UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 28

Milum Textile Services Co.

and 28-CA-20898 et al

UNITE HERE

UNITE HERE'S BRIEF IN SUPPORT OF EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

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Introduction

UNITE HERE relies primarily on, and incorporates by reference, Counsel for General Counsel's brief. UNITE HERE's brief is limited to two issues:

(1) Milum Textile Services committed a *Bill Johnson's*[1] §8(a)(1) violation by seeking a quick injunction against UNITE HERE'S April 27, 2006 rally. Although Milum Textile could not realistically expect to prevail on its defamation-related claims because it could produce evidence of neither actual malice nor actual damages, Judge Lana Parke[2] concluded that the lawsuit violated §8(a)(1) only insofar as Milum Textile pursued preempted secondary boycott claims.[3]

(2) Milum Textile's unfair labor practices are sufficiently severe to entitle UNITE HERE to a *Gissel* bargaining order.[4] Judge Parke found a *Gissel* order inappropriate because Milum Textile's tolerance of some §7 activity somehow made its misconduct conventionally remediable, despite the Employer's continual, serious and pervasive violations, including hallmark discharges.[5]

In early 2006, UNITE HERE began a campaign to organize Milum Textile's employees. The Union wanted the Employer to enter into a card-check neutrality agreement. Toward this end, UNITE HERE has worked to mobilize Milum Textile's employees and customers.

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[1] *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983).
[2] Judge Joseph Gontram conducted 12 days of hearing, and then passed away before deciding the case. Judge Parke decided the case based on her reading of the record. *Milum Textile Services, Co.,* JD(SF)-29-07 (10/5/07) ("Decision"), 1.
[3] Decision, 15-16.
[4] *NLRB v. Gissel*, 395 U.S. 575 (1969).
[5] Decision, 26-27.

On March 4, 2006, the employees first made their strength known to Milum Textile by presenting to its principal, Craig Milum, a petition showing majority support. Milum responded by soliciting and attempting to remedy the employees' most significant grievance, that their supervisor disrespected them.

UNITE HERE soon started a public campaign. In response, Milum Textile sought a temporary restraining order to enjoin, at an April 27 rally, Union speech concerning threats to linen quality related to adverse employee working conditions. The lawsuit was baseless because (1) Milum Textile's secondary boycott claims were preempted; and (2) Milum Textile could produce no evidence of actual malice nor of actual damages necessary to enjoin allegedly defamatory speech. The lawsuit was retaliatory because (1) Milum Textile attempted to abuse process to delay the rally, without regard to the legal merits of its claim; (2) it was part of large number of legally baseless attempts to persuade the Board's Regional Director and the police to take action against UNITE HERE and the employees; (3) it was part of Milum Textile's course of unlawful conduct, described below as justifying a *Gissel* order; and (4) it was directed against UNITE HERE's protected publication of Milum Textile's employees' working conditions. The lawsuit therefore violated §8(a)(1) under *Bill Johnson's*, under both Justice Scalia's and Justice Breyer's interpretation of *BE&K Construction Co.*,[6] and under both the Board majority and dissenting opinions in *BE&K* after remand.[7]

[6] *BE&K Construction Co. v. NLRB*, 536 U.S. 516 (2002).
[7] *BE&K Construction Co.*, 351 NLRB No. 29 (2007).

Frustrated with UNITE HERE's continued public campaign, by early summer Craig Milum himself committed two hallmark violations, discharging employees Denise Knox and So Moe Min, which Judge Parke found as §8(a)(3) violations. Judge Parke also found that Milum Textile violated §8(a)(1) by prohibiting Union buttons, and suspending prominent activist Evangelina Guzman for refusing to remove a button. These violations caused UNITE HERE to lose its majority status.

Milum Textile continued to violate the Act. It unlawfully disciplined Guzman and Maria Minjarez—Judge Parke's failure to find these violations is subject to exceptions. Judge Parke found that the Employer violated §8(a)(1) with surveillance and threats of wage loss. These latter violations affected the entire workforce.

UNITE HERE has charged Milum Textiles with additional violations, committed during and after the hearing, including discharging Guzman. Copies of the charges are attached. The Union expects the Region to find meritorious the Guzman discharge and other violations.

A fair election is impossible. A *Gissel* order is necessary.

Statement of Facts

The March 4 meeting.

Around March 4,[8] an employee delegation delivered to Craig Milum a petition signed by a majority of its workforce authorizing UNITE HERE to represent the signatories.[9] During the meeting with the employee delegation, Milum asked the employees why they

[8] All dates are in 2006 unless stated otherwise.
[9] Decision, 3, 13.

wanted a union.[10] He asked, "what was it that we wanted for him to change?"[11] Employees complained that Production Manager Angela Kayonnie did not treat them with respect.[12] They complained that she did not know their names, so she clapped her hands or poked them to get their attention. [13] Milum agreed to provide nametags so that Kayonnie could address the employees by name.[14] He told the employees that they did not need a union because he would speak to Kayonnie to improve her treatment of employees.[15] Milum also said, "if the people wanted the union, it would be a long process and it would take many—it could take many years."[16] Milum later provided the promised nametags.[17] Judge Parke found that Milum violated §8(a)(1) by promising and providing the nametags.[18] General Counsel is excepting to her failure to find additional violations.[19]

UNITE HERE's public campaign; Milum Textile responds with a ULP charge.

On March 10, UNITE HERE wrote to Milum Textile's restaurant customers, asserting that the customers "should be concerned about the risk of contaminated linens." UNITE HERE alleged that Milum Textile "mixed hospital linens with restaurant linens in the washers." It further alleged, "Government Investigators in 2002 found dirty and

[10] Decision, 5; Acosta, 3/8, 556-557. Transcript references will specify the witness or speaker, the hearing date and the page number. "GCX" refers to General Counsel Exhibits, "RX" to Respondent Exhibits.
[11] Acosta, 3/8, 572.
[12] Decision, 5; Rojas, 3/8, 564; Milum, 3/5, 50.
[13] Decision, 5; Milum, 3/5, 50; Acosta, 3/8, 556-557.
[14] Decision, 5; Milum, 3/5, 52; GCX30, p.3.
[15] Decision, 5; Guzman, 3/8, 572; Rojas, 3/8, 564-565.
[16] Decision, 5; Acosta, 3/8, 557; Guzman, 3/8, 573.
[17] Decision, 5; Milum, 4/11, 2238; GCX30, p.3.
[18] Decision, 15.
[19] Decision, 14-15.

dangerous conditions—that may produce linens that could be a risk to your business." In support of this allegation, UNITE HERE made three assertions, one based on an Arizona Department of Environmental Quality (ADEQ) investigation, and two based on an Arizona OSHA investigation: (1) Milum used the same bins for both clean and dirty linen; (2) "Milum did not train workers on quality control procedures," and (3) "Milum has shown a disregard for Blood Borne Pathogens Exposure Control Standards."[20]

On April 3, Milum Textile filed a charge with Region 28 alleging that UNITE HERE violated §8(b)(4)(ii)(B) by publishing the March 10 letters. The Employer requested injunctive relief.[21]

By letter dated April 28, the Regional Director dismissed the charge. He wrote that the "investigation revealed no evidence that any of the Union's communications contained knowingly false information."[22] He cited *NLRB v. Servette*,[23] which held that the law does not prohibit unions from making "non-coercive entreaties" to secondary employers to cease doing business with primaries.[24] By letter dated June 7, the Office of Appeals upheld the Regional Director, finding that Milum Textile did not establish that the letters were "made with a reckless disregard for the truth."[25]

Meanwhile, in April, Arizona OSHA again investigated Milum Textile.[26] OSHA's findings included five "serious" violations of the Bloodborne Pathogens standard.[27]

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[20] Decision, 5; GCX8.
[21] Decision, 5; GCX3.
[22] GCX4.
[23] 377 U.S. 46 (1964),
[24] Decision, 5; GCX4.
[25] Decision, 5, fn.14; GCX6.
[26] T2245; GCX138.

On April 25, Milum learned of a press release announcing the Union's April 27 noon rally near two Fox restaurants—Milum's customers—at the Kierland Commons Mall.[28] Milum claimed that he heard of the press release from "numerous newspaper and television companies."[29] The press release stated, "Milum workers will speak about dirty and dangerous conditions in an effort to protect their own health and safety and the health and safety of restaurant patrons."[30] The employees, accompanied by UNITE HERE's General President, were going to release a report, entitled "Compromising on Quality: Conditions at Milum Textile Services Jeopardize Linen Quality" which "describes unsafe practices."[31] The release indicated that the report would include allegations similar to those made in the March 10 letters.[32]

Milum Textile seeks to enjoin the April 27 rally.

