Barkus Bakery, Inc. *and* Matthew Lopinto. Case 6–CA–7269

October 30, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

On June 28, 1974, Administrative Law Judge Stanley N. Ohlbaum issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent, Barkus Bakery, Inc., Allison Park, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

I. PRELIMINARY STATEMENT, ISSUES

STANLEY N. OHLBAUM, Administrative Law Judge: This proceeding under the National Labor Relations Act, as amended (29 U.S.C. Sec. 151, *et seq.*, "Act"), arising from a charge filed by Matthew Lopinto, the Charging Party, on February 11, as amended on March 25, and brought on for hearing by complaint issued by the Board's Regional Director for Region 6 on March 26, was tried before me in Pittsburgh, Pennsylvania, on May 10, with all parties participating throughout by counsel and afforded full opportunity to present evidence and contentions, as well as to file briefs received on June 5 and 6, 1974.

The principal issue here for decision is whether Respondent violated Section 8(a)(1) of the Act by discharging (and failing and refusing to reinstate) its employee Matthew Lopinto (Charging Party herein) because he engaged in concerted activities with fellow employees, protected under the Act, in relation to terms and conditions of their employment, specifically concerning overtime work.

Upon the entire record [1] and my observation of the testimonial demeanor of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

II. JURISDICTION

At all material times Barkus Bakery, Inc., Respondent herein, has been and is a Pennsylvania corporation, with principal office and place of business in Allison Park, Pennsylvania, engaged in manufacturing, marketing through truck distribution by its own drivers, and also the retail sale of bakery products. In the course and conduct of that business during the representative year immediately preceding issuance of the complaint, Respondent received for use at its said Allison Park facility goods and materials whose value exceeded $50,000, directly in interstate commerce from places outside of Pennsylvania.

I find that, as admitted in the pleadings, at all material times Respondent has been and is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

III. UNFAIR LABOR PRACTICES

A. *Facts as Found*

1. Background; persons involved

Respondent operates a bake manufactory and distribution system, as well as retail bakeshop or shops, producing most of its products by hand without automation. It is said that, for this reason, a degree of overtime work is frequently and perhaps usually required by its bakers to assure that products in ovens are completed, and perhaps also by its drivers in the event they cannot complete deliveries within rigid time frames. Accordingly, when employees are hired, it is with the explanation and understanding that they may be required and should be prepared to work overtime, for which they are compensated. At times here material, the average overtime worked by Respondent's bakers and bakers assistants is variously estimated at 4 to 8 hours per week, seemingly perhaps as much as around an hour at the end of the dayshift (10 a.m.–6:30 p.m., with the overtime thereafter).

Respondent's principals are Barkus brothers Leo and Robert—Leo the president and "inside" or office manager-administrator and Robert the vice president and production manager. Each is an agent and supervisor within the meaning of the Act.

Matthew Lopinto, the Charging Party here, entered Respondent's employ in October, 1971, as a truckdriver, on the understanding that overtime would be required "from time to time." In December 1973 he was made a baker's helper, continuing in that capacity until the termination of his employment on February 8, 1974, under circumstances to be described.

[1] General Counsel's unopposed June 3, 1974, motion to correct the trial transcript is granted

2. Termination of Lopinto's employment on February 8, 1974

(a) *Employee's version*

On February 8, 1974, Lopinto reported for work on the day ("second," 10 a.m.–6:30 p.m.) shift at 10 a.m. as usual. At around 10:30, he was detailed to assist fellow employees Coyle and Friedel in making coffeecakes at the conveyor belt. When he arrived there, Coyle remarked to Lopinto that they were "tired of working overtime all the time" and "were going to" take this problem up with Respondent's Foreman Burek and its principal Robert Barkus (production manager). When Coyle asked Lopinto whether he was willing to join the others in this endeavor, Lopinto replied that "if everybody else is going to go along, you can count me in." Since the others likewise agreed, Coyle spoke to Burek and Barkus about it an hour or so later, and so reported to his fellow employees.

