of employees which unfairly impacted the way employees voted in the representation election.

TERMINATIONS

The union alleges that JBS unlawfully terminated employees Randall, Landers and Ingram because of their legally protected concerted activities in support of the union. This violated Sections 8(a)(3) and 8(a)(1) of the National Labor Relations Act (NLRA).

Chris Randall served on an employee committee that provided information about the union to other employees. He attended approximately eight union meetings and wore union shirts and union buttons every day to work. Both Rick Landers and Adam Ingram also wore union shirts and buttons. All three men attended the weekly mandatory employee meetings on Thursday, and they frequently spoke during the meeting about what the employees wanted. Ingram testified that

approximately two weeks before the representation election, he wore a union button to one of the mandatory meetings. He saw several managers in attendance, including Henry Spears, the Human Resources Manager. Ingram stated that Spears walked up to him and looked at the union button and then asked “Are you all right?” Ingram responded that he was all right at which point Spears continued to look at the union button on his shirt. Spears then returned to the group of managers and spoke to them, at which point all of the managers looked at Ingram.

The Company, through its attorney, asserted that the General Manager, Paul Collins, had determined long before the representation election that the Ft. Worth plant had too many team leaders compared to general workers. In August 2010, Collins ran the Ft. Worth facility while Lampert was on vacation. When Lampert returned, Collins mentioned to him that some team leaders would need to be eliminated to bring the Ft. Work plant in line with other JBS facilities. The company also presented evidence that JBS had been undertaking a continuous streamlining or reduction in force long before the union filed a petition for an election. Below is a list of positions that Henry Spear eliminated between March 2008 and June 2011.

- Mar 31, 2008 - IT Team Lead – position eliminated
- Jun 20, 2008 - Materials Superintendent – position eliminated
- Dec 30, 2008 - Quality Supervisor – reduction in force
- Feb 10, 2009 - HR Support – reduction in force
- Jul 15, 2010 - Team Lead – position eliminated
- Nov 5, 2010 - Chris Randall, IT Team Lead – position eliminated
- Nov 5, 2010 - Rick Landers, Team Lead – reduction in force
- Nov 5, 2010 - Adam Ingram, Team Lead – reduction in force
- Jun 20, 2011 - Supervisor – position eliminated
- Jun 20, 2011 - Two Temporary Employees, Harness Rack – eliminated

Both sides stipulated that JBS did not rely on financial records, financial comparisons, or analyses of any kind. This list also included, but was not limited to, records regarding profitability, productivity, wage comparisons, costs to retain temporary employees or anything similar in the terminations of Randall, Landers and Ingram. The company further stipulated that the termination decisions had nothing to do with the economic downturn of the company or the industry. Mark Lampert testified that these employees were not terminated because of their job performance or because of disciplinary problems. The only factor used by the company was manpower comparisons among the JBS plants.

Lampert acknowledged that prior to the terminations he was aware that Ingram and Randall supported the union because of the union shirts and buttons they wore to

work each day. Randall openly admitted to his supervisor that he had been the employee who first contacted the union, and he was one of the most outspoken employees at the company's mandatory meetings.

Part of the company's response to this allegation was that these three employees were supervisors, not employees as defined by the NLRA in Section 2(11), and therefore not covered by the provisions of the Act. Thus, before deciding on termination allegation, it must first be determined whether these employees are supervisors or employees under the act. If it is determined that they are supervisors, they are not covered by the provisions of the NLRA.

The company argued that these three employees are supervisors and therefore have no protection under the NLRA. Mark Lampert testified that JBS considers the team leaders (Randall, Landrum and Ingram) to be part of the management team and includes them in management meetings. Lampert further testified that he seeks input from the team leaders in making decisions on who to fire and/or hire. He did admit, however, that the team leaders cannot hire, fire or discipline employees on their own. Team Leader Landrum testified that while he could recommend someone be hired, it's the supervisor's decision as to whether they are hired or not. Lampert stated that the team leaders are held accountable for directing the work and the production of their team. He testified that the team leaders have made job assignments and been involved in deciding where temporary employees work on the line, however, he provided no documentation of this. Team Leader Ingram testified that he could tell the workers on his line what work they had to do but he could not assign them where to go. The supervisors would make this decision and give the team leaders their assignments at the beginning of the shift, and the team leaders would then pass this information on to the employees on the line. Team Leader Ingram also testified that when his supervisor left the building, the team leaders "ran the plant." However, two of the team leaders were given company cell phones and were instructed to call the supervisor in case of an emergency.