On April 26, Milum Textile sued UNITE HERE in federal district court.[33] It requested a TRO to enjoin (1) alleged picketing and (2) distributing leaflets to secondaries and their customers.[34]

Milum Textile argued that UNITE HERE's statements were false.[35] But the Employer attempted to show neither the actual malice nor the actual damages necessary to prevail in a defamation action against labor speech.[36]

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[27] 29 CFR 1910.1030. Decision, 5, fn. 12; GCX138, p.5-6.
[28] GCX11, ¶4 and Exhibit B.
[29] *Id*., ¶4.
[30] *Id*., Exhibit B.
[31] *Id*.; GCX5, Exhibit D.
[32] GCX11, Exhibit B.
[33] Decision, 6; GCX8-11.
[34] GCX10, p.1
[35] GCX11, Exhibit C.

In its motion papers, Milum Textile asserted that, by distributing the allegedly defamatory leaflets to the Employer's customers, UNITE HERE would be engaging in an unlawful secondary boycott.[37] Milum testified that "we were hoping to prevent a problem for our customer … and that was certainly the reason why we were hurrying to get that lawsuit filed."[38]

District Court Judge James A. Teilborg heard counsel at 11:35 AM on April 27, within minutes of the scheduled noon rally.[39] By this time, Milum Textile's counsel understood that he could not get an injunction for a §8(b)(4) violation,[40] and that he was left with state law theories for tortious interference, libel and slander.[41] Judge Teilborg quickly expressed concern about issuing a prior restraint against protected speech.[42] His law clerk pointed out that Milum had to show actual malice under *New York Times v. Sullivan*.[43] The Judge denied the TRO because "there's really no attempt at showing actual malice in the complaint or the affidavits," and because it would be a prior restraint on speech.[44]

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[36] *Linn v. Plant Guard Workers Local 114*, 383 U.S. 53, 65 (1966).
[37] §8(b)(4)(ii)(B); GCX10, p.4-6.
[38] Milum, 4/11, 2246-2247.
[39] GCX12, p.1.
[40] *San Antonio Community Hospital, v. Southern California District Council of Carpenters*,125 F.3d 1230, 1235 (9th Cir. 1997), petition for rehearing denied, suggestion for a rehearing en banc rejected, 137 F.3d 1090 (9th Cir. 1998).
[41] GCX12, p.3-4.
[42] *Id.*, p.3.
[43] 376 U.S. 254 (1964); GCX12, p.6.
[44] *Id.*, p.19-20.

Milum Textile made no further efforts to prosecute the lawsuit.[45] It voluntarily dismissed the case on May 26.[46] By then, UNITE HERE had expended $3120.36 to defend against the lawsuit.[47]

Milum's attempts to involve the police.

Judge Parke found that "Mr. Milum emailed some customers with suggestions on how to effectuate arrests of handbillers for trespassing, urging them to warn handbillers of criminal liability and to contact the police."[48] Yet, Milum Textile introduced no police records or admissible testimony demonstrating that Union supporters had trespassed.

On June 19, in an email to Fox representatives, Craig Milum suggested the arrest of Union activists, including Brandy Ybarra.

> A trespassing violation and arrest and possible ensuing repercussions might cause Brandy and other employees involved to realize the seriousness and foolishness of all this. If none of our employees participated and the union had only their paid staff bother our Customers, our legal efforts to stop the harassment would probably be more effective as the legal processes move forward.[49]

In explaining the reason for the email, Milum suggested that his efforts had little to do with obtaining a trespassing conviction. Rather, he wanted to stop the leafletting:

> I was trying to get the practice to stop of the union going to our customers or instigating people going to our customers and handing out materials that were harmful to the customers. I felt kind of like an obligation to help our customers in any way I could.

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[45] GCX7.
[46] GCX18.
[47] GCX128-129.
[48] Decision, 7.
[49] CCX64.

> I felt that distributing information that was false I thought that was—and designed to hurt us and to hurt the customers and to get the customers, you know, to pressure us to give up the rights of the employees to vote on the election, to vote whether they wanted to have a union or not, I thought that was inherently unfair, shouldn't happen, wasn't intended by Congress, and the people of the United States, as a group, I don't think they support that sort of behavior and activity.[50]

On August 9, Milum emailed customers with information on "how to get perpetrators arrested or at minimum cited for a crime when they are in the act of passing out the leaflets or demonstrating, etcetera."[51] He told them that "you want police to be directly involved and warning the perpetrators …."[52]

On October 26, Milum "talked to a Phoenix police officer this morning in the union reaction squad."[53] Milum claimed, "What I was trying to do was put a stop to trespassing [at customers' facilities] and doing things that are against the law."[54] The property owners never called Milum to ask him to call the police on their behalf.[55] Milum called the Phoenix police around 10 or 20 times.[56]

Judge Parke concluded that Milum Textile did not violate §8(a)(1) by contacting the police or by urging customers to contact the police.[57] General Counsel is excepting to Judge Parke's conclusion.

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[50] Milum, 3/7/07, 319-320.
[51] GCX88.
[52] *Id*.
[53] GCX68.
[54] Milum, 3/7, 329.
[55] *Id.*, 330.
[56] Decision, 7; Milum, 3/7, 335.
[57] Decision, 17-18.

The early summer events: Button prohibition, discharges, discipline.

Around June 27, Milum directed Kayonnie to tell employee Luz Vertila Acosta to stop distributing UNITE HERE buttons.[58] Milum himself told employees, including Evangelina Guzman, Zulema Ruiz and Lydia Roberts that employees could not wear Union buttons.[59] On July 4, Milum suspended Guzman for wearing a Union button.[60] Milum recognized that Ms. Guzman was the most significant Union supporter.[61]

Milum personally fired Denise Knox and So Moe Min on July 8.[62] Two days earlier, Ms. Knox had appeared on television on UNITE HERE's behalf.[63] Knowledge of the discharges was widely disseminated.[64] Although some employees testified that Knox and Min were fired for taking too long to arrive at their work stations, the employees were also well aware that Milum Textile had previously tolerated similar conduct, with at most minor repercussions.[65] Judge Parke found that Milum Textile violated §8(a)(1) by prohibiting buttons, and §8(a)(3) by discharging Knox and Moe and by disciplining Guzman.[66]

Union support dissipates.

Despite Milum Textile's conduct during the March 4 meeting, from March through June UNITE HERE managed to maintain a high level of employee support. A Union

[58] Milum, 3/6, 147-148.
[59] Milum, 3/6, 150, 153-154, 157, 162.
[60] Guzman, 3/8, 578-580.
[61] Decision, 4, fn.10; Milum, 3/7, 377; GCX 86.
[62] Milum, 3/6, 243-249; 3/7, 265-266; GCX50.
[63] Milum, 3/6, 249.
[64] Milum, 3/7, 265, 275; Velasquez Garcia, 4/2, 1091, 1120, 1123; Reyes, 4/2, 1140; Roberts, 4/3, 1204; Zambrano, 4/3, 1279-1280; Goebel, 4/4, 1499, 1507, 1533.
[65] Goebel, 4/4, 1502-1507, 1533.
[66] Decision, 17, 21-24.

organizer testified, "There was a high turnover, but we would always reach out to the new workers and we would always keep organizing them."[67]

After the early summer events, Union support starting dissipating.[68] UNITE HERE lead organizer Daisy Pitkin testified, "All those things combined [the button prohibition, Guzman's suspension, the discharges] had a huge impact on the campaign."[69] Employees told Organizer Cristina Aguilera and employee Maria Teresa Velasquez Garcia (an Employer witness) that they would not sign the petition because "they could get fired the way Denise and Soe Min did …."[70] Salvador, who had previously demonstrated Union support by wearing stickers and buttons, told Ms. Pitkin "that he didn't want to wear the stickers because he was afraid he was going to be fired."[71] UNITE HERE was attracting 10 to 15 employees to bimonthly meetings before the discharges, but afterwards attracted at most two employees.[72] Before the discharges, employees took Union literature to distribute inside the plant, but afterwards no employees would perform the task.[73] Before the discharges, UNITE HERE accumulated 13 employee signatures for a petition, while afterwards UNITE HERE only obtained three signatures for a petition concerning breaks.[74] Employees refused union buttons.[75] Judge Parke noted, "Mr. Milum estimated that by February 2007, of the 40 employees participating in the March 4 work stoppage,

[67] Aguilera, 3/21, 985.
[68] Decision, 14; Velasquez Garcia, 4/2, 1116.
[69] Pitkin, 3/20, 882.
[70] Aguilera, 3/21, 968; Velasquez Garcia, 4/2, 1116.
[71] Decision, 14; Pitkin, 3/20, 883.
[72] Decision, 14; Pitkin, 3/20, 883-884.
[73] Decision, 14; Pitkin, 3/20, 884.
[74] Aguilera, 3/21, 968.
[75] Decision, 14.

only Ms. Guzman still wanted the Union."[76] She found that UNITE HERE's "majority support was dissipated, at least in part, by [Milum Textile's] unfair labor practices …."[77]

Milum's charge filing campaign.