After lunch, soon after 2 p.m., Lopinto was instructed by Foreman Burek to "give . . . a hand" to Robert Barkus. Telling Lopinto he had no need for his help, Barkus accompanied him back to Burek and asked the latter why he had referred Lopinto to him (Barkus) when he (Barkus) didn't "need a hand." Without further ado, Barkus thereupon said to Lopinto, "What's this I hear about you not wanting to work overtime tonight?" Lopinto, who with the others had regularly been working an hour past the end of his shift almost every day, replied, "If everyone else is going to go home tonight, I might as well go home too." Barkus responded, "I'm going to tell you what I told everybody else, if you go home, you stay home," adding "As a matter of fact, as far as I'm concerned, you are finished [or, "done"] now." So Lopinto left, indicating to Coyle on his way out that he had been fired. Lopinto has at no time been recalled by Respondent, who concededly within 2 weeks hired a replacement for him and still refuses to reinstate him.[2]

The foregoing account of Lopinto is strongly corroborated by his fellow employees Friedel and Coyle, who, as will be recalled, were direct participants with him in their joint venture to seek relief in their overtime problem.

According to Friedel, a clearly truthful witness (no longer in Respondent's employ since April, 1974) who also regularly worked about an hour a day past his shift, it was he (Friedel) who on the occasion in question opened up the conversation among the employees (Stegmaier or Stegmier, in addition to Friedel, Coyle, and Lopinto) on the subject of overtime, remarking that "I don't think that it is right about the overtime that we are working." When the others, including Lopinto, agreed, Coyle volunteered to approach Foreman Burek on the subject, and they all concurred. When Friedel wondered, "What do you think would happen, if we left at six thirty," Lopinto indicated that he "would go along with us, if we did." Around noon, Coyle told Friedel he had spoken to Burek "about the overtime." Shortly thereafter when Robert Barkus came over to the ovens and asked him "What [is] going on," Coyle said, "I don't think that it is right for one crew to leave early and another crew to stay late." Barkus left, but returned a few minutes and said, "If [you] leave or walk out at six thirty, that is [your] job, don't bother to come back." At around 2 p.m. he overheard Barkus say to Lopinto, at the end of a conversation which he did not pick up, "Well, you can leave now." On cross-examination, Friedel confirmed that there was no "plan," but just "talk," to walk off the job, and that the intention and decision of the men was only to "talk" to management concerning the constant overtime.

Robert Coyle, Jr., who also strongly corroborated Lopinto, has been in Respondent's employ for 11 years and *on the date in question (i.e., February 8) was a foreman-supervisor of Respondent.* He is still in Respondent's employ.[3] He, too, swore that although his shift was from 10 a.m. to 6:30 p.m., he also normally was required to work until 7:30 or even 8 p.m. "just about every day." Around 10:30 a.m. on February 8, he assembled a coffeecake work crew consisting of Friedel, Lopinto and Stegmaier, in addition to himself. Friedel commented about the unfairness of being constantly required to stay late overtime, with some getting off early and some working late. Coyle agreed but remarked that there was "not too much we can do about it." Friedel speculated, "What do you think would happen, if we walked out at six thirty"—i.e., at the end of the shift. In response to a question by Coyle, Lopinto indicated he would join the others provided they all did so. Coyle—then a supervisor—opined that if they did they need not "plan on coming back," but nevertheless volunteered to talk to Foreman Burek about it "and maybe straighten something up, and get something settled." Around 12:30 he took the matter up with Burek and shortly thereafter with Robert Barkus (with whom Coyle had seen Burek talking after Coyle spoke to Burek). Barkus asked Coyle, in Burek's presence, "Who is this bitching about the overtime?" Coyle gave Barkus the names of the employees (including Lopinto) who were unhappy about the constant overtime. Barkus remarked, "Anybody who don't work until the job is done, is through." Coyle said nothing. Later that afternoon, Lopinto informed Coyle—who, as aforestated, was then a supervisor—that he had been "fired"; expressing incredulity, Coyle returned to work. Testifying later also as a rebuttal witness called by General Counsel, Coyle disclosed that about a month after Lopinto's termination, the hours of the first shift, which had been 6 a.m.–2:30 p.m., were changed to 8 a.m.–4:30 p.m.; and that a few weeks later, the hours of the second shift (i.e., the shift Lopinto had been on) were changed from 10 a.m.–6:30 p.m. to 11 a.m.–7:30 p.m., which they remain today.[4]

