JD(SF)–15–02
Eugene, OR

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

THE GUARD PUBLISHING COMPANY,
d/b/a THE REGISTER-GUARD

and

Cases 36-CA-8743-1
36-CA-8849-1
36-CA-8789-1
36-CA-8842-1

EUGENE NEWSPAPER GUILD,
CWA LOCAL 37194

Andrew Lang, Esq., and *Adam Morrison, Esq.,*
for the General Counsel.

L. Michael Zinser, Esq., of Nashville, Tennessee,
for the Respondent.

Jill Wrigley, Esq., of Washington, D.C.,
for the Charging Party.

DECISION

Statement of the Case

John J. McCarrick, Administrative Law Judge. This case was tried in Eugene, Oregon on November 14-16, 2001, upon the General Counsel's Second Consolidated Complaint (complaint) alleging that the Guard Publishing Company d/b/a the Register-Guard (Respondent) violated Section 8(a)(1), (3) and (5) of the Act by maintaining, promulgating and enforcing an overly broad no solicitation policy, by promulgating and maintaining an insignia policy prohibiting display of union insignia or signs, by discriminatorily enforcing its no solicitation policy by warning Suzi Prozanski (Prozanski)[1] on May 5 and August 22, 2000,[2] and by proposing an illegal subject during collective bargaining with Eugene Newspaper Guild, CWA Local 37194

[1] In its answer, Respondent contends that this allegation is not encompassed by the underlying unfair labor practice charges and is time-barred by Section 10(b) of the Act. A complaint is not restricted to the precise allegations of the charge. As long as there is a timely charge, the complaint may allege any matter sufficiently related to or growing out of the charged conduct. *NLRB v. Fant Milling Co.*, 360 U.S. 301, 309, 79 S.Ct. 1179, 1184 (1959). The test that applies for adding related uncharged allegations is stated in *Redd-I, Inc.*, 290 NLRB 1115, 1115–1116 (1988), In applying the closely related test set forth in *Redd-I*, the Board looks at three factors. Whether the untimely allegation involves the same legal theory as the timely charge. Whether the untimely allegation arises from the same factual circumstances or sequence of events as the timely charge. Whether the respondent would raise the same or similar defenses to both allegations. I find that the allegation in the complaint is closely related to the timely charge in 36-CA-8743

[2] All dates are in 2000 unless otherwise indicated.

(Union). Respondent filed a timely answer to the complaint and denied any wrongdoing. On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following:

Findings of Fact

I. Jurisdiction

The Respondent, an Oregon corporation, publishes a newspaper at its Eugene, Oregon facility, where it annually had gross sales of goods and services valued in excess of $200,000 and held membership in or subscribed to interstate news services, published nationally syndicated features and advertised nationally sold products. 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. The Issues

1. Does Respondent's Communications Policy constitute an overly broad no solicitation rule in violation of Section 8(a)(1) of the Act?

2. Has Respondent enforced its Communications Policy in a discriminatory manner in violation of Section 8(a)(1) of the Act?

3. Has Respondent implemented and maintained an overly broad rule prohibiting the wearing of union insignia or the display of signs soliciting support for the union in violation of Section 8(a)(1) of the Act?

4. Did Respondent's May 5 and August 22 warnings to Prozanski for violating Respondent's Communications Policy violate Section 8(a)(1) and (3) of the Act?

5. Did Respondent's October 25 Counterproposal No. 26 prohibiting use of Respondent's e-mail systems for union business, constitute an illegal subject of bargaining which violated Section 8(a)(5) of the Act?

B. The Facts

1. Background

Respondent publishes the Register-Guard, a daily newspaper with circulation in the Eugene, Oregon area. The Union represents about 150 of Respondent's employees in the editorial, circulation, business office, display and classified advertising, human relations, promotion and information systems departments. These departments include, *inter alia*,

[3] At the end of the trial Counsel for the General Counsel without objection requested leave to submit official Board documents to explain the status of case 36-CA-8075. On November 20, 2001 Counsel for the General Counsel submitted the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing dated February 29, 2000 in Case 36-CA-8075. There being no objection to its introduction into the record, this document will be received as General Counsel's exhibit 63.

reporters, photographers, copy editors, secretaries, clerks, advertising department employees and district managers in the circulation department. The last collective bargaining agreement between Respondent and the Union was for the period October 16, 1996 to April 30, 1999. Respondent and the Union have been negotiating for a new agreement but have not yet entered into a successor contract.