Not discouraged by the dismissal of its own charges for allegedly false secondary leafletting, Milum encouraged its customers to file similar charges.[78] Milum urged on its customers the theory that "the union is prohibited from making false statements regarding the company or making statements that 'have an effect of inducing any individual' not to do business with the targeted company."[79] These were the precise theories rejected by the Regional Director and the Office of Appeals.[80] Milum therefore could not realistically expect a favorable decision.

Nonetheless, on November 4, Milum emailed a Fox representative, urging him to file charges.

> The best plan now appears to us to be to get as many Customers as possible to file ULPs. It is inexpensive and it gets investigations started by a federal agency of activities that definitely warrant investigating. If UNITE HERE is planning on further leafleting the filing of an ULP may cause them to reconsider ….[81]

Milum made 10 to 20 requests to Fox, and additional requests to customers Oaxaca, Mancuso's, and the Litchfield school system.[82] Mancuso's actually filed secondary

[76] Decision, 14.
[77] Decision, 26.
[78] Decision, 7.
[79] GCX68, p.8.
[80] GCX4, 6.
[81] GCX68.
[82] Milum, 3/7, 326-327; GCX67.

boycott charges, on August 29 (which it quickly withdrew), and on October 30 (which the Regional Director dismissed).[83]

Milum's efforts to enlist its customers in this campaign had nothing to do with the merits of any charge. In a December 22 email to a Fox representative, Milum emphasized the importance of attracting the Region's attention, and ignored the likelihood of a Regional dismissal.

> Our calculation is that one [charge] from Fox would have a little more profound impact with the NLRB because it is unusual for things to be so bad that a secondary target employer actually files the ULP and therefore would get more attention and interest on the part of the NLRB. However, most of the benefit comes from just filing it and having the issues investigated and considered regardless of who files the ULP.[84]

Rather, Milum explicitly solicited support in order to undermine UNITE HERE's campaign. In an email to the same Fox representative dated October 16, Milum wrote:

> Unfair Labor Practice charges definitely should be initiated. I am sure based upon quite a bit of information that I would like to share and maybe a media effort which I think could be very helpful in giving the union a black eye in public.[85]

And on December 20, Milum wrote to Fox representatives, "If you are successful in filing this ULP, you eliminate probably about two thirds of the negative impact of the [Union's] leafletting …."[86]

On January 4, 2007, Milum filed another secondary boycott charge attacking UNITE HERE's campaign. The Regional Director refused to issue a complaint, and the Office of Appeals affirmed.[87]

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[83] GCX94-96.
[84] GCX75.
[85] GCX66.
[86] GCX70.

Milum Textile's later attacks on the workers.

Despite UNITE HERE's loss of majority status, Milum Textile continued committing unfair labor practices. On October 19, the Employer suspended Maria Minjarez for distributing Union literature.[88] Milum told her that "everybody had said that I was a troublemaker."[89] In late 2006, Milum Textile showed employees a video which threatened to reduce employee wages.[90] On December 26, Kayonnie suspended Guzman, again.[91] In January 2007, Milum Textile installed video cameras to spy on the employees.[92] On January 23, 2007, Supervisor Chavez disciplined Guzman, again.[93] On March 4, 2007, Milum told Maria Rojas that she could not wear a Union button.[94]

Judge Parke found the §8(a)(1) violations.[95] She failed to find the §8(a)(3) violations,[96] and General Counsel is excepting.

Region 28 is currently investigating additional UNITE HERE charges, including that Milum Textile disciplined employees for their Union activity; interrogated an employee about a wearing union button; and interfered with employee participation in a Union rally. Most significant is that Milum Textile discharged Guzman.

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[87] GCX73-74, 144.
[88] Minjarez, 3/8, 467-478; GCX56.
[89] Minjarez, 3/8, 477.
[90] Milum, 3/6, 102-103, 105.
[91] Guzman, 3/8, 580-584.
[92] Guzman, 3/8, 588.
[93] Guzman, 3/8, 584-587.
[94] Milum, 3/7, 409-410.
[95] Decision, 17-20.
[96] Decision, 23-26.

Argument

I. Milum Textile violated §8(a)(1) by filing a baseless, retaliatory lawsuit.

A. Judge Parke's decision.

The complaint alleges a *Bill Johnson's* violation, that Milum Textile violated §8(a)(1) by pursuing its lawsuit against UNITE HERE. Judge Parke found the violation only to the extent that Milum Textile pursued a TRO based on preempted claims of secondary boycott and interference with economic relationships. She found that Milum Textile did not violate the Act by pursuing fraud, slander and libel claims because General Counsel and UNITE HERE did not prove that these claims were baseless.[97]

Judge Parke erred. The lawsuit was baseless is its entirety. Milum Textile filed its lawsuit to block UNITE HERE's April 27 rally. Milum Textile had no realistic expectation of showing the court, before that activity, evidence of actual malice and actual damages necessary to obtain its injunction. More specifically, Milum Textile had no facts showing that UNITE HERE's campaigners knew that their statements were false, or acted with reckless disregard of their statements' truth; nor could Milum Textile expect to obtain that evidence by April 27. Nor had Milum Textile any reason to believe that Fox or any other customer would stop doing business with Milum Textile because of the April 27 rally.

To violate §8(a)(1), Milum Textile needed not only a baseless lawsuit, but also a retaliatory motive. Judge Parke understated Milum Textile's retaliatory motive. She accepted arguendo that Milum Textile wanted to "retaliate against the Union's appeal to

[97] Decision, 15-16.

the Respondent's customers to cease doing business with the Respondent…."[98] Because the lawsuit was baseless, this is sufficient retaliation to support a §8(a)(1) violation. But the retaliation evidence is far stronger. Milum Textile abused process because it sought the TRO with no reasonable expectation of prevailing on the merits, but could only hope that a sympathetic judge would act on a gut feeling to enjoin the rally, causing its cancellation before UNITE HERE had the opportunity to persuade the judge or an appeals court that it had a right to hold the rally. Milum Textile's lawsuit was also part of two continuing patterns of misconduct, (1) baseless and often unlawful attempts to persuade the government to interfere with UNITE HERE's customer campaign, a pattern demonstrating that the litigation abused process and (2) an unlawful campaign to suppress UNITE HERE's organizing drive.

B. **The legal background.**

In any *Bill Johnson's* case, two competing rights must be balanced. These are the employees' §7 right to engage in protected activity free from employer interference; and the employer's First Amendment right to file a lawsuit.

The caselaw focuses on where to strike that balance. In *Bill Johnson's* itself, the Supreme Court held that the Board may not enjoin a reasonably based ongoing lawsuit.[99] In *BE&K*, the Supreme Court held that an employer does not violate §8(a)(1) by filing

[98] *Id.*, 16.
[99] 461 U.S. at 748-749.

against a union a reasonably based lawsuit, in which evidence of the employer's retaliatory motive shows simply a desire for relief from the union's protected activity.[100]

But *BE&K* left important questions unanswered. What if a reasonably based lawsuit is accompanied by retaliation evidence stronger than the simple desire to obtain relief from §7 conduct?[101] And if the lawsuit is baseless, just how much retaliation evidence is necessary to establish the §8(a)(1) violation?[102]

Justices Breyer, writing also for Justices Stevens, Souter and Ginsburg, and Justice Scalia, writing also for Justice Thomas, in concurring opinions gave different answers. Justice Breyer would find a violation in a reasonably based lawsuit with "stronger or different" retaliation evidence.[103] Examples are where "an employer, indifferent to outcome, who intends the reasonably based but unsuccessful lawsuit simply to impose litigation costs on the union"; or where "the employer brings [the lawsuit] as part of a broader course of conduct aimed at harming the unions and interfering with employees' exercise of their rights under §7(a)…."[104] Justice Scalia would find a violation only in "lawsuits that are both objectively baseless and subjectively intended to abuse process."[105]

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[100] 536 U.S. at 538-539 (Justice Breyer, concurring).
[101] 536 U.S. at 536-537 ("We do not decide whether the Board may declare unlawful any unsuccessful but reasonably based suits that would not have been filed but for a motive to impose the costs of the litigation process, regardless of the outcome, in retaliation for NLRA protected activity….").
[102] 536 U.S. at 539 (Justice Breyer, concurring, noting that the majority opinion "does not address at all lawsuits the employer brings as part of a broader course of conduct aimed at harming the unions and interfering with employees' exercise of their rights under §7").
[103] 536 U.S. at 539.
[104] 536 U.S. at 539.
[105] 536 U.S. at 537.