(b) *Employer's version*

Respondent's version of the foregoing events was provided by the Barkus brothers, their Foreman Burek, and

[2] The foregoing is based upon credited testimony of Lopinto, to my observation a straightforward and credible witness

[3] That this factor deserves weight in assessing a witness' credibility, since he testifies at the risk of incurring his employer's displeasure if not reprisal, see, e g, *Georgia Rug Mill,* 131 NLRB 1304, 1305 (1961), fn 2, enfd as modified 308 F 2d 89 (C A 5, 1962), *Wirtz* v *B A C Steel Products, Inc*, 312 F 2d 14, 16 (C A 4, 1962)

[4] Since Coyle was not cross-examined and no controverting proof was offered regarding this, his testimony concerning the changed shift hours is unchallenged

their truckdriver Kastanis. In essence, these witnesses stressed that overtime is an agreed as well as essential feature of Respondent's business operation; that any employee unwilling to work overtime is in violation of his employment agreement; that Lopinto was not discharged but "quit on his own accord"; that no protected concerted activity is involved; and that Lopinto never sought restoration to his job, which is no longer available to Lopinto since a replacement has been hired.

Thus, Respondent's vice president and production manager, Robert Barkus, was insistent in his testimony that if employees did not work overtime as required "it would disrupt everything, because then everybody would want to do the same thing," with consequent spoilage of products in process of baking, and that there is "no" way to avoid overtime. In similar vein, his brother Leo B. Barkus, Respondent's president, insists that work on hand at the end of the shift "must" be completed, that it is "just not in the ball game" to "walk off" until "the job is completed," that it is "impossible to operate" otherwise, and that it is not feasible to eliminate overtime.[5]

According to Robert Barkus, early in the afternoon of February 8 Respondent's Foreman Burek informed him that Coyle had reported to him (Burek) that Lopinto and Friedel had "threatened to walk out, if they had to work any more overtime." I do not credit this, preferring instead the testimony of Coyle, Lopinto, and Friedel as described above; or, alternatively, I find that if Barkus was indeed told this by Burek—whom I found to be less than impressive as a witness—Burek inaccurately reported to Barkus what he (Burek) had been told by Coyle concerning the intentions and statements of Lopinto and Friedel uttered within the frame of reference of protected concerted activity on their part.[6]

Further, according to Robert Barkus, he soon thereafter asked Lopinto, "What's this I hear about you refusing to work any more overtime," to which Lopinto merely "nodded his head"; and that when Barkus thereupon continued, "I also hear that you are going to walk out tonight, after eight hours . . . you know how short handed we are . . . if you walk out today . . . you can consider yourself done," to which Barkus merely shrugged his shoulders, said "okay," and walked out. As to this, I unhesitatingly, upon comparative demeanor observations and the record as a whole, prefer the version, as described above, put forward by Lopinto and the other employee witnesses of General Counsel; and I find that Lopinto at no time indicated that he was walking out, refusing to work, or quitting his job.[7, 8]