Respondent began installing a computer and information system at its Eugene facility in March 1996 and had fully implemented the system, with Internet and electronic mail (e-mail) capability in the summer of 1997. All of Respondent's employees with the exception of 15 district managers have access to e-mail. While most employees have their own computer terminal, a few employees, such as the 12 outside salespersons, share a terminal and have e-mail access.

On October 4, 1996, Respondent promulgated a written Company Communications Policy that applies to the use of Respondent's communications systems including telephones, message machines, computers, fax machines and photocopy machines. Under the heading "General Guidelines" the Policy provides, "Communications systems are not to be used to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations." The General Guidelines further state that "Improper use of Company communication systems will result in discipline, up to and including termination." The initial draft of the Communications Policy was issued on September 4, 1996. On September 12, 1996, the Union requested bargaining over the use of the electronic communications system. However, there is no evidence that the parties executed a written agreement reflecting an accord regarding the Communications Policy.

2. May 5 and August 22 Warnings to Prozanski

Respondent has employed Prozanski for about 17 years. She currently works as a copy editor in the newsroom features department. Prozanski is a member of the Union and has served as Union president since January 2000. In her capacity as copy editor, Prozanksi has her own desk and computer with Internet and e-mail functions. Prozanski uses e-mail for both work and non-work purposes. In her work Prozanksi uses e-mail to make story lists, compile photographs, review stories and to send memos to coworkers regarding work topics. She also sends and receives e-mails on a regular basis for non-work purposes. For example, Prozanski sends and receives e-mail about union business or to advise fellow workers she is going on a break.

On May 4, Prozanski, in her capacity as Union president, sent e-mail from her computer at work to about 50 coworkers at their work e-mail addresses. The e-mail dealt with a rally that took place on May 1. Prozanski told Respondent's managing editor, Dave Baker, she was going to send the e-mail and he replied, "OK, I understand." About five minutes later, Baker returned and told Prozanski she should not send the e-mail. On May 5, Baker issued Prozanski a written warning for violating the Respondent's Communications Policy for sending a Union related e-mail on May 4.

On August 14 Prozanski sent e-mail from the Union office to Respondent's employees at their work e-mail addresses advising them to wear green in support of Union efforts to gain a raise for employees and a contract. On August 18 Prozanksi sent another e-mail from the Union office to Respondent's employees at their work e-mail addresses urging them to participate in the Union's entry in the Eugene Celebration Parade. On August 22 Cynthia Walden, Respondent's Director of Human Relations, issued a written warning to Prozanski for sending the August 14 and 18 Guild related e-mails to employee workstations in violation of

Respondent's Communications Policy.

Respondent's employees testified without contradiction that both they and their managers used e-mail at work for non-business purposes without reprimand. In addition to Prozanski, Respondent's reporters Lance Robertson (Robertson), Randi Bjornstad (Bjornstad), William Bishop (Bishop) and Kimber Williams (Williams) sent and received e-mail at work from employees and managers regarding parties, jokes, breaks, community events, sporting events, births, meeting for lunch and poker games. Respondent's general manager, Dave Baker (Baker) admitted that he has received personal e-mail from other employees and has not disciplined them. Numerous e-mails were offered into evidence that reflect employees, supervisors and managers have sent and received personal e-mail at work without discipline. The following e-mails were sent by managers or supervisors: On March 18 city editor Margaret Haberman e-mailed an unspecified group of employees that she was throwing a party in honor of her 40th birthday. On September 1, assistant city editor Scott McFetridge sent e-mail to over 20 employees announcing a going away party. On March 30, assistant city editor Lloyd Paseman e-mailed employees, managers and supervisors seeking someone to walk a reporter's dog. On March 14 assistant news editor Paul Yarbrough sent e-mail to employees and supervisors that he had basketball tickets available. On November 8, deputy managing editor, Carl Davaz sent e-mail to all employees listing among other business related items, a birth announcement. On July 28 graphics editor, R. Romig announced a party to numerous employees by e-mail. On October 8 and 10 managing editor Baker sent e-mail to all employees announcing the United Way Campaign and soliciting assistance from employees in the campaign.