Finally, all three team leaders voted in the September 2011 representation election and JBS did not challenge their status at that time. On August 19, 2011 JBS entered into a Stipulated Election Agreement which designated all full-time production and maintenance employees as the appropriate bargaining unit. Again, there was no challenge to the status of the Team Leaders. In response, the Company argued that since the outcome of the election was in management's favor, there was no reason to contest the status of these employees. Finally, in a PowerPoint presentation during the organizing campaign, JBS managers compared the wages at the Ft. Worth plant with wages at five other unionized JBS plants. Although Team Leaders received more pay than the other job classifications, they were included in this comparison with other nonsupervisory employees.

COMPANY STICKERS

The union alleges that several JBS supervisors illegally interrogated employees by asking them if they wanted an antiunion sticker. According to the union, if an employee refused a sticker, that employee would then be identified by management as a union supporter. One employee testified that two supervisors asked him if he wanted a sticker, which he refused. The employee stated that even though he had declined a sticker, the supervisors asked him several more times if he wanted a sticker. Employee James Stewart testified that a supervisor named Harry asked him if he wanted an antiunion sticker. While he could not identify the supervisor, he was sure that the person was a member of the office staff or a supervisor. The Quality Control Supervisor's name is Harry Banks. No other employees could be identified with that first name. However, later in an affidavit Stewart contradicted his earlier testimony and stated that no supervisor ever asked him to wear the sticker.

In September 2010, several employees who were against the union asked Plant Manager Lampert if they could get buttons to express their views. Lampert denied their request. The employees then asked Lampert if he could get some labels or stickers that they could wear. In response, Lampert had some stickers printed which said "No Means No." When the stickers arrived, Lampert gave them to his staff and told them that they could only give a sticker to an employee who asked for one. One of Lampert's managers testified that Lampert had indeed told him that he could only give a sticker to an employee if they asked for one.

INTERROGATION BY SUPERVISOR

The union alleges that JBS Manufacturing, through one of its supervisors, interrogated an employee about the union's activities and his feelings about the union. When employee Frank Sanders was initially asked if any company representative had ever asked him about his feelings concerning the union, he answered "No." Later, when asked specifically if supervisor Sam Fredericks had talked with him about the union he responded "Yeah, he asked me one time what I think about the union." Sanders stated that this occurred about three weeks before the union election. Sanders did not indicate how he responded to the question or any other details about the conversation.

SURVEILLANCE

The union alleges that Plant Manager Mark Lampert created an impression among employees that their union activities were under surveillance. Employee Marie Traverse testified that she got involved with the union organizing campaign in July 2010. She attended several union meetings, became a member of the employee

organizing committee, and wore a union shirt and buttons to show her support for the union. She stated that at the end of July or first of August, Lampert called her into his office, closed the door, and asked her if it was true that she was pressuring employees on the production floor to sign union cards. Traverse told him it was not true. Traverse admitted to being aware of a rule in the employee handbook that prohibits employees from soliciting other employees during work time and in work areas. She also confirmed that when Lampert talked with her, he was asking her about that solicitation policy. Lampert testified that he called Traverse into his office to talk about complaints he had received that she had pressured employees in work areas and during work times. He provided no other details about the conversation.

INTERROGATION BY PLANT MANAGER AND PROMISED BENEFITS

The union alleges that in September 2010, Lampert interrogated an employee about his union sympathies and promised better benefits and working conditions if the employees refused to support the union. Employee Juan Carver testified that on two occasions he had been called to Plant Manager Mark Lampert's office to discuss an incident with the forklift. Carver was told that employees had complained about him pressuring employees on the production floor to sign authorization cards. Carver stated this was not true. While in the office, Carver stated that Lampert asked him how he felt about the union. During the second visit, Lampert asked him whether he wanted a union and then said that he didn't want Carver to support the union. Carver then asked Lampert "What is better?" to which Lampert replied that the employees in the plant made decent money and that if Carver had a problem he should come to Lampert and he would fix it.

Lampert testified that JBS has had an open door policy for many years. Employees can talk to either Plant Manager Mark Lampert or General Manager Paul Collins if they have any work related issues. Lampert stated that the open door policy is described in the employee handbook.

ADDITIONAL READINGS

Flex-n-Gate Texas, LLC and United Automobile, aerospace and Agricultural
Implement Workers of America, AFL-CIO. *NLRB Cases 16-CCA-027742
and 16-CA-027790.*