

**A. J. Krajewski Manufacturing Co., Inc. and United Steelworkers of America, AFL-CIO**  
**A. J. Krajewski Manufacturing Co., Inc. and United Steelworkers of America, AFL-CIO, Petitioner.**  
 Cases 1-CA-5666 and 1-RC-9085

February 3, 1970

**SUPPLEMENTAL DECISION AND ORDER**

**BY MEMBERS FANNING, BROWN, AND JENKINS**

On September 20, 1968, the National Labor Relations Board issued its Decision in the above-entitled proceeding,<sup>1</sup> finding that Respondent had engaged in certain conduct in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, and ordering Respondent to cease and desist therefrom, and to take certain affirmative action, set forth therein. Thereafter, on July 17, 1969, the United States Court of Appeals for the First Circuit entered its order in this case,<sup>2</sup> finding no substantial evidence to support the Board's 8(a)(1) finding with respect to creating the impression of surveillance, enforcing the Board's 8(a)(3) finding of Andreoli's discriminatory discharge, and affirming the Board's factual finding that the Union, on July 13, 1966, possessed valid union authorization cards from a majority of the employees in the unit. However, the court remanded the remaining portion of the Board's Decision and Order for reconsideration by the Board of its 8(a)(5) finding and its order to bargain in light of the guidelines laid down by the Supreme Court of the United States in *N.L.R.B. v. Gissel Packing Company*.<sup>3</sup>

Following the remand, the Board, on August 12, 1969, issued a notice permitting the parties to submit statements of position with respect to the issue remanded by the court of appeals. Such statements were duly filed by the Respondent, Charging Party, and General Counsel.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the statements of position and the entire record in this proceeding and, for the reasons set forth below, shall reaffirm its original finding that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize the Union as majority representative of the employees, and further finds that a bargaining order is necessary to effectuate the purposes and policies of the Act.

The record shows that Andreoli was the leader of the union movement among the employees, having made the initial contact with the union representatives and having solicited the bulk of the authorization cards. Andreoli was discharged during the critical preelection period. Respondent contends, in its statement of position, that this discharge was the result of a single isolated action and is insufficient to establish a violation of Section 8(a)(5) or to sustain a bargaining order. We find no merit in this contention. It is a well-established fact that a discriminatory discharge of an employee because of his union affiliation goes to the very heart of the Act. Furthermore, the discharge of the union leader, as here, serves as a warning to the employees that the employer has the power to take action which affects the employees' livelihoods and that it is willing to implement such power against Union adherents. The implementation of such power against the union ringleader is just as likely to accomplish the destruction of employee support for unionization as would a greater number of unfair labor practices which individually have a lesser impact.

In *Gissel, supra*, the Supreme Court stated, *inter alia*, that the Board may find an 8(a)(5) violation and issue a bargaining order where "the possibility of erasing the effects of [the] past practices and ensuring a fair election (or a fair rerun) by the use of traditional remedies . . . is slight and . . . [therefore] employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order . . ."<sup>4</sup>

In our opinion, a bargaining order is warranted on the facts of this case. After rejecting the Union's bargaining demand, the Respondent successfully used the time available before the election to undermine the Union's majority by discriminatorily discharging Andreoli, the leader of the Union's organizational drive among the employees. It is unlikely that the lingering coercive effect of this discriminatory discharge could be neutralized by conventional remedies so as to ensure a fair rerun election. We therefore find that the employee sentiment expressed through the cards is a more reliable measure of employee desires and that statutory policies are better effectuated by issuing a bargaining order than directing a rerun election. Accordingly, we shall reaffirm the 8(a)(5) and (1) finding and the remedy provided therefor in the original Decision and Order herein.

**SUPPLEMENTAL ORDER**

In view of the foregoing, and on the basis of the record as a whole, the National Labor Relations Board reaffirms its Order of September 20, 1968, in this proceeding with respect to the 8(a)(5) and (1) finding and the issuance of a bargaining order.

<sup>1</sup>172 NLRB No. 245.

<sup>2</sup>*A. J. Krajewski Manufacturing Co., Inc. v. N L R. B.*, 413 F 2d 673.

<sup>3</sup>395 U.S. 575

<sup>4</sup>*Id* at 614