3. December 12-Kangail's Armband and Placard

Ronald Kangail (Kangail) worked for Respondent as a district manager since 1977. He is a member of the Union and is part of the bargaining unit. As a district manager Kangail deals with newspaper carriers, subscribers and businesses in his district and also in his office. While in the field, Kangail drives his own vehicle. Neither Kangail nor any of the other district managers are required to wear a uniform when dealing with the public. In his office at Respondent's facility, Kangail has Union material displayed that he has not been required to remove.

In November Kangail began to wear a green armband to show support for the Union and to demonstrate the Union did not have a contract with Respondent. At the same time he displayed a green placard in the window of his vehicle while working in the field. The placard was 8 ½ by 11 inches in size and stated:

WORKERS AT THE

REGISTER-GUARD

DESERVE A FAIR CONTRACT!

SUPPORT THE

EUGENE NEWSPAPER GUILD.

Want to help? Call 343-8625.

On December 12, Kangails's supervisor, zone manager Steve Hunt (Hunt) told Kangail

to remove the armband from his arm and the placard from his car when he was in the field. Kangail complied with the directive. Other district managers wore insignia while in the field including hats with the logos of football teams and the Marine Corps and shirts displaying college names. Respondent has no written policy or rules concerning the display of insignia or signs at work. There was contradictory testimony from advertising director Michael Raz (Raz) and circulation director Charles Downing (Downing) concerning exactly what Respondent's policy was concerning wearing insignia when dealing with the public. Raz said the policy was that, ". . . employees could not wear or exhibit indicia that are controversial in nature, or partisan or political, or in – otherwise represent the company in a negative context." Downing testified that the policy was, "That while in the execution of their duties in the field, they're not to wear anything that is not appropriate to the business;"

4. October 26-Respondent Proposes Contract Language Prohibiting Unit Employees from Using Respondent's Electronics Communications Systems for Union Matters.

On about October 25, during the course of bargaining for a new collective bargaining agreement, Respondent proposed the following contract language:

Company Counterproposal No. 26
October 25, 2000

Article XVII

Section 8. Electronic Communications Systems-The electronic communications systems are the property of the Employer and are provided for business use only. They may not be used for union business.

On November 15 Respondent clarified its position with respect to Company Counterproposal No.26. In a statement of position Respondent reaffirmed that its, "contract proposal only prohibits use of the systems for union business." The position statement added, "Attached to this statement of position is the Company's current Communication's (sic) Policy. It is our intention that this attached policy will govern the use of systems in situations 'other than' union business." On November 16 the Union responded that it would not reply to Company Counterproposal No. 26 since it illegally restricted employees' rights to concerted activity in the workplace. Two weeks later the Union filed a charge in case 36-CA-8789 on November 30, 2001 alleging that Respondent violated Section 8(a)(5) of the Act by making Company Counterproposal No. 26. The Region dismissed the charge on March 30, 2001 and the Union filed an appeal to the General Counsel. On August 13, 2001, the Region revoked the dismissed charge in case 36-CA-8789. Meanwhile the Union asked Respondent for further clarification of Company Counterproposal No. 26. In a letter dated April 9, 2001, the Union asked Respondent to address four questions. The letter asks in pertinent part:

1. Does the e-mail ban apply to bargaining unit members who are discussing "union business" or solely to elected officers and representatives of the Guild?

2. Does "union business" include the expression of ideas and opinions by bargaining unit members regarding the Guild in its representative role? Would it ban employee use of e-mail to critique the course of ongoing contract negotiations or the terms of the collective bargaining agreement? To discuss the Guild's position in bargaining? To discuss the Guild's handling of employee grievances? To discuss the status of an unfair labor

practice charge or an arbitration matter being pursued by the Guild on behalf of the bargaining unit?