On *BE&K*'s remand, all five Board members found the lawsuit reasonably based.[106] Following Justice Scalia, the Board majority—Chairman Battista and Members Schaumber and Kirsanow—found no violation.[107] Following Justice Breyer, the dissent—Members Liebman and Walsh—advocated remanding the case to the ALJ to determine whether the retaliation evidence might be sufficiently severe to support a §8(a)(1) violation.[108]

UNITE HERE requests the Board to overrule its *BE&K* decision, and to adopt the dissent as the governing law. The reasons for doing so are set forth in Justice Breyer's concurrence, and in the dissenting opinion itself, and will not be repeated here. Still, even under the majority decision, Milum Textile violated §8(a)(1). Its lawsuit was baseless and it abused process.

C. **Milum Textile's claims were objectively baseless.**

A lawsuit is objectively baseless if "no reasonable litigant could realistically expect success on the merits."[109] Milum Textile sued UNITE HERE to enjoin the April 27 rally. Milum Textile could not realistically expect success on the merits on its secondary boycott claim, because only the Board's regional director is entitled to a secondary boycott injunction. Milum Textile could not realistically expect success on the merits of its state law claims because Milum Textile could produce evidence neither of actual malice nor of actual damages.

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[106] 351 NLRB No. 29, slip op., 9-10, 13.
[107] *Id.,* slip op., 6-8.
[108] *Id.,* slip op., 13.
[109] *Id.*, slip op., 7.

1. Milum Textile's litigation was factually baseless because the Employer could not show the actual malice necessary to support the state law claims.

(a) *Milum had to show evidence of actual malice at the TRO hearing.*

For Milum Textile's lawsuit to be reasonably based, it had to "realistically expect" to win its TRO. To do so, Milum Textile had to produce evidence at the TRO hearing supporting the factual bases for its claims. A lawsuit is factually baseless if it raises no "genuine issue[s] of material fact that turn[] on the credibility of witnesses or on the proper inferences to be drawn from undisputed facts …."[110]

To obtain an injunction against labor speech, a plaintiff must show facts demonstrating at least "a reasonable chance of meeting . . . the *New York Times* 'actual malice' standard" for defamatory speech.[111] Because all of Milum's state law claims attack labor speech, they implicate the same §7 concerns as defamation actions, thereby entitling UNITE HERE to the actual malice standard accorded by *Linn* and *New York Times*.[112]

But to prove actual malice, a plaintiff must show that the defendant knew that a statement was false; or that the defendant made the statement with reckless disregard of the statements' truth or falsity.[113] Therefore, Milum Textile had to ascertain what was

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[110] *Bill Johnson's*, 461 U.S. at 745. Compare *Geske & Sons v. NLRB*, 103 F.3d 1366, 1376 (7th Cir. 1997), cert. den. 522 U.S. 808 (1997), enforcing 317 NLRB 28 (1995) (employer raised no factual issues) with *Ray Angelini*, 351 NLRB No. 24 (2007) (employer did not violate §8(a)(1) by pursuing an ultimately unsuccessful lawsuit, because employer raised triable factual issues as demonstrated by its withstanding summary judgment motion).

[111] *San Antonio Community Hospital,* 125 F.3d at 1235.

[112] *Beverly Hills Foodland v. UFCW*, 39 F.3d 191, 196 (8th Cir. 1994) (actual malice necessary to prove tortious interference).

[113] *Linn*, 383 U.S. at 65.

going on in the Union's collective head. The determination of whether there was actual malice "rests entirely on an evaluation of [the author's] state of mind."[114] A Union campaigner must have "made the statement with a 'high degree of awareness of … probable falsity' … or must have entertained serious doubts as to the truth of [their] publication.'"[115]

In short, a defamation plaintiff must ascertain whether the defendant thought that the statement was false or true. If the latter, the plaintiff must further ascertain why the defendant believed in the statement's truth. Asserting, and even proving, that the statement is false is insufficient.

The facts necessary to demonstrate actual malice are often in accessible without discovery. "[R]esolution of the . . . actual malice inquir[y] typically requires discovery."[116] The discovery process enables plaintiff to explore the defendant's support for its allegedly defamatory statements. And litigation may not be deemed factually baseless if the charged party makes an adequate offer of proof describing the evidence the party expected to obtain through discovery, and an explanation of why it was not obtained.[117] Milum Textile made no offer of proof, nor gave any explanation.

What could Milum Textile reasonably expect to ascertain in discovery, and why was no evidence was ascertained? Milum Textile could reasonably expect to ascertain nothing because it had no time to engage in discovery. It filed the lawsuit to stop the

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[114] *Bose Corp. v. Consumers Union of the United States*, 466 U.S. 485, 494 (1984).
[115] *Harte-Hanks Communicaton v. Connaughton*, 491 U.S. 657, 667 (1989).
[116] *Karedes v. Ackerley Group*, 423 F.3d 107, 113 (2d Cir. 2005).
[117] *Geske & Sons*, 103 F.3d at 1376 (employer's lawsuit baseless because employer "never made any attempt, by affidavit or otherwise, to state what evidence it expected to obtain through discovery or why it could not yet produce that evidence").

rally. And it only had two days notice of the rally. Milum Textile learned of the rally on April 25, filed the lawsuit on April 26, and attended the TRO hearing the morning of April 27, when the rally was scheduled for noon. At least, Milum Textile could have sought an order that UNITE HERE witnesses appear for questioning with relevant documents at the April 27 hearing.

But Milum Textile did nothing to show actual malice. Judge Teilborg found, Milum Textile "made no attempt at showing actual malice."[118] And Milum Textile could not realistically expect to prevail by coming to court without any ability to produce actual malice evidence at that hearing.

The difficulty of getting a TRO enjoining labor speech is illustrated by *San Antonio Community Hospital*, one of the few cases where the plaintiff ultimately succeeded on the merits[119]—but not at the TRO hearing, which the plaintiff lost.[120] Although the actual malice facts were relatively accessible—the union displayed a sign reading, "this hospital is full of rats," which the appeals court majority interpreted, under the circumstances, as implying that the hospital had a rodent problem rather than that the hospital used rat contractors[121]—the district court granted the preliminary injunction only after the parties developed the facts at an evidentiary hearing.[122]

But, unlike *San Antonio Community Hospital*, Milum Textile did not continue its lawsuit after losing the TRO. Judge Teilborg's order denying the TRO frustrated Milum

[118] GCX12, p.20.
[119] 137 F.3d at 1090 (Judge Reinhardt, dissenting from denial of petition for rehearing, and from rejection of suggestion for rehearing en banc).
[120] 125 F.3d at 1233.
[121] 125 F.3d at 1236-1237.
[122] *Id*.

Textile's purpose in filing the lawsuit, and the Employer therefore withdrew it. So it is unnecessary to ask what Milum Textile might have tried to learn in discovery had the lawsuit continued. Judge Parke erred in finding that no final outcome was reached in the litigation, and therefore "other evidence [apart from that before Judge Teilborg] must provide the key" to whether the state law claims had a reasonable basis.[123] Judge Teilborg's decision was the final outcome.

(b) *Milum Textile filed the lawsuit for only one reason: To stop the rally.*

The litigation was no general attempt to stop UNITE HERE's public campaign, in which Milum Textile might have the opportunity to develop the facts through discovery. Its only purpose was to enjoin the April 27 rally.

The litigation's purpose is discernible by comparing the litigation's timing with the timing of the allegedly defamatory statements. UNITE HERE made the statements on March 10. Yet, until Craig Milum learned of the April 27 rally, Milum was content to rely on its Board charge to obtain relief from the March 10 statements.[124] Milum learned of the rally on April 25.[125] Milum Textile filed its suit on April 26.[126]

Milum Textile representatives' written and oral statements also show that the Employer filed the lawsuit only to stop the rally. Craig Milum testified that "we were hoping to prevent a problem for our customer, and we were unsuccessful in that, and that

[123] Decision, 16.
[124] Decision, 5; GCX3.
[125] GCX11, ¶4 and Exhibit B.
[126] GCX7.

was certainly the reason why we were hurrying to get that lawsuit filed."[127] Milum wrote in his affidavit that around April 25 he learned of a press release "which indicates that that the union is going to be picketing Fox Restaurants, one of my largest customers" on April 27.[128] Milum claimed he needed "immediate[] relief from the illegal secondary boycott actions."[129] Milum Textile's requested a TRO against "Picketing and distributing leaflets to the customers of Fox Restaurants…."[130] Milum Textile alleged that "the issuance of the press release and the anticipated picketing constitutes an illegal secondary boycott…."[131] During the argument before Judge Teilborg, Milum Textile's lawyer admitted that the Employer's desire to stop the rally accounted for the lawsuit's timing.