Also testifying as Respondent's witness, Foreman Jerry ("Gerry") Burek, who has been in its employ for 18 years, stresses that Respondent's rule has been that "if there was overtime, you had to work it." Burek's version of the events of February 8 is somewhat at variance with that of Robert Barkus. According to Burek's account, after he told Barkus that one or two employees "didn't want to work overtime" he sent Lopinto over to Barkus to give him a hand and shortly thereafter he heard Barkus ask Lopinto, "What's this I hear about you wanting to walk out, and not working the overtime," to which Lopinto replied,"Yes"; and that when Barkus thereupon asked Lopinto if he "would walk out," Lopinto again replied "Yes." Thereupon, still according to Burek, Barkus remarked, "If you don't want to work until the job is complete, you might as well leave now," [9] to which Lopinto said "Okay," shrugged his shoulders, and left—never to return. Burek concedes, however, that he is unable to recall "other" portions of the conversation. Again, on comparative demeanor observations and the record as a whole, I prefer and credit the version of Lopinto and the other employee witnesses.[10]

B. *Resolution and Rationale*

Drawn into a discussion of fellow employees concerning the supposed unfairness of being required to work overtime day after day as a steady diet and the desirability of attempting to remedy the situation, Lopinto agreed with the others, while at the same time making it clear that he would not act alone but only in concert with the other employees. One of the group, a supervisor (Coyle) volunteered to take the matter up with higher management, which he did. Almost immediately thereafter, higher management in effect accused Lopinto of threatening to walk off the job. When Lopinto indicated he had no such intention unless all of the others did so, he was nevertheless informed by the firm's production chief and executive that "as far as I'm [Robert Barkus] concerned you are finished [or, "done"] now." Under all of the circumstances, Lopinto reasonably construed this to be his job termination—as he immediately thereafter indicated to Respondent's Supervisor Coyle, who did not seek to disabuse him, any more than did anybody else in Respondent's hierarchy, which shortly thereafter hired somebody else to fill Lopinto's job and to this day refuses to reinstate him.

Two basic questions are presented, each raised by Respondent's contentions. *First,* was Lopinto's participation in the described employees' activity concerning their overtime problem concerted activity within the Act's protection; *second,* was Lopinto discharged or did he quit? I resolve both questions in Lopinto's favor.

[5] Claiming he does not know whether employees were "really unhappy" about the overtime situation (which, as noted above, was seemingly changed after the termination of Lopinto's employment), Leo Barkus maintained at the trial that "my office door is open all the time."

[6] Cf. *N.L.R.B. v. Burnup & Sims, Inc.*, 379 U.S. 21 (1964).

[7] Cross-examination educed from Lopinto the testimony that he had no intention of walking off the job on February 8 regarding the overtime but, on the contrary, to continue working overtime "if everyone else stayed if they would have went home, I would have went home." This is in effect what Lopinto testified he told Barkus, and I believe Lopinto. It is clear to me upon the record as a whole, including assessment of comparative demeanor and weighing the combined credibility of witnesses on one side against those—primarily Robert Barkus—on the other, that Lopinto (the same as other employees unhappy about the overtime situation) merely wished to discuss it with management and at no time intended to nor would have walked out or off the job individually, but only if *all* employees did so together at the same time. I so find.

[8] Also according to Robert Barkus, when, after speaking to Lopinto he later asked Friedel, "What is this, I hear about you refusing to work any more overtime," Friedel simply did not answer him. Friedel subsequently left the job for other employment.

[9] I credit Lopinto's denial that Barkus said this or put it to him in this way.

[10] Respondent's remaining witness, its truckdriver Kastanis, testified that he considers himself obligated to work overtime if he is out on the road with his truck.