3. Does the e-mail ban cover workplace discussion by co-workers of candidates for Guild office? The expression of employee opinion to co-workers on the quality of representation being offered by the Guild? Could a Register-Guard worker properly communicate by company e-mail to a co-worker criticism or opinion regarding Guild action as bargaining representative of the actions of its elected officers?

4. Could a Register-Guard employee use the company e-mail to discuss the merits of a proposed Guild dues increase?

Respondent replied in writing on April 21, 2001. This response stated in pertinent part:

> We will now attempt to answer your questions in the order asked:
>
> 1. The proposal applies to all employee covered by the contract as well as officers and representatives.
>
> 2. As a general rule the proposal will apply to all union business. We are not going to, in advance, try to pre-judge all possible hypothetical acts and circumstances. See final paragraph below.
>
> 3. Same as answer number 2.
>
> 4. No.
>
> By agreeing to this proposal we are not asking the union to waive any rights employees may hypothetically have regarding the selection of a new union and/or to decertify Guild Local 194. This proposal is intended to cover the conduct of union business and the employees represented by this union under this contract while it represents them. We express, with this proposal, no position with respect to use of our systems in that circumstance because we are not bargaining about that circumstance. Whatever our position is in that regard we will make that decision at the time that the circumstances presents itself, but independent of Company Counterproposal No. 26.

Also on August 21, 2001 a bargaining session took place between the Union and Respondent. Attorney L. Michael Zinser and Director of Human Relations Cynthia Walden represented Respondent. Lance Robertson represented the Union. Union member Randi Bjornstad contemporaneously recorded bargaining notes of this session. The notes reflect that Zinser advised that Counterproposal 26 applied to all members of the bargaining unit who were discussing any union business. Zinser further said that Counterproposal 26 would not address the issue of employee attempts to decertify the Union. To date Respondent has not withdrawn Counterproposal No. 26. After all witnesses had been called, Zinser took the stand and testified over the objection of General Counsel and Charging Party. Zinser denied that on August 21, 2001, he said Respondent's e-mail system could be used to decertify the Union.

C. The Analysis

1. Respondent's Communications Policy

General Counsel and the Union contend that Respondent's maintenance of its Communications Policy is an overbroad prohibition on employees' rights to make solicitations regarding Section 7 subjects. Both General Counsel and the Union argue that the employer's computers and computer systems, including e-mail, constitute a work area within the meaning of *Republic Aviation Corp*[4]. Since the Communications Policy ban on non-business use of e-mail includes solicitation and is not limited to working time, it is presumptively unlawful. Respondent argues that it has a right to prohibit the use of its personal property for non-business purposes and that the Union agreed to the Communications Policy.

a. The Law

The Board has generally found that an employer may validly limit employee use of its communications equipment. The Board has held that employees have no statutory right to use an employer's equipment or media. *Mid Mountain Foods, Inc.,* 332 NLRB No. 19, slip op. at 2 (2000). Thus the Board has found no violation in non-discriminatory limits on the use of employer bulletin boards[5], telephones[6], public address systems[7], video equipment[8] and e-mail[9].

b. The Analysis

While General Counsel and Charging Party argue that Respondent's e-mail system amounts to a workplace and that employee solicitation cannot be totally banned without justification, I find the argument misplaced. The Board has yet to hold that an e-mail system owned by an employer constitutes a workplace where an employer is prohibited from limiting all employee Section 7 solicitation. Rather, the Board has consistently found that employers may non-discriminatorily limit the use of their communications equipment without infringing on employees' rights to solicit for Section 7 purposes. I find that Respondent's Communications Policy is not a facially overbroad no solicitation no distribution rule but rather a valid limit on the use of its communications equipment. I will dismiss this portion of the complaint.

2. The May 5 and August 22 Discipline of Prozanski

Both General Counsel and Charging Party argue that Respondent's Communications Policy was applied to Prozanski in a discriminatory fashion. Thus they contend that the implementation of the policy itself violated Section 8(a)(1) of the Act. Since Respondent applied the Communications Policy to Prozanksi due to her activities on behalf of the Union, General Counsel and Charging Party take the position Respondent violated Section 8(a)(3) of the Act.

