

**West Side Plymouth, Inc. and Professional Automobile Salesmen Union, Local 436, affiliated with Office and Professional Employees International Union, AFL-CIO.** Cases 8-CA-4561-1, -2 and 8-CA-4658

December 16, 1969

**SECOND SUPPLEMENTAL DECISION  
AND ORDER**

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On March 22, 1968, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding,<sup>1</sup> and on June 11, 1969, an amendment thereto, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, and ordering the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act, including an order directing the Respondent to bargain with the Union.

On June 16, 1969, the Supreme Court of the United States issued its opinion in *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575, in which it laid down certain guidelines relative to the propriety of finding violations of Section 8(a)(5) and issuing orders to bargain based upon such violations or violations of other sections of the Act. On August 12, 1969, the Board notified the parties of its decision to reconsider and invited statements of position. Statements of position have been received from the Respondent and the General Counsel. We have again reviewed the entire record including the statements of position and, having reconsidered the matter, affirm the Board's original finding and order in this respect for the reasons stated below.

In its original decision the Board found, in agreement with the Trial Examiner, that Respondent had engaged in violations of Section 8(a)(3) and (1) in that it discriminatorily refused to reinstate striking employees, and imposed stricter and more arduous working conditions upon its employees because of their selection of a bargaining representative, and that Respondent had engaged in violations of Section 8(a)(1) in that it coercively interrogated employees and threatened its employees with store closure and loss of employment because of their selection of a bargaining representative. The

Board also found that a majority of Respondent's employees had signed valid authorization cards for the Union<sup>2</sup> and that the Respondent had violated Section 8(a)(5) and (1) when it refused to bargain with the Union.

In *Gissel, supra*, the United States Supreme Court approved the Board's authority to issue a bargaining order to redress unfair labor practices "so coercive that, even in the absence of a Section 8(a)(5) violation, a bargaining order would have been necessary to repair [their] unlawful effect." The Court also held that in circumstances where the unlawful conduct is less flagrant, the Board may find an 8(a)(5) violation and issue a bargaining order if it finds that ". . . the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies . . . is slight and that employee sentiment . . . expressed through cards would, on balance, be better protected by a bargaining order . . ."

Having carefully considered the matter in the light of the *Gissel* decision, we reaffirm our original finding that a bargaining order is necessary and the only effective remedy for the substantial violations of Section 8(a)(3) and (1) found herein.

We also find that the violations of Section 8(a)(3) and (1) were of such a nature as to have such a lingering effect that the possibility of erasing these effects and of ensuring a fair election or rerun election by the use of traditional remedies was slight. In these circumstances, we are of the opinion and find that, on balance, the rights of the employees and the purposes of the Act would be best effectuated by reliance on the employee sentiments expressed by the authorization cards.

**ORDER**

Based on the foregoing and the entire record in this case, the National Labor Relations Board hereby affirms its order issued in this proceeding on March 22, 1968, as amended by its Supplemental Order issued June 11, 1969.

<sup>1</sup>170 NLRB No. 98

<sup>2</sup>Contrary to Respondent's contention, there is nothing in the Court's opinion in *Gissel* which would indicate that when used as herein authorization cards must state affirmatively that they will not be used for an election. Rather, the Court states that where, as here, the cards state clearly and unambiguously on their face that the signer designates the Union as his representative they are to be taken at face value, absent affirmative proof that the signing was a product of misrepresentation or coercion. *Gissel Packing Co., supra*, citing with approval *Cumberland Shoe Corp.*, 144 NLRB 1268; *Levi Strauss & Co.*, 172 NLRB No. 57