> The complaint was prepared and filed yesterday. It was the evening before that we found out about the press release that Unite Here … was going to have this scene at the Kierland restaurants of Fox Companies.[132]

Craig Milum admitted that the loss of the TRO proceeding was "part of" his reasons for withdrawing the lawsuit.[133]

Milum's other proffered reasons for withdrawing the lawsuit are pretextual. Milum testified that he withdrew the lawsuit because he felt that it would be expensive.[134] But it is common knowledge that protracted litigation, especially if necessitating extensive discovery, is expensive. A request for a TRO, however, can be filed relatively cheaply. Milum testified that he had learned about the experiences of other companies and had

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[127] Milum, 4/11, 2246-2247.
[128] GCX11, p.2, ¶4.
[129] *Id.,* p.3, ¶5.
[130] GCX10, p.1, ¶1.
[131] *Id.,* p.6.
[132] GCX12, p.3.
[133] Milum, 4/11, 2246-2247.
[134] Milum, 4/11, 2176.

received advice from experienced labor law attorneys.[135] The only experienced labor law attorney with whom Milum consulted was Aramark labor counsel Dennis Slipakoff.[136] He consulted with Mr. Slipakoff seven weeks after withdrawing the lawsuit.[137] Milum named no other company and no other labor law attorney.

Milum Textile's inaction, after losing the TRO, showed its disinterest in the lawsuit apart from the TRO. After it lost the TRO, Milum Textile did nothing to pursue the lawsuit.[138] On May 26, it filed a Notice of Voluntary Case Dismissal.[139]

After the TRO hearing, Milum Textile still had an interest in obtaining relief from the March 10 statements. But it pursued this relief not through the litigation, but through the Board, appealing the April 28 dismissal of its secondary boycott charge.[140]

(c) *Milum Textile showed no evidence of actual malice at the TRO hearing.*

So, Milum Textile filed the lawsuit to stop the rally. But it brought to court no evidence that could give the Employer a realistic expectation of establishing actual malice before the rally began. Milum Textile had only UNITE HERE's March 10 letter to shed light on Union campaigners' thought processes. But the letter did little more than suggest the campaigners' reasons for believing their statements' truth. To get the TRO, Milum Textile had to fully elicit these reasons, and attack them as not providing reasonable support for the statements. Milum Textile could not do so without discovery.

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[135] Milum, 4/11, 2174-2175.
[136] Milum, 3/5, 40-41.
[137] Milum, 3/6, 116-117; GCX39.
[138] GCX7.
[139] GCX7, GCX18.
[140] GCX4; GCX6.

Rather, before Judge Teilborg, Milum Textile asserted only that the March 10 statements were false. It made its defamation case with Exhibit C, an attachment to Craig Milum's affidavit in support of the Employer's TRO motion.[141] Milum Textile argued to the ALJ only "[t]he highlights of Craig Milum's Affidavit."[142]

i. *Linen mixing.*

Milum first challenged the Union's assertion that there have been instances when the Employer mixed hospital and health care linens. Milum asserted, as refined by counsel in her brief to the ALJ, that the statement is false and that there are business reasons indicating that Milum would want to avoid mixing linens because it is "uneconomical."[143] Both the March 10 letter itself and Daisy Pitkin's testimony identified the bases for the Union's assertion: employee reports.[144] Milum Textile gave no reason for UNITE HERE to disbelieve these reports. In fact, Milum Textile's own witnesses corroborated these reports.[145] See, *Community Medical Services of Clearfield, Inc. v. Local 2665 AFCME*,[146] in which union campaigners against a nursing home based allegedly defamatory statements on employees' and patients' relatives' reports.[147] The campaigners lacked personal knowledge of many facts, and in the defamation action no evidence was introduced showing the reports' accuracy.[148] Nonetheless, the court held

[141] GCX11.
[142] Milum Textile's Brief to ALJ, 96-97.
[143] Milum Textile's Brief to ALJ, 96; GCX11, Exhibit C, p.1-4.
[144] Pitkin, 4/5, 1693.
[145] Groebel, 4/4, 1532-1533; Chavez, 4/5, 1754.
[146] 437 A.2d 23 (Pa. Super. Ct. 1981).
[147] *Id.*, 28-29.
[148] *Id.*

that the employer showed no actual malice, and affirmed a summary judgment motion favoring the union.[149]

ii. *Dirty and dangerous conditions.*

Milum Textile challenged UNITE HERE's conclusion that "Government investigators in 2002 found dirty and dangerous conditions—that may produce linens that could be a risk to your business." Milum Textile claimed that "[n]o government agency ever made" this finding.[150] But on the face of its March 10 letter, the Union supported this conclusion with three statements, two of which Milum Textile contested before the ALJ.

iii. *Dirty and dangerous conditions: Transporting dirty and clean linen in the same bins.*

The Union asserted that, "Milum jeopardized the separation of soiled and clean linen by using the same bins for both. ADEQ. Notice of Violation." Milum Textile argued that ADEQ had no jurisdiction over commercial laundry linen quality, and therefore "did not review Milum's linen service processing nor did it cite Milum for any violations." [151]

But Milum Textile did not grasp the Union's rationale, and therefore could not contest it. In a 2002 "Medical Waste Transporters Inspection Report," an ADEQ investigator reported that Milum Textile used the same bins to transport clean and dirty laundry:

[149] *Id.*, 29.
[150] Milum Textile's Brief to ALJ, 96; GCX11, Exhibit C, p.4.
[151] Milum Textile's Brief to ALJ, 96-97; GCX11, Exhibit C, p.4-5.

> Milum Truck Number 44164. Blue containers on the right side of the truck are used for transporting clean laundry to and soiled laundry from contracted facilities.[152]

Milum corroborated that Milum Textile uses the same bins to transport clean and soiled linen.[153] The Union could reasonably infer from the ADEQ report either that ADEQ found that Milum Textile did not decontaminate the bins; or that ADEQ considered any decontamination process insufficient to eliminate the risk that residue from supposedly clean bins might contaminate the clean linen.

iv. *Dirty and dangerous conditions: Training on quality control procedures.*

UNITE HERE also supported its "dirty and dangerous conditions" contention with the assertion that "Milum did not train workers on quality control procedures. AZ OSHA." Milum Textile again responded that the state agency lacked jurisdiction over the matter and therefore could not "have issued a notice of violation regarding quality control procedures." [154]

And once again, Milum Textile failed to ascertain the Union's rationale, and therefore could not address it. In 2002, Arizona OSHA cited Milum Textile for violating the OSHA regulation requiring bloodborne pathogen training "[a]t the time of initial assignment to tasks where occupational exposure may take place …."[155] OSHA deemed

[152] GCX139, p.9.
[153] Milum, 4/10, 1909.
[154] Milum Textile's Brief to ALJ, 97; GCX11, Exhibit C, p.4-5.
[155] GCX61, p.13, citing 29 CFR §1910.1030(g)(2)(ii)(A).

this a "serious" violation,[156] i.e. "there is a substantial probability that death or serious physical harm could result …."[157]

Bloodborne pathogen training is reasonably characterized as quality control training. Bloodborne pathogens should be confined to the soil side, where employees are required to wear personal protective equipment, and receive hepatitis b vaccinations.[158] The required training must include instruction in work practices that "will prevent or reduce exposure."[159] The training should therefore include teaching soil side employees to avoid the spread of bloodborne pathogens to the clean side so as to "prevent or reduce exposure" of clean side employees, who are not similarly protected; and of consumers of healthcare linen, who might, through improper work practices, be exposed to contaminated linen. Therefore, bloodborne pathogen exposure training is effectively quality control training. And Milum Textile's failure to provide training implicates "dirty and dangerous conditions—that may produce linens that could be a risk to your business."

v. *Dirty and dangerous conditions: Disregard for blood borne pathogens standard.*

UNITE HERE lastly supported its "dirty and dangerous conditions" contention with the assertion that "Milum has shown a disregard for Blood Borne Pathogenes [sic] Exposure Control Standards. AZ OSHA."[160] Milum Textile did not argue this contention before the ALJ, and with good reason. The 2002 OSHA citation reflects five