---

[4] 51 NLRB 1186 (1943), enfd. 142 F. 2d 193 (2d Cir. 1944), affd. 324 U.S. 793 (1945)

[5] *Honeywell, Inc*., 262 NLRB 1402 (1982), enfd. 722 F. 2d 405 (8th Cir. 1983)

[6] *Union Carbide Corp*., 259 NLRB 974, 980 (1981), enfd. in relevant part 714 F. 2d 657, 663-664 (6th Cir. 1983)

[7] *The Heath Co*., 196 NLRB 134 1972)

[8] *Mid Mountain Foods, Inc., supra*.

[9] *Adtranz AAB Daimler-Benz Transportation NA, Inc*., 331 NLRB No. 40 (2000). In affirming the ALJ's decision, the Board noted that no exceptions were filed to the judge's finding that Respondent's ban on non-business use of its e-mail system did not violate Section 8(a)(1) of the Act.

Respondent contends that it applied its Communications Policy in a uniform manner that limited all use of its e-mail system by third party organizations. Thus, its discipline of Prozanski was neither a violation of Section 8(a)(1) or (3) of the Act.

a. The Law

While an employer may limit the personal use of its property by employees, it may not do so in a manner that discriminates against employees' Section 7 rights. In a case involving the use of an employer's e-mail system, the Board in *E.I. du Pont de Nemours & Co*., 311 NLRB 893, 919 (1993), found that the employer violated Section 8(a)(1) of the Act by allowing use of its e-mail system by employees for a wide variety of personal subjects but prohibited employees from using e-mail to distribute any union material.

Section 8(a)(3) of the Act prohibits employers from discriminating in regard to an employee's, "tenure of employment . . . to encourage or discourage membership in any labor organization."[10]

In 8(a)(3) cases the employer's motivation is frequently in issue, therefore the Board applies a causation test to resolve such questions. *Wright Line*, 251 NLRB 1083, 1088 (1980). The *Wright Line* test requires the General Counsel to make a prima facie showing sufficient to support an inference that the employee's protected conduct motivated the employer's adverse action. "The critical elements of discrimination cases are protected activity known to the employer and hostility toward the protected activity." *Western Plant*, 322 NLRB 183, 194 (1996). Although not conclusive, timing is usually a significant element in finding a prima facie case of discrimination. *Id*. at 194.

If the General Counsel successfully presents a prima facie case of discrimination, the burden then shifts to the employer to persuade the trier of fact that the same adverse action would have occurred even in the absence of the employee's protected activity. *Western Plant,* 322 NLRB 183, 194 (1996). To meet this burden, "an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct." *Roure Bertrand Dupont, Inc.,* 271 NLRB 443 (1984).

b. The Analysis

The record is replete with evidence of personal use of Respondent's e-mail system by its employees and managers both before and after Respondent disciplined Prozanski. Respondent's argument that it limited all e-mail use by third party organizations, including the Union, misses the mark. First, there is evidence that Respondent permitted third party organizations such as Weight Watchers and United Way access to e-mail; second, the Board has drawn no distinction between non-business use of communications equipment by third party organizations as opposed to personal use by employees. If an employer allows employees to use its communications equipment for non-work related purposes, it may not validly prohibit employee use of communications equipment for Section 7 purposes. *Fleming Companies, Inc.,* 336 NLRB No. 15, slip op. at 3 (2001). The evidence reflects Respondent has failed to enforce its Communications Policy. It has permitted personal use of e-mail for a wide variety of non-business purposes. Having permitted a plethora of non-business uses of e-mail, Respondent cannot validly prohibit e-mail dealing with Section 7 subjects. Respondent's argument that

[10] 29 U.S.C. Section 158(a)(3).

Prozanski's use of e-mail was a more egregious violation of the Communications Policy since they were sent to multiple persons (spam) is without merit. First, the practice of sending e-mail to multiple recipients was common practice by both employees and managers. Second, there has been no evidence that sending e-mail to many addressees has any adverse impact on discipline or production. I find Respondent's enforcement of its Communications Policy in the May 5 and August 22 discipline of Prozanski violated Section 8(a)(1) of the Act.

