

**American Cable Systems, Inc. and Communications Workers of America, AFL-CIO.** Cases 26-CA-2229 and 26-RC-2447

December 3, 1969

**SUPPLEMENTAL DECISION AND ORDER**

**BY CHAIRMAN McCULLOCH AND MEMBERS BROWN AND ZAGORIA**

On October 24, 1966, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding,<sup>1</sup> 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 including, *inter alia*, an order that the Respondent bargain with the Union upon request.

Thereafter, the United States Court of Appeals for the Fifth Circuit issued a decision,<sup>2</sup> enforcing the Board's order, in part, but denying enforcement in part and remanding the instant proceeding to the Board for reconsideration of the propriety of the bargaining order and the 8(a)(5) finding in view of the Supreme Court's opinion in *N.L.R.B. v. Gissel Packing Company*, 395 U.S. 575. The Board accordingly notified the parties on August 18, 1969, that they might file statements of position. Statements of position have been filed by the Respondent, the Charging Party, and the 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, having reviewed the entire record in this case pursuant to the Court's remand, including the statements of position, makes the following additional findings and conclusions:

In its original Decision the Board made findings, which the Fifth Circuit thereafter affirmed, that: (1) the Respondent violated Section 8(a)(3) of the Act

by discharging two employees; (2) the Respondent violated Section 8(a)(1) of the Act by engaging in interrogations, threats, and promises of benefit, all subsequent to the filing of the election petition in this case but prior to the election herein; and (3) the Union here involved represented a majority of the employees in an appropriate unit as evidenced by authorization cards. In its original Decision the Board also found that the Respondent's conduct interfered with the election and that the Respondent's refusal to bargain with the Union was in bad faith, and thus violative of Section 8(a)(5) of the Act.

Without relying on our earlier finding that the Respondent acted in bad faith in refusing to bargain with the Union as the majority representative of its employees in an appropriate unit, we now find that the Respondent's violations of Section 8(a)(1) and (3) of the Act, as summarized above, not only precluded a fair election, but were of such pervasive and aggravated character as to warrant the finding, which we now make, that an order directing the Respondent to bargain with the Union is necessary to repair their unlawful effects.<sup>3</sup> The aforementioned conduct has undermined the Union's majority, and caused an election to be a less reliable guide to the employees' free choice than the signed authorization cards by which they designated the Union to represent them. We find, accordingly, that by refusing the Union's request and engaging in the aforesaid unfair labor practices, the Respondent violated Section 8(a)(5) of the Act and that an order requiring the Respondent to recognize and bargain with the Union is appropriate to remedy its violation of that section, as well as to remedy the other unfair labor practices found.

**SUPPLEMENTAL 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 October 24, 1966.

<sup>3</sup>The Respondent contends that regardless of the effects which its unfair labor practices may have had upon the possibility of a rerun election at the time this case was originally considered by the Board, the intervening years have brought about a complete employee turnover and thus a free election is now possible and should constitute the Board's remedy in this case. We reject such an approach. Cf. *G.P.D., Inc.*, 179 NLRB No. 31, *Horace Simmons d/b/a Vaca Valley Bus Lines*, 179 NLRB No. 107, and cases cited therein. See also, *N.L.R.B. v. L. B. Foster Company*, 418 F.2d 1 (C.A. 9).

<sup>1</sup>161 NLRB 332.

<sup>2</sup>*N.L.R.B. v. American Cable Systems, Inc.*, 414 F.2d 661 (C.A. 5)