[156] GCX61, p.13.
[157] 29 U.S.C. §666(k).
[158] RX71; 29 CFR §1910.1030(d)(3) and (f)(1).
[159] 29 CFR §1910.1030(g)(2)(vii)(F).
[160] GCX11, Exhibit C, p.6-7.

serious bloodborne pathogen violations.[161] As noted above, the violations include Milum Textile's failure to provide required training, a violation implicating linen quality. OSHA also cited Milum Textile for violating a regulation requiring that "Employers shall ensure that employees wash hands …."[162] In "Compromising on Quality," UNITE HERE referenced an employee survey, conducted "during spring 2006," almost four years after the 2002 OSHA citation, which revealed that "Milum does not universally enforce a policy of requiring workers to wash their hands when they move from the soil sort to the clean side of the plant."[163] Then, on May 5, 2006, OSHA cited the Employer for five serious bloodborne pathogen violations, including a citation which reads in part: "a) Soil sort area: The employer did not provide handwashing facilities readily accessible to employees with occupational exposure to bloodborne pathogens."[164] UNITE HERE may reasonably infer that soil side employees with unwashed hands moving to the clean side create a risk of spreading contamination to the clean side. This would be a dirty and dangerous condition, found by OSHA, which poses a threat both to clean side employees and to linen quality.

So Milum Textile filed its lawsuit without crucial facts, and with no way of developing those facts in time for the TRO hearing. Milum Textile's suit was therefore factually baseless.

[161] GCX61, p.9-14.
[162] 29 CFR §1910.1030(d)(2)(vi); GCX61, p.12.
[163] GCX5, Exhibit D, p.4-5.
[164] 29 CFR §1910.1030(d)(2)(iii); GCX138, p.5.

(d) *By introducing the litigation record, General Counsel met his burden of proving that Milum Textile could not realistically expect to prevail because it lacked evidence of actual malice.*

Judge Parke ruled that General Counsel and UNITE HERE did not meet their burden of proof.[165] But General Counsel's burden was to produce the litigation record and show that Milum Textile raised no material factual questions on that record. Milum Textile had the burden of producing any additional evidence.

In *Geske & Sons*, the Seventh Circuit held that "to determine whether a lawsuit is baseless, the Board must examine the plaintiff's evidence to determine whether it raises any material questions of fact." The court approved of the Board's "examin[ation of] all the evidence Geske produced at the hearing on its motion for a preliminary injunction and correct[] conclu[sion] that the evidence raised no material question of fact." It further held that any additional evidence was for Geske to produce.[166]

Similarly, General Counsel here introduced the litigation record. As argued above on page 24 through 30, Exhibit C and Judge Teilborg's ruling show that Milum Textile raised no material factual question as to actual malice. General Counsel carried his burden.

[165] Decision, 16.
[166] *Geske & Sons*, 103 F.3d at 1376.

2. Milum Textile's litigation was factually baseless because the Employer could not show the actual damages necessary to support the state law claims.

To prevail in a defamation action, or similar state law claims arising out of a labor dispute, a plaintiff must show actual damages.[167] Milum Textile's state law claims are baseless because Milum Textile had no realistic expectation of showing actual damages.

Actual damages means an actual loss.[168] Milum Textile made no showing to Judge Teilborg that the April 27 rally, if held, was likely to result in actual loss. Rather, Milum Textile alleged only conclusory generalities.[169] Although UNITE HERE first published its allegedly defamatory statements on March 10, Milum Textile did not allege any actual loss resulting from the statements before the April 27 TRO hearing. In fact, Craig Milum claimed that Milum Textile has suffered no loss at all from the Union's public campaign.[170] Nor did is there any evidence of communications in which Fox representatives threatened to end their company's relationship with Milum Textile were the rally to occur near Fox's properties.[171] Without any evidence of actual damages, Milum Textile had no reasonable expectation of getting the TRO.

3. Milum Textile's litigation was legally baseless because its secondary boycott claims were preempted.

Milum Textile's secondary boycott claim was baseless because it was preempted. Only the Board's regional director is entitled to injunctive relief for secondary boycott

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[167] *Linn*, 383 U.S. 65-66.
[168] *Intercity Maintenance Co. v. Local 254, SEIU*, 241 F.3d 82, 90 (1st Cir. 2001).
[169] GCX11, ¶5.
[170] GCX78; GCX83.
[171] *Intercity Maintenance Co.*, 241 F.3d at 90 (no actual damages where employer presented no evidence that recently lost accounts left because of allegedly defamatory statements).

violations.[172] To the extent that Milum Textile's tortious interference claim is essentially a secondary boycott claim, that claim too is preempted.[173]

An employer violates §8(a)(1) by pursuing a preempted claim for retaliatory purposes.[174] Judge Parke correctly found that Milum Textile therefore violated §8(a)(1).[175]

D. **Milum Textile's lawsuit was sufficiently retaliatory.**

In his *BE&K* concurrence, Justice Scalia indicated that an employer violates §8(a)(1) by filing a baseless lawsuit only if the lawsuit is an abuse of process.[176] Justice Breyer, followed by the Board's *BE&K* dissent, would hold that even a reasonably based but unsuccessful lawsuit may violate the Act if it is retaliatory as demonstrated by evidence "of a broader course of conduct aimed at harming the unions and interfering with employees' exercise of their rights under § 7 …."[177] And caselaw preceding *BE&K*, and not overruled by the Supreme Court, holds that an employer violates §8(a)(1) by pursuing a baseless lawsuit where the retaliation evidence shows simply that the lawsuit was directed at §7 activity.[178]

Here, the lawsuit was an abuse of process that Justice Scalia and the Board's *BE&K* majority would find unlawful. Milum Textile sued with the hope that it could persuade the judge, regardless of extant law, to stop the April 27 rally, thereby imposing a

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[172] *San Antonio Community Hospital,* 125 F.3d at 1235.
[173] *BE&K v. Carpenters*, 90 F.3d 1318, 1327-1330 (8th Cir. 1996).
[174] *Bill Johnson's*, 461 U.S. 737, fn.5; *Can-Am Plumbing, Inc. v. NLRB*, 321 F.3d 145, 150-151 (D.C. Cir. 2003).
[175] Decision, 16.
[176] 536 U.S. at 537.
[177] 536 U.S. at 539; 351 NLRB No. 29, slip op., 13.
[178] *Garage Management Corporation*, 334 NLRB 940 (2001).

campaign defeat on UNITE HERE, without any real concern about the lawsuit's ultimate disposition on the merits. Milum Textile also abused process by engaging in a pattern of frivolous legal proceedings—Board charges and attempts to instigate the police to interfere with §7 protected activity—without regard to obtaining successful legal results. Justice Breyer and the Board's *BE&K* dissenters would find the lawsuit unlawful, even were it reasonably based, because Milum Textile filed it as part of extensive unlawful campaign aimed at harassing UNITE HERE and its supporters by interfering with the Union's lawful public campaign, and, more generally, aimed at interfering with the employees' §7 right to organize. And, under pre-*BE&K* law, which the Board dissenters would presumably uphold, Milum Textile violated §8(a)(1) because its litigation aimed to interfere with the §7 right to publicize labor disputes to secondaries and their customers.

1. Milum Textile's lawsuit abused process because it was aimed at using delay inherent in the litigation process to force the postponement of UNITE HERE's protected rally, notwithstanding that Milum Textile had no legal right to a TRO.

A plaintiff abuses process by filing a frivolous lawsuit to delay the defendant's exercise of its legal rights. A lawsuit filed to take advantage of the delay inherent in the proceedings, with no expectation of ultimately prevailing on the merits, is a "classic example" of sham litigation.[179] A plaintiff engages in sham litigation by "us[ing] the governmental process—as opposed to the outcome of that process"—to gain a desired result.[180] And sham litigation is not afforded First Amendment protection.[181] Justice

[179] *City of Columbia v. Omni Outdoor Advertising*, 499 U.S. 365, 380 (1991).
[180] *Id.*
[181] *Id.*

Scalia's citation to *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*,[182] indicates that by abuse of process, Judge Scalia meant sham litigation.