It is clear that Prozanski was engaged in union activity at the time she sent her e-mail messages on May 4, August 14 and 18. She sent the e-mail to Union members on behalf of the Union. Moreover, there is no dispute that Respondent was aware of Prozanski's Union activity. Respondent noted in the disciplinary letters of May 5 and August 22 that Prozanski was engaged in Guild activity when she sent the e-mail. Respondent stated in both disciplinary letters that Prozanski was being disciplined for sending the Union related e-mail in violation of its Communications Policy. General Counsel has established each prima facie element of its case establishing Respondent disciplined Prozanski in violation of Section 8(a)(3) of the Act. The burden shifts to Respondent to prove that it would have disciplined Prozanski even in the absence of her union activity.

Respondent's defense is based upon a faulty premise. It assumes that the Communications Policy was enforced in a consistent, non-discriminatory fashion. As noted above, the Communications Policy was observed in the breach not the enforcement. Having permitted a wide variety of non-business use of its e-mail, Respondent cannot rely on this policy to establish it would have disciplined Prozanski in the absence of her Union activity. I find Respondent's May 5 and August 22 discipline of Prozanski violated Section 8(a)(3) of the Act.

3. Respondent's Insignia Policy

General Counsel and Charging Party contend that Respondent violated Section 8(a)(1) of the Act by enforcing an unwritten insignia policy that prohibited employee Ronald Kangail from wearing union insignia and displaying a Union placard at work. Respondent argues that it had the right to prohibit employees from wearing and displaying union insignia when dealing with the public.

a. The Law

While working, an employee's right to wear and display union insignia is protected by Section 7 of the Act. *Republic Aviation Inc. v. NLRB*, 324 U.S. 793, 65 S.Ct. 982, 89 L.Ed. 1372 (1945); *Albertsons's Inc*., 319 NLRB 93, 102 (1995). This right is balanced against an employer's right to operate its business. An employee's right to wear insignia can be limited or prohibited only if the employer can show such a ban on Section 7 rights is mandated by "special circumstances". *Mack's Supermarket*, 288 NLRB 1082, 1098 (1988). Such special circumstances include employee safety, protecting the employer's product or image, and ensuring harmonious employee relations. *Nordstrom, Inc.,* 264 NLRB 698, 700 (1982). Mere exposure of customers to union insignia does not constitute a special circumstance. *Flamingo Hilton-Laughlin,* 330 NLRB 287 (1999).

b. The Analysis

There is no dispute that Kangail was wearing union insignia and displaying a union placard in his car while working for Respondent and dealing with the public. Nor is there any controversy that Respondent directed Kangail to refrain from wearing his armband or from displaying his placard when dealing with the public. While Kangail's display of union insignia

was protected by Section 7 of the Act, Respondent has failed to show any special circumstance that would justify its ban on Kangail's armband and placard in his auto while dealing with the public. Thus, no probative evidence was adduced that Kangail's display adversely affected Respondent's business, employee safety, or employee discipline. Moreover, Respondent's vague, unwritten insignia policy has not been enforced in a wide variety of other situations. District managers wore insignia, including baseball caps and shirts with various logos, while dealing with the public. I find that by promulgating and enforcing its unwritten insignia rule prohibiting the display of union insignia in December 2000, Respondent violated Section 8(a)(1) of the Act.

4. The October 25 Counterproposal No. 26

General Counsel and Charging Party argue that Respondent's Counterproposal No. 26 is an illegal subject of bargaining. It is argued that Respondent's continued insistence on Counterproposal No. 26 in collective bargaining violated Section 8(a)(5) of the Act. Respondent contends that Counterproposal No. 26 is a mandatory subject of bargaining. Consequently, there is no violation of Section 8(a)(5) of the Act.

a. The Law

Neither party may require the other to agree to contract provisions that are unlawful under the Act. *National Maritime Union (Texas Co.),* 78 NLRB 971, 981-982, enf'd 175 F. 2d 686 (2d Cir. 1949). However, merely proposing or bargaining about an illegal subject does not necessarily violate the Act. A violation occurs when the opposing party has rejected the illegal proposal and the proponent continues to insist on the illegal subject. In *California Pie Co.,* 329 NLRB 968, 974 (1999), the Board found insistence on an illegal proposal violated Section 8(a)(5) of the Act.

