All-Tronics, Inc. *and* Local 868, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 29-CA-1233

October 14, 1969

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND ZAGORIA

On April 29, 1969, the National Labor Relations Board issued its Decision in the above-entitled proceeding,[1] 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 August 5, 1969, the Board informed the parties that the Board would reconsider its 8(a)(5) finding and the bargaining order in this case in the light of the guidelines laid down by the Supreme Court in *N.L.R.B* v *Gissel Packing Company,*[2] and invited the parties to file statements of position Such statements have been filed by the General Counsel and Respondent.

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 that a bargaining order is necessary to effectuate the purposes and policies of the Act in this case

Insofar as is relevant here, the Supreme Court in *Gissel Packing, supra,* in stating the general principles applicable to the issuance of bargaining orders, agreed that the Board has 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 the unlawful effect of those [unfair labor practices]."[3] Additionally, the Court approved the Board's authority to issue a bargaining order ". in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." In the latter situation, the Board is to examine the nature and extent of the employer's unlawful conduct and ascertain the likelihood that use of traditional remedies would ensure a fair election. In applying these general principles to the cases before it, the Court remanded three of them to the Board for a determination as to "[whether] even though traditional remedies might be able to ensure a fair election there was insufficient indication that an election (or a rerun . . .) would definitely be a more reliable test of the employee's desires than the card count taken before the unfair labor practices occurred."

In our opinion, a bargaining order is warranted on the facts of this case under either of the above standards. Thus, Respondent's numerous violations of the Act prior to the election included threats of more strigent work discipline, limitations on pay increases, and a resort to layoffs should the employees choose a union, as well as interrogations of employees concerning their union sympathies. Thereafter, four employees were discriminatorily laid off, including the principal union organizer. The Union, though possessing valid authorization cards from a majority of the employees, failed to receive a majority in the election, which was subsequently set aside on the basis of Respondent's unlawful conduct. Following the election, and while objections were pending, Respondent granted a general wage increase designed to further erode Union support.

By engaging in such conduct, Respondent demonstrated a propensity to engage in violations of the Act under conditions which heighten the possibility that relief in the form of customary cease and desist, backpay, and reinstatement provisions, etc., will not effectuate statutory policies herein. In these circumstances, we are satisfied that a bargaining order would be necessary, even in the absence of an 8(a)(5) violation, to remedy the other unfair labor practices in this case. Additionally, we find that Respondent, by engaging in the foregoing conduct and refusing to recognize the Union as majority representative of its employees, violated Section 8(a)(5) and (1) of the Act The Respondent's pattern of unlawful conduct was of such a nature as to have a lingering effect and use of traditional remedies here is unlikely to ensure a fair or coercion-free rerun election. We are persuaded that the unambiguous cards validly executed by a majority of employees in the unit represent a more reliable measure of employee desire on the issue of representation in this case, and that the policies of the Act will be effectuated by the imposition of a bargaining order. Accordingly, we shall reaffirm the findings and remedy provided in the original Decision and Order herein.[4]

[1] 175 NLRB No 110
[2] 395 U S 575
[3] *Id* at 615
[4] *General Stencils, Inc*, 178 NLRB No 18, *World Carpets, Inc*, 176 NLRB No 138

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 April 29, 1969, in this proceeding