Employees who together seek amelioration concerning terms or conditions of their employment are exercising a right guaranteed to them under the Act. For so doing, they may not be discharged without violating the Act. *N.L.R.B.* v. *Washington Aluminum Company, Inc.*, 370 U.S. 9, 16–17 (1962); *Morrison-Knudsen Company, Inc.*, 173 NLRB 56 (1968), and cases cited at 59, fn. 11, enfd. 418 F.2d 203 (C.A. 9, 1969). The expressed desire of Respondent's employees acting together, including Lopinto, for relief from what they regarded as onerous if not intolerable, constant overtime requirements, is typically the sort of concerted activity concerning a term and condition of employment which falls within the Act's protection. *Id;* see also *Union Electric Company,* 196 NLRB 830 (1972); *Poly-Tech, Incorporated,* 195 NLRB 695 (1972); *First National Bank of Omaha,* 171 NLRB 1145 (1968), enfd. 413 F.2d 921 (C.A. 8, 1969); *Louis Page Contracting,* 166 NLRB 629 (1967); *Modern Cleaners Company,* 100 NLRB 37 (1952), enfd. 208 F.2d 243 (C.A. 2, 1953). It is no answer to the Act's requirements to insist, as Respondent does here, that the employees' "employment agreement" requires them to work overtime. Such a "requirement" does not override the Act's guarantees. Cf. *Schultz, Snyder & Steel Lumber Company,* 198 NLRB No. 72 (1972),[11] Respondent could with equal invalidity contend that the special nature of its business and the express terms of its employees' employment agreements rule out union organizational membership or activity. Economic detriment to the employer does not provide justification for his failure to comply with the Act's requirements. In *Washington Aluminum, supra,* the Supreme Court held unlawful the discharge of employees for actually walking out of a shop (which they regarded as too cold for work), even though in contravention of an express company requirement of permission to leave the job. Mr. Justice Black stated for the Court, 370 U.S. at 17 "Indeed, concerted activities by employees for the purpose of trying to protect themselves from working conditions as uncomfortable as the testimony and Board findings showed them to be in this case are unquestionably activities to correct conditions which modern labor-management legislation treats as too bad to have to be tolerated in a humane and civilized society like ours." Whether the employees' situation here falls within the same or an analogous category to that in *Washington Aluminum* and its satellite cases is beside the point; the teaching is clear that employees have the right under the Act to associate themselves for concerted redress of grievances, regardless of whether that redress would be costly or even economically catastrophic to their employer.

Here it will also not be overlooked that the employees did not even, as in *Washington Aluminum,* walk out; they merely addressed themselves to management, for which Lopinto lost his job. Since Respondent's employees, including Lopinto, could not lawfully have been discharged had they gone out on strike concerning Respondent's overtime policy, they could not lawfully be discharged for taking the lesser action they did here. Cf. *N.L.R.B.* v. *Globe Wireless, Ltd.,* 193 F.2d 748, 750 (C.A. 9, 1951) and cases cited; *Cusano d/b/a American Shuffleboard Co.* v. *N.L.R.B.,* 190 F.2d 898, 902 (C.A. 3, 1951), and cases cited. Here, "what the workmen did was more reasonable and less productive of loss to all concerned than an outright strike." *N.L.R.B.* v. *Kennametal, Inc.,* 182 F.2d 817, 819 (C.A. 3, 1950). " 'The language of the Act does not require and its purposes would not be served by holding that dissatisfied workmen may receive its protection only if they exert the maximum economic pressure and call a strike.' " *N.L.R.B.* v. *J. I. Case Co.,* 198 F.2d 919, 922 (C.A. 8, 1952), cert. denied 345 U.S. 917 (1952).

Upon the facts as found and record presented, I find and conclude that the activities of Respondent's employees, including Lopinto, on February 8, 1974, constituted concerted activities protected by Section 7 of the Act, and that discharge therefore would be and was in violation of Section 8(a)(1) of the Act.

The remaining question is whether Lopinto was discharged or whether he quit. Accepting and finding, as I have, the version of Lopinto (as corroborated by his fellow employees, one of whom—Coyle—was Respondent's supervisor and is still in its employ) concerning the circumstances attending, as well as those preceding and succeeding, that incident, I believe and accordingly find that Respondent intended to and did in fact terminate Lopinto's employment on the occasion in question, and that Lopinto reasonably construed its words and actions in just that way.