b. The Analysis

Respondent contends that Counterproposal 26 must be read in conjunction with the entire Communications Policy that applies to all employees. Its argument seems to be that the union ban on use of communications equipment in Counterproposal 26 is part and parcel of the company-wide ban on all non-business use of communications equipment. This argument might hold water but for the fact that there was no enforcement of the Communications Policy on non-business use, other than union use, of communications equipment. Consequently, Respondent's Counterproposal No. 26 is an unlawful codification of a discriminatory policy and constitutes an illegal subject of bargaining.[11] The Union repeatedly objected to this counter proposal and filed an unfair labor practice charge with the Board. The Region dismissed this charge and later revoked the dismissal. Respondent's refusal to withdraw its illegal proposal violated Section 8(a)(5) of the Act.

Conclusions of Law

1. By maintaining a rule which prohibits employees from wearing of union insignia and by discriminatorily maintaining and enforcing a rule which prohibits use of communications

[11] Respondent's reliance on Board cases that find computer access policy and the use of other communications equipment mandatory subjects of bargaining is inapposite. The issue here is not whether the Communications Policy was a mandatory subject of bargaining but whether Counterproposal 26 was an illegal subject of bargaining.

equipment for union purposes Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By warning Suzi Prozanski on May 5 and August 22 Respondent violated Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

3. By proposing, insisting upon and refusing to withdraw Counterproposal No. 26 during collective bargaining, Respondent violated Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

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.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Guard Publishing Company d/b/a Register-Guard, Eugene, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminatorily maintaining a rule that prohibits its employees from using its electronic communications systems for union purposes.

(b) Maintaining rules that prohibit a display of union insignia

(c) Issuing written warnings to employees to discourage their activities on behalf of the Union.

(d) Refusing to bargain in good faith with Eugene Newspaper Guild, CWA Local 37194 (Union) as the exclusive collective bargaining representative of employees in the following appropriate unit:

> All employees described in the collective bargaining agreement between Respondent and the Union, effective from October 16, 1996 to April 30, 1999.

(e) 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.

[12] 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.

(a) Withdraw Counterproposal No. 26 in any future negotiations with the Union over terms of a collective bargaining agreement.

(b) Rescind the rule prohibiting the display of union insignia.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings to Suzi Prozanski, and within 3 days thereafter notify Prozanski in writing that this has been done and that the warnings will not be used against her in any way.

(d) Within 14 days after service by the Region, post at its facility in Eugene, Oregon copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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 March 7, 2000.

(e) 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.

(f) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, San Francisco, California, February 21, 2002.

_____
John J. McCarrick
Administrative Law Judge

[13] If this Order is enforced by a Judgment of the 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."

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 had 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 discriminatorily maintain or enforce a rule that prohibits employees from using electronic communications systems for union purposes.

WE WILL NOT maintain rules that prohibit a display of union insignia.

WE WILL NOT issue written warnings to employees to discourage their activities on behalf of the Union.

WE WILL NOT refuse to bargain in good faith with Eugene Newspaper Guild, CWA Local 37194 (Union) as the exclusive collective bargaining representative of employees in the following appropriate unit:

All employees described in the collective bargaining agreement between Respondent and the Union, effective from October 16, 1996 to April 30, 1999.

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

WE WILL withdraw Counterproposal No. 26 in any future negotiations with the Union over terms of a collective bargaining agreement.

WE WILL rescind the rule prohibiting the display of union insignia.

WE WILL within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings to Suzi Prozanski, and within 3 days thereafter notify Prozanski in writing that this has been done and that the warnings will not be used against her in any way.

THE GUARD PUBLISHING COMPANY, d/b/a THE REGISTER-GUARD

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal Agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to an agent with the Board's SubRegional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

601 S.W. Second Avenue, Suite 1910, Portland, Oregon 97204
(503)-326-8085 Hours of Operation: 8:00 a.m. to 4:30 p.m.

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 601 S.W. Second Avenue, Suite 1910, Portland, Oregon 97204, Telephone (503)-326-8085.