A litigant therefore abuses process by making a frivolous request for emergency relief, where the delay in reversing an improvidently granted request would damage the opposing party. In *Hirschfeld v. Spanakos*,[183] a Second Circuit case, a municipal election board filed a baseless last minute motion to stay an order to place a candidate's name on the ballot for a congressional election. If the court "had granted the stay, Hirschfeld's name would have been off the ballot and the timing of the appeal, even if expedited, would not allow enough time to restore his name to the ballot if we affirmed the district court decision."[184] The candidate eventually sued the election board for damages, and the election board claimed First Amendment protection for its litigation. The Court found that the election board's action lacked constitutional protection because it was brought in bad faith, and was therefore sham litigation.[185]

Similarly, Milum Textile brought its litigation in bad faith, with reckless disregard as to whether it had any reasonable basis. Its TRO request based on its secondary boycott claim was preempted and therefore legally baseless. Yet, its memorandum supporting its TRO request was based solely on a secondary boycott theory. By the time of the TRO hearing, Milum Textile's lawyer was aware that he could not get a secondary boycott injunction, and he shifted reliance to the state law claims. But he had made no effort to

[182] 508 U.S. 49, 60-61 (1993).
[183] 104 F.3d 16 (2d Cir. 1997).
[184] *Id.*, 18.
[185] *Id.*, 19-20.

learn of the strict *Linn-New York Times* requirements to prove these theories, and learned of them from Judge Teilborg's law clerk. In short, he slapped something together to get into court quickly to stop the April 27 rally, without any reasonable attempt to make sure that he had a legally viable claim.

A frivolous lawsuit evidences the plaintiff's retaliatory intent.[186] Here, it shows that Milum Textile did not care about the legal merits. Milum Textile wanted to get its case before a judge who might find its argument sympathetic—notwithstanding that it was baseless—and who would issue an injunction first and sort out the legalities later. Unfortunately, some judges have sympathized, at least initially, with employer tales of "oppression" by the big, bad labor union having the audacity to assist employees in improving conditions through the exercise of §7 rights.[187] Meanwhile, had the TRO issued, UNITE HERE would have suffered a campaign defeat by having its well publicized scheduled rally cancelled or significantly restricted, without time to obtain legal redress. Milum would have given the Union a "black eye." [188]

Milum Textile's litigation was baseless and abused process. Milum Textile violated §8(a)(1) even under Justice Scalia's and the Board majority's *BE&K* interpretation. And,

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[186] *Bill Johnson's*, 461 U.S. at 747.
[187] *Geske & Sons*, 103 F.3d at 1369 (state court issued TRO restraining union's publication of "false and misleading statements," then denied preliminary injunction after employer failed to show likelihood of success on merits on libel claim; §8(a)(1) violation found); *Metropolitan Opera Association v. Local 100, HERE*, 239 F.3d 172 (2d Cir. 2001) (vacating preliminary injunction against union speech during course of campaign); and *Martin Selig Real Estate*, 19-CA-28614 (Advice, 7/20/2004) (*Bill Johnson's* complaint not warranted where state court adequately remedied employer's conduct by vacating TRO against union's campaign and imposing $18,000 attorney's fee award against employer).
[188] GCX66.

under Justice Breyer's and the dissent's *BE&K* interpretation, because Milum Textile abused process, it violated §8(a)(1) whether or not the litigation was baseless.

2. Milum Textile's lawsuit abused process because it was one of a series of harassing legal actions directed at interfering with UNITE HERE's public campaign.

Another form of sham litigation is that engaged in as part of a series of harassing legal actions.[189] "Litigation is invariably costly, distracting and time-consuming; having to defend a whole series of such proceedings can inflict a crushing burden on a business."[190] Moreover, not all of these legal actions need be baseless, or even unsuccessful. "When dealing with a series of lawsuits, the question is not whether any one of them has merit—some may turn out to, just as a matter of chance—but whether they are brought pursuant to a policy of starting legal proceedings without regard to the merits and for the purpose of injuring a market rival."[191]

Milum Textile not only pursued a series of frivolous legal proceedings, but it encouraged others to do so, in order to harass UNITE HERE and to interfere with its lawful campaign, without any reasonable expectation of obtaining positive decisions. Milum Textile filed its first non-meritorious secondary boycott charge on April 3, which was finally dismissed on June 7, asserting as unlawful the same conduct it alleged in the federal court complaint. After the initial charge's dismissal, Milum Textile knew or should have known that it could not obtain a favorable decision. Nonetheless, on January

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[189] *USS-POSCO Industries v. Contra Costa County Bldg. & Constr. Trades Council*, 31 F.3d 800, 811 (9th Cir. 1994), citing *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972).
[190] *USS-POSCO Industries*, 31 F.3d at 811.
[191] *Id. See also Primetime 24 Joint Venture v. National Broadcasting Co.*, 219 F.3d 92, 101 (2d Cir. 2000).

4, 2007, Milum Textile again attacked UNITE HERE's public campaign with a similar non-meritorious charge.

Moreover, although he learned from his first charge that his theories lacked merit, Craig Milum vehemently and repeatedly solicited his customers to file charges, and successfully persuaded one customer to do so. He hoped that the mere numbers of charges would cause the Board to act, would cause the Union to stop leafletting, and would give the Union "a black eye in public." Milum also asked his customers to instigate criminal proceedings against UNITE HERE and/or its supporters, without any reasonable expectation of obtaining any convictions, because he aimed to stop lawful leafletting, not trespassing or other nonexistent misconduct.

Here too, under Justice Scalia's and the Board majority's *BE&K* interpretation, Milum Textile violated §8(a)(1) because its litigation was baseless and abused process. And, under Justice Breyer's and the dissent's *BE&K* interpretation, because the lawsuit was part of a larger pattern of harassing legal action, Milum Textile violated §8(a)(1) whether or not the litigation was baseless.

3. Milum Textile's lawsuit was part of a pattern of unlawful conduct to stymie UNITE HERE's organizing campaign.

The quantity and intensity of unfair labor practices, committed by an employer at around the same time it files a lawsuit, demonstrate that the employer filed the lawsuit with motivation sufficiently retaliatory to divest the lawsuit of its First Amendment protection. In *Dilling Mechanical*[192]and *Allied Mechanical*,[193] the ALJs found *Bill*

[192] *Dilling Mechanical Contractors*, JD-24-03 (Bogas, 2/28/03), slip op., 7-8.

Johnson's violations because of the retaliatory intent demonstrated by severe and pervasive surrounding unfair labor practices.

In *Dilling Mechanical*, Judge Bogas found that the employer's numerous unfair labor practices demonstrated that it was "not an employer that merely 'didn't like' unions, but one that repeatedly demonstrated a willingness to vent its dislike through unlawful and unusually aggressive antiunion actions."[194] He concluded that "the Respondent's unsuccessful state court lawsuit was a continuation of its heavy handed, antiunion tactics, and part of its 'broader course of conduct aimed at harming the unions and interfering with employees' exercise of their rights under Section 7(a) of the NLRA.'"[195]

Similarly, in *Allied Mechanical*, Judge Vandevanter found that the employer engaged in "repeated unfair labor practices over a course of several years … which included acts undertaken against individual employees, not just the unions …." This "broader course of conduct" demonstrated that the employer's baseless lawsuit was sufficiently retaliatory to violate §8(a)(1). [196]

As argued below, Milum Textile committed sufficiently severe and pervasive unfair labor practices to justify a *Gissel* order. The Employer victimized not only the Union, but also individual employees, especially Denise Knox, So Moe Min, Evangelina Guzman and Maria Minjares.

Milum Textile's lawsuit was "part of a broader course of conduct aimed at" undermining UNITE HERE's organizing campaign. Under Justice Breyer's and the

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[193] *Allied Mechanical Services*, JD(ATL)-40-03 (Vandeventer, 6/10/03), slip op., 8.
[194] Slip op., 7.
[195] *Id.*
[196] Slip op., 8.

Board dissenter's *BE&K* interpretation, whether or not the litigation was baseless, Milum Textile violated §8(a)(1).

4. Milum Textile filed the lawsuit to stop UNITE HERE and the employees from engaging in the protected activity of publicizing their labor dispute.

A union engages in protected activities when it publicizes among the employer's customers the relationship between employee working conditions and the quality of the employer's product or service.[197] UNITE HERE planned a rally for April 27 near two Fox restaurants—Milum Textile's customers—during which the Union would release a report about working conditions at Milum Textile. These working conditions could also affect the healthfulness of the linens received by Fox, and used by Fox customers.

