

Welcome-American Fertilizer Co. and Welcome Fertilizer Co. and Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 490, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 20-CA-4194

October 20, 1969

SUPPLEMENTAL DECISION AND
ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN

On February 16, 1968, the National Labor Relations Board issued its Decision and Order (169 NLRB No 104) in the above-entitled case, modifying in certain respects the Decision issued by the Trial Examiner on May 29, 1967; in all other respects adopting his findings and conclusions, and ordering the Respondent, Welcome-American Fertilizer Co. and Welcome Fertilizer Co., Dixon, California, to take the action set forth in the Board's Order.

The Board¹ thereby adopted the Trial Examiner's conclusions that, by laying off four employees on August 5, 1966, the Respondent had violated Section 8(a)(3) of the Act, by refusing the Union's demand for recognition made on August 4, 1966, the Respondent had violated Section 8(a)(5) of the Act; and that the traditional remedies of backpay, reinstatement, and the issuance of a bargaining order were appropriate to the violations found.

On June 16, 1969, the Supreme Court of the United States issued its decision in *NLRB v. Gissel Packing Company*, 395 U.S. 575, setting forth certain principles relative to the proper construction of Section 8(a)(5) and (1) and the issuance of bargaining orders thereunder. On August 19, 1969, after requesting and receiving remand of

the instant case from the United States Court of Appeals for the Ninth Circuit, the Board issued a notice to all parties to this proceeding, stating its intention to reconsider its Decision and Order in the light of *Gissel Packing Company* and giving the parties leave to file statements of position with respect to such reconsideration. Counsel for the General Counsel and the Respondent have filed statements of position.

We have carefully measured the record in this case against the criteria outlined by the Supreme Court. We reaffirm our previous finding that the Respondent committed a violation of Section 8(a)(5) requiring the issuance of a bargaining order. By unlawfully laying off four of the eight employees in the appropriate unit, all of whom had signed valid authorization cards for the Union, the Respondent has, we find, engaged in unfair labor practices of such an extensive and pervasive character as to require the issuance of a bargaining order even in the absence of a Section 8(a)(5) violation. *The Sinclair Company v. NLRB*, 395 U.S. 575. Furthermore, as the General Counsel points out, the unfair labor practices shown by this record warrant a finding that, in all likelihood, they have precluded the holding of a fair election, and that reliance upon the sentiment of the employees as expressed by their unanimous signing of authorization cards will best effectuate the policies of the Act. Accordingly, we reaffirm the findings and conclusions, as modified above, and the order we previously issued in this case.

ORDER

It is hereby ordered that the Decision and Order issued in this case on February 16, 1968, be, and it hereby is, affirmed.

¹Pursuant 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