

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**SAIGON GOURMET RESTAURANT, INC.
AND SAIGON SPICE, INC., a SINGLE
EMPLOYER d/b/a SAIGON GRILL
RESTAURANT**

and

Case No. 2-CA-38252

318 RESTAURANT WORKERS UNION

Jaime Rucker, Esq., Counsel for the
General Counsel
S. Michael Weisberg, Esq., Counsel for
the Respondent
Yvonne Brown, Esq., Counsel for the
Union

SUPPLEMENTAL DECISION

RAYMOND P. GREEN, Administrative Law Judge. I originally heard this case in New York on December 3, 5 and 6, 2007 and issued a Decision on February 14, 2008. On March 9, 2009, the Board issued a Decision which substantially adopted my Findings, Conclusions and Order. Nevertheless, the Board remanded certain allegations as follows:

That on or about March 2, 2007, the Respondent threatened to close the delivery department and discharge all of the delivery workers in retaliation for their union and/or protected concerted activities.

That on or about March 2, 2007, at its Amsterdam Avenue location and on or about March 3, 2007, at its University Place location, the Respondent interrogated employees about whether they intended to sue the Respondent regarding their pay.

Findings and Conclusions

With respect the alleged threat to close and discharge the delivery workers, I conclude that the testimony of the General Counsel's witnesses, Ke Yu Guan and Li Bing Xing are credible. In substance, Ke Yu Guan testified that Mr. Nget's wife, (Michelle), in Mr. Nget's presence, told employees; "If all you guys refuse to sign, then there is no more work... Then tomorrow do not show up for work. Just take your bike and all your personal belongings in Saigon and go." Li Bing Xing similarly testified that Michelle Nget said; "If you guys [are] not going to sign this piece of paper, then starting tomorrow we're not going to do any deliveries anymore. Take all your bicycles and belongings and go." I note that the testimony of the two individuals was mutually corroborative; that Michelle Nget did not testify in this proceeding; and that the threat is exactly what happened next. To wit, all of the delivery employees were discharged.

I also credit the testimony of the General Counsel’s witnesses regarding the alleged interrogations. For one thing, I conclude, contrary to Mr. Nget’s testimony, that he did see employees out in front of the restaurant when he arrived on the morning of March 2, 2007. I also conclude that on March 2, 2007, the Respondent interrogated employees at a meeting as to whether they signed a paper in front of the store, referring to a paper authorizing legal action. I further conclude that on March 3, 2007, at the University Place location, the Respondent interrogated an employee about whether he would join the others if they boycotted in front of the restaurant.

Given the other illegal conduct previously found to be coercive, including the threats of discharge and the mass discharge of employees, I conclude that these interrogations were coercive. *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F. 2d 1006 (9th Cir. 1985).

Additional Conclusions of Law

By threatening to close the delivery department and discharge all of the delivery workers in retaliation for their protected concerted activities, the Respondent has violated Section 8(a)(1) of the Act.

By interrogating employees about whether they intended to sue the Respondent regarding their pay, the Respondent has violated Section 8(a)(1) of the Act.

Modified Remedy¹

Having concluded that the Respondent has violated Section 8(a)(1) of the Act in the manner described above, it is recommended that the Order and Proposed Notice in the original case be modified to encompass these violations.

Dated at Washington D.C., April 15, 2009.

 Raymond P. Green
 Administrative Law Judge

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.