No particular form of words need be used to constitute a discharge. "The fact of discharge of course does not depend on the use of formal words of firing. It is sufficient if the words or action of the employer 'would logically lead a prudent person to believe his tenure had been terminated' [citations]." Blackmun, J., in *N.L.R B.* v. *Trumbull Asphalt Company of Delaware,* 327 F.2d 841, 843 (C.A. 8, 1964). See also *General Tire & Rubber Co.* v. *N.L.R B.,* 451 F.2d 257, 258, fn. 1 (C A. 1, 1971), where the court characterized a similar employer contention that the employee had "quit voluntarily" as "too frivolous to warrant discussion"; *N.L.R B.* v. *Central Oklahoma Milk Producers Assn.,* 285 F.2d 495, 497–98 (C.A. 10, 1960); *Kut-Kwick Corporation,* 176 NLRB 635, 647–651 (1969).

Not only did Lopinto justifiably interpret the described transaction between principal and Production Manager Barkus and himself as a dismissal from Respondent's employ, but it is entirely clear from the testimony of

[11] *C G Conn, Ltd* v *N L R B,* 108 F 2d 390, 397 (C A 7, 1939), relied upon by Respondent, is distinguishable from the situation presented here In *Conn* (involving Sec 8(a)(3) and (1)), the employees were unilaterally attempting to set their own work terms and conditions In *Conn,* unlike the instant case (involving Sec 8(a)(1)), there is no indication that the employees' actions grew out of contractually established terms and conditions of employment as herein (*Resp br,* p 6, alludes to the "contract' here), which the employees merely sought concertedly in good faith to attempt to persuade the employer to change or improve An employee asserting a claim arising out of a contractually established term or condition of employment applicable to all employees, as herein, is engaged in furtherance of activity together with his fellow employees who seek in concert to change that common term or condition of employment Such concerted activity is protected under the Act See the scholarly discussion on this point by Circuit Judge Lay in *Illinois Ruan Transport Corporation* v *N L R B,* 404 F 2d 274, 284 (C.A 8, 1968) (Although Judge Lay's exposition is contained in a dissenting opinion, the majority took no issue with those views, but reached its conclusion that a discharge was justified upon the assumption that the activity resulting in the discharge was concerted)

Respondent's principals (i.e., the two Barkus brothers), as well as the arguments and position of its counsel, that Respondent would not tolerate in its employ an employee unwilling to work overtime in accordance with its requirements. (The simple fact here is, however, that Lopinto was dismissed even though he in fact never refused to work overtime.) I find that Lopinto did not quit, but was discharged from Respondent's employ.

While Respondent undoubtedly has the right to operate overtime and to require its employees to do so, it violates the Act when, as here, it discharges an employee who in concert with other employees expresses the desire not to do so or who indicates that in concert with others he will not do so, or who associates himself with his fellow employees in these desires or aspirations or in the intention to discuss them with his employee or otherwise seek amelioration through lawful means. *Washington Aluminum* and cases cited *supra.*

Respondent contends, finally, that Lopinto has lost his right to his job by failing to seek reinstatement, and that his job is no longer open to him since somebody else has been hired in his place. By no means is it true that an employee who has been unlawfully discharged must demand reinstatement. He may, as he did here, justifiably assume that, in view of his discharge, such a demand is not only unnecessary but would be futile—as Lopinto indeed testified, without contradiction, it invariably was in the case of others, always "no soap." He may, as here, seek redress through the processes of the Board and courts. It is hardly worthy of mention that it is no defense to an unlawful discharge that another employee has been hired to take the place of the unlawfully discharged employee.

Upon the foregoing findings and the entire record, I state the following:

Conclusions of Law

A. Jurisdiction is properly asserted in this proceeding.

B. By its conduct set forth in "III," *supra,* consisting of the discharge of Matthew Lopinto from its employment on February 8, 1974, under the circumstances found, Respondent has interfered with, restrained, and coerced its employees, and is continuing to do so, in the exercise of rights guaranteed to said employees by Section 7 of the National Labor Relations Act, as amended, and has thereby engaged, and is continuing to engage, in unfair labor practices in violation of Section 8(a)(1) of said Act.

C. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of said Act.

