

**Beaver Bros. Baking Co., Inc. d/b/a American Beauty Baking Co. and American Bakery and Confectionery Workers International Union, AFL-CIO and Blair Kelly.** Cases 6-CA-3455 and 6-CA-3518

May 27, 1970

**SUPPLEMENTAL DECISION AND ORDER**

BY MEMBERS FANNING, BROWN, AND JENKINS

On May 23, 1968, the National Labor Relations Board issued its Decision and Order in the above-entitled proceedings,<sup>1</sup> finding that the Respondent had engaged 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 take certain affirmative action designed to effectuate the policies of the Act, including an order directing Respondent to bargain with the Union.

On June 16, 1969, the Supreme Court of the United States issued its decision in *N.L.R.B. v. Gissel Packing Company*, 395 U.S. 575, affirming generally the Board's use of authorization cards in determining a union's majority status, and the Board's power to issue a bargaining order based upon such showing where the employer's unfair labor practices had a tendency to undermine the Union's majority and impede the election process.

Thereafter, the United States Court of Appeals for the District of Columbia remanded the instant proceeding to the Board for reconsideration in the light of the Supreme Court's opinion in *Gissel*. On October 28, 1969, the Board issued a notice permitting the parties to file statements of position with respect to the application of *Gissel* to this proceeding. Subsequently, the Respondent and the General Counsel filed timely statements in support of their respective positions.<sup>2</sup>

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

We have again reviewed the entire record, including the statements of position, and, having reconsidered the matter, affirm our original finding and order in this respect for the reasons stated below.

In our initial Decision we found, in agreement with the Trial Examiner, that the Respondent violated Section 8(a)(1) of the Act. These unlawful acts are fully detailed in the Trial Examiner's original Decision and summarized in our original Decision. Contrary to the Trial Examiner, however, we found and concluded that Respondent's 8(a)(1) violations were not minimal, but were, in fact,

substantial enough to support an inference of bad faith on the part of the Respondent in its refusal to recognize the Union as representative of an uncoerced majority of its employees in an appropriate unit, and that Respondent's unlawful conduct had for its purpose the impeding and coercing of its employees in the exercise of their statutory rights. The Board also found that Respondent discriminatorily discharged three employees in violation of Section 8(a)(3) and (1) of the Act, and, further that the strike that began on September 21, 1965, in protest of Respondent's conduct was at its inception an unfair labor practice strike.

With respect to the 8(a)(5) allegation of the complaint, the Board found that at all times material the Union represented an uncoerced majority in an appropriate unit of Respondent's employees and was entitled to recognition as their exclusive collective-bargaining representative; and that, in the absence of any convincing evidence that Respondent had any reasonable basis upon which it could validly assert a good-faith doubt of the Union's majority, Respondent's refusal to recognize the Union was in violation of Section 8(a)(5) of the Act. The Board issued a bargaining order.

We are convinced after a careful reexamination of the facts herein in the light of the standards set forth in the Supreme Court's opinion in *Gissel* that a bargaining order is warranted. The Respondent's campaign to defeat the Union's organizational efforts consisted not only of serious acts of interference, restraint, and coercion against its employees in violation of Section 8(a)(1), but included the discriminatory discharge of three employees in violation of Section 8(a)(3). These unfair labor practices tended to destroy the Union's majority status achieved by authorization cards and to prevent a free election. In our view, it is unlikely that the effect of these unfair labor practices could be neutralized by conventional cease-and-desist remedies which would ensure a fair election. We therefore find that the employees' desires as expressed through the authorization cards are a more reliable measure of their stand on the issue of representation, and that the policies of the Act will be better effectuated by the issuance of a bargaining order. Therefore, the bargaining order previously issued to remedy the Respondent's unfair labor practices is appropriate to remedy its violations of Section 8(a)(5) and (1), and we shall affirm it.

**SUPPLEMENTAL ORDER**

In view of the foregoing, and on the basis of the record as a whole, the National Labor Relations Board affirms its Order issued in this proceeding on May 23, 1969.

evidence, make new findings, and reconsider his prior findings. The General Counsel has filed a statement in opposition thereto. We conclude that the issues on the record before us have been fully litigated and further that there is no basis for remanding the case to the Trial Examiner for reconsideration of his prior finding or for the making of new findings. Accordingly, Respondent's motion is denied.

<sup>1</sup> 171 NLRB No 98

<sup>2</sup> The Respondent has also filed a motion to remand to the Trial Examiner for the purpose of reopening the record to adduce additional