

Interstate Equipment Co., Inc., Interstate Highway Express, Inc., and Cletus G. Allen, Sole Proprietor, d/b/a Allen Motor Express and Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Interstate Equipment Co., Inc., Interstate Highway Express, Inc., and Cletus G. Allen, Sole Proprietor, d/b/a Allen Motor Express and William D. Bundy.

Interstate Equipment Co., Inc., Interstate Highway Express, Inc., and Cletus G. Allen, Sole Proprietor, d/b/a Allen Motor Express and Frank Bugh.

Interstate Equipment Co., Inc., Interstate Highway Express, Inc., and Cletus G. Allen, Sole Proprietor, d/b/a Allen Motor Express and William Bundy. Cases 25-CA-2462, 25-CA-2510, 25-CA-2510-2, and 25-CA-2707

December 10, 1969

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On July 26, 1968, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding (172 NLRB No. 145), wherein it ordered, among other things, that the Respondent cease and desist from refusing to recognize and bargain with the Union notwithstanding the fact that the Union had not received a majority of the votes cast in a Board election. Subsequently, the Supreme Court of the United States in *N.L.R.B. v. Gissel Packing Company*, 395 U.S. 575, June 16, 1969, upheld a Board bargaining order given under similar circumstances. However, in affirming the Board's action the Court delineated the criteria under which a bargaining order would be appropriate. Accordingly, in view of the Supreme Court's decision, the Board, *sua sponte*, has reconsidered the subject case, as well as a number of other similar cases, in light of the criteria set forth by the Supreme Court in *Gissel, supra*, hence the instant supplemental decision. In accordance with Board notice and invitation, statements of position with respect to the impact of the Supreme Court's Decision in *Gissel Packing Company, supra*, on the Board's outstanding Decision and Order in the subject case were filed by the Respondent, General Counsel, and Charging Party.

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 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 in these cases.

We have heretofore found that the Union represented a majority of the Respondent's employees in an appropriate unit on March 1 and 3, 1966, when it made its initial demands for recognition and bargaining upon the Respondent. The Respondent refused the Union's proffer of signed authorization cards for verification of signatures and made it clear that recognition would only be granted after the Union proved its majority through the medium of a Board conducted election. Thereafter, and continuing through April 9, 1966, when the Union failed to receive a majority of the votes cast in a Board-conducted election, the Respondent interrogated its employees as to the activities of the Union and their own union sympathies, threatened reprisals for union adherence, and discharged or laid off a number of employees because of their union activities or membership. Thus C. Allen, one of the Respondent's principal officers, interrogated employees, Eads, Hamilton, and Bundy on separate occasions in regard to their union sympathies and the substance of a number of union meetings, and threatened them with discharge, etc., should the Union be successful in its organizational campaign. Additionally, the Respondent during the period March 3, 1966, through April 9, 1966, implemented its threats and discharged or laid off employees Shepherd, Hamilton, Bugh, and Bundy because of their known membership in, and activities on behalf of, the Union.

The aforementioned conduct of the Respondent occurring subsequent to the demand for recognition and the filing of the election petition, which we have found to be violative of Section 8(a)(1) and (3) of the Act, has undermined the Union's majority strength. By engaging in such conduct and refusing to recognize the Union as majority representative of its employees, the Respondent violated Section 8(a)(5) and (1) of the Act.

Further, we are satisfied that a bargaining order is warranted to remedy the unlawful refusal to bargain. Insofar as is relevant here, the Supreme Court in *Gissel, supra*, 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," and remanded three of the cases before it 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

employees' desires than the card count taken before the unfair labor practices occurred." In the instant case, the Respondent's pattern of unlawful conduct was of such a nature as to have a lingering effect, and the 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.

In view of the extensive violations of the Act committed by the Respondent, both before and subsequent to the settlement agreement (which was revoked by the Regional Director prior to the issuance of the consolidated complaint herein), we are not convinced that the Respondent's action in

subsequently recognizing and executing a 3-year contract with the Union provides an adequate remedy for its prior conduct here disclosed or that there will not be a recurrence of such conduct in the future.¹ Accordingly, we shall reaffirm the unfair labor practice findings and the remedy provided therefor in the original Decision and Order herein.

ORDER

In view of the foregoing, and on the basis of the entire record, the National Labor Relations Board reaffirms its Order of July 26, 1968, in this proceeding.

¹*Southern Tours, Inc.* 167 NLRB No 42, *United States Gypsum Company*, 143 NLRB 1122, 1127, *NLRB v American National Insurance Co.* 343 U.S. 395, 399, In 4, *NLRB v Mexia Textile Mills, Inc.* 399 U.S. 563.