Remedy

Having been found to be in violation of Section 8(a)(1) of the Act, Respondent should be required to remedy its violation by ceasing and desisting therefrom or any like repetition, and by reinstating its discharged employee Lopinto and recompensing him for pay lost, with interest, less offsetting earnings if any, to be computed in the manner described by the Board in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co,* 138 NLRB 716 (1962), and to make its records available for that purpose. Respondent should also be required to expunge from its records any notation to the effect that Lopinto quit his job voluntarily. Since the discharge of an employee for attempting to assert a right guaranteed to him under the Act strikes at fundamental purposes underlying the Act, the order should include a provision requiring Respondent to cease and desist from infringing upon rights secured to employees under Section 7 of the Act. Finally, Respondent should be required to post the usual notice to employees.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

ORDER [12]

It is hereby ordered that Respondent Barkus Bakery, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, terminating the employment of, laying off, furloughing, or failing to rehire or reinstate or reemploy, or threatening so to do, any employee for discussing, asserting, or attempting to discuss and assert, in concert with other employees, any lawful dissatisfaction, complaint or grievance concerning overtime working requirements or policies with a view toward ameliorating or modifying the same, or concerning any other terms or conditions of employment, or for otherwise exercising or attempting to engage in any concerted activity protected under the National Labor Relations Act as amended.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of their right of self-organization; to form, join, or assist any labor organization; to bargain collectively through representatives of their own choosing; to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection; or to refrain from any and all such activities.

2. Take the following affirmative actions necessary to effectuate the policies of the Act:

(a) Offer Matthew Lopinto unconditional reinstatement to his former job and employment eligibility status with Respondent in the same fashion and for all purposes, including but not limited to seniority, as though Respondent had not discharged him on February 8, 1974; discharging, if necessary, any replacement or other employee hired in his stead.

(b) Make Matthew Lopinto whole, in the manner set forth in the "Remedy" portion of the Decision of which this Order forms a part, for any loss of pay suffered by him as the result of his unlawful discharge by Respondent on February 8, 1974.

(c) Expunge or correct any personnel or other record, entry or report indicating that Matthew Lopinto quit the employ of Respondent at any time on or since February 8, 1974.

[12] In the event no exceptions are filed as provided by Sec 102 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order which follow herein shall, as provided in Sec 102 48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes

(d) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the extent of compliance with the terms of this recommended Order.

(e) Post in its plant in Allison Park, Pennsylvania, copies of the attached notice marked "Appendix." [13] Copies of said notice, on forms provided by the Board's Regional Director for Region 6, shall, after being duly signed by Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify said Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[13] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial before an Administrative Law Judge of the National Labor Relations Board, at which all sides had the opportunity to be fully heard, the decision has been announced that we, Barkus Bakery, Inc., have violated the National Labor Relations Act. This notice is posted in accordance with the Board's Order requiring it to be posted.

The National Labor Relations Act guarantees certain rights to employees, including the right to act together in matters concerning their jobs and working conditions, and also the right to bargain collectively concerning the same if they wish to do so.

WE WILL NOT violate those rights of yours.

WE WILL NOT discharge, furlough, lay off, suspend or otherwise retaliate against, or threaten so to do, any employee for exercising any of those rights.

WE WILL offer Matthew Lopinto full and unconditional reinstatement to his former job and employment status with us, and we will reemploy him just as if we had not discharged him on February 8, 1974; and we will dismiss, if necessary, any replacement we have hired in his place.

WE WILL pay Matthew Lopinto for any wages he lost after we discharged him on February 8, 1974, plus interest.

WE WILL correct Matthew Lopinto's records to show that he did not quit his job with us on February 8, 1974.

All of you are free to engage in concerted activities for the purpose of collective bargaining with us or for the purpose of other mutual aid or protection concerning your working conditions as well as your wage and hours; and to do so through representatives of your own choosing, without any interference, restraint, or coercion by us.

BARKUS BAKERY, INC.