Milum Textile engaged in baseless litigation to block the rally. Because the litigation was baseless, its direction against §7 protected activity is sufficient retaliation evidence to prove that Milum Textile violated §8(a)(1).[198]

II. The Union is entitled to a *Gissel* order.

This is a category II *Gissel* case, one of the "less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes."[199] In such cases, "where there is also a showing that at one point the union had a majority, … the Board can properly take into

[197] *Allied Aviation Service Co.*, 248 NLRB 229, 230 (1980), enfd. 636 F.2d 1210 (3d Cir. 1980); *Sierra Publishing Co. v. NLRB*, 889 F.2d 210 (9th Cir. 1989).
[198] *Garage Management Corporation*, 334 NLRB 940 (2001).
[199] 395 U.S. at 614.

consideration the extensiveness of an employer's unfair practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future." *Id.*

Judge Parke found that, on March 4, UNITE HERE enjoyed majority support, as demonstrated by an employee petition.[200] She also found that "its majority support was dissipated, at least in part, by the unfair labor practices found herein."[201]

Milum Textile, acting through Craig Milum, its highest official, responded to the earliest manifestation of Union activity, the March 4 meeting, by attempting to assuage the employees' problems. At the meeting, Milum solicited grievances and discovered that the employees' biggest problem was Production Manager Kayonnie. Milum agreed to talk to Kayonnie, and suggested that he provide nametags so Kayonnie could refer to employees by name. He told the employees that the Union was unnecessary, and that it would take a long time.

Milum thereby sent the message that he will quickly respond to employee requests to get their problems solved, so that they do not need a union.[202] No notice posting will undo that message. "Notably, most of these benefits were requested by employees in response to the Respondent's unlawful solicitation of grievances, thereby fortifying the impression in the minds of employees that the benefit grants were designed to dissuade them from supporting the Union."[203]

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[200] Decision, 13, 26.
[201] *Id.*, 26.
[202] *America's Best Quality Coatings Corp.*, 313 NLRB 470, 472 (1993), enf'd. 44 F.3d 516 (7th Cir.), cert. denied 515 U.S. 1158 (1995) (unfair labor practice's impact magnified by its occurrence on the day after the union demanded recognition).
[203] *Evergreen America Corp.*, 348 NLRB No. 12 (2006), slip op., 3, citing *Overnite Transportation*, 329 NLRB 990, 993 (1999).

Milum became increasingly exasperated with the Union's public campaign. With little success from filing his own §8(b)(4) charges and going to court to enjoin the union, Milum lashed out at Knox, a Union activist who had just appeared on television in support of the Union. He fired Knox along with Min, another employee with some pro-union history, who happened to be with Knox when Milum was discharging her.

The discharges are classic "hallmark" violations, the "presence [of which] will support the issuance of a bargaining order unless some significant mitigating circumstance exists."[204] A discharge "is one of the most flagrant means by which an employer can hope to dissuade employees from selecting a bargaining representative because no event can have more crippling consequences to the exercise of Section 7 rights than the loss of work."[205] Reinstatement and backpay paid to discriminatees do not alleviate employees' fear. They know that discriminatees suffer months, if not years, of economic insecurity while waiting for the Board to act. And that knowledge is usually widely disseminated.

> [A discharge] is the type of conduct which employees are apt to relate to other employees and which is rather difficult, probably impossible to forget or discount. Nor are employees likely to miss the point that backpay and offers of reinstatement made some 9 to 11 months after the discharge do not necessarily compensate for the financial hardship and emotional and mental anguish apt to be experienced during an interim period of unemployment.[206]

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[204] *NLRB v. Jamaica Towing Co.*, 632 F.2d 208, 212 (2d Cir. 1980).
[205] *Center Service System Division*, 345 NLRB No. 45 (2005), slip op., 23, enfd. in relevant part, 482 F.3d 425 (6th Cir. 2007), citing *Mid-East Consolidation Warehouse*, 247 NLRB 552, 560 (1980).
[206] *NLRB v. Davis*, 642 F.2d 350, 354 (9th Cir. 1981) (favorably quoting from the ALJ decision).

In fact, numerous Milum Textile employees learned of the discharges.[207]

An order that Milum Textile reinstate Knox is unlikely to remedy UNITE HERE's loss of bargaining unit leadership. An employee reinstated after a discriminatory discharge "would not likely risk another period of unemployment 'by engaging in further attempts to improve [the employee's] working conditions, in the absence of a bargaining order.'"[208] This is especially true when "[t]he ownership and management of the Respondent remains the same as when … the discriminatee] was unlawfully discharged, which 'can serve only to reinforce in the minds of the employees the lingering effects of the Respondent's violations.'"[209]

The effects of the hallmark discharges, the first Guzman suspension, and the prohibition of Union buttons were exacerbated by Craig Milum's direct participation. His involvement made the unfair labor practices "unlikely to be forgotten" by employees.[210] "Such actions [by top management] have a 'tendency to undermine majority strength and impede the election process.'"[211]

In fact, UNITE HERE started losing support immediately after, and as a direct result of the combined impact of the discharges, the button prohibition and Guzman's suspension for violating the no-button rule. Employees stopped coming to meetings,

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[207] *Traction Wholesale Center Co.*, 328 NLRB 1058, 1077 (1999), enfd. in relevant part, 216 F.3d 92 (D.C. Cir. 2000) (*Gissel* order granted where knowledge of single discharge was disseminated throughout dispersed unit); *Evergreen America,* slip op., 1 *(Gissel* order granted in 115 person unit where violations' effects felt throughout unit).

[208] *Center Service System Division*, slip op., 23, citing *Cassis Management Corp*, 323 NLRB 456, 460 (1997).

[209] *Center Service System Division*, slip op., 23, citing *State Materials*, 328 NLRB 1317 (1999).

[210] *Evergreen America*, slip op., 4, citing *Consec Security*, 325 NLRB 453, 455 (1998), enfd. mem. 185 F.3d 862 (3d Cir. 1999).

[211] *Center Service System Division*, slip op., 23, citing *Cassis Management Corp.*, 323 NLRB 456, 460 (1997).

stopped wearing insignia, stopped distributing literature and stopped signing petitions. Some explicitly attributed their sudden inactivity to fear of discharge. Evidence of actual loss of support indicates the necessity of a *Gissel* order.[212]

Not content with having beaten down the Union, Milum Textile continued to commit unfair labor practices in order to keep it down. The video surveillance cameras affected all unit employees. Milum Textile's suspension of Minjarez for wearing a button reinforced in all employees' minds the Employer's prohibition of this form of §7 activity, just in case they had forgotten Milum's June conduct and Guzman's suspension. Milum Textile showed the videotaped threat of wage loss to all employees. And to demonstrate to the employees that Union activism does not pay, Milum Textile continued persecuting key activist Guzman. The coercive and widespread impact of even these non-hallmark violations contribute to the necessity of a *Gissel* order.[213] The situation is analogous to cases where the employer inflicted an election loss, and thereafter continued to commit still more violations. Such "post election action demonstrates Respondent's continuing propensity to violate the Act and indicates that the coercive effects of [its] unlawful conduct are likely to linger, making it highly unlikely that a free fair election can be held."[214]

Milum has hardly been fazed by legal defeats. His secondary boycott charge was dismissed, yet he filed another one and harassed his customers to file more. The

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[212] *Sheraton Hotel Waterbury*, 312 NLRB 304, 305 (1993), enf. denied on other grounds, 31 F.3d 79 (2d Cir. 1994) ("clear dissipation of union support," as evidenced by overwhelming election loss).
[213] *Evergreen America*, slip op., 3 (non-hallmark violations supported *Gissel* order); *Center Service System Division*, slip op., 23 (same).
[214] *Evergreen America*, slip op., 4, citing *Aldworth Co.*, 338 NLRB 137, 150 (2002), enfd. 363 F.3d 437 (D.C. Cir. 2004).

Regional Director told him that the "investigation [of Union literature] revealed no evidence that any of the Union's communications contained knowingly false information." Milum filed suit, alleging that the same communications were defamatory. The Regional Director issued a complaint against his company, and Milum continued to commit unfair labor practices. Another complaint issued, and still more unfair labor practices followed. The police failed to arrest Union leafletters, but he continued calling the police and encouraging his customers to call as well.

Milum Textile continued to violate the Act during and after the hearing before Judge Gontram. Around March 5, 2007, the Employer committed still another hallmark violation, firing key Union leader Guzman. The Union expects the Region to issue a complaint shortly on this and a number of other violations. UNITE HERE requests that the Board consider the outcome of this later case in determining the propriety of a *Gissel* order. See, *Parts Depot*, where the Board partly based a *Gissel* order, requested in an earlier hearing, on evidence elicited in a later hearing.[215]

If a standard remedy issues on the complaint here, Milum would still continue to violate the Act. A fair election cannot be conducted among employees of such an employer. A *Gissel* order should therefore issue.

Judge Parke found a Gissel order unnecessary because Milum Textile's toleration of some forms of Union activity "suggest[s] that the coercive effects of the Respondent's conduct can be adequately remedied by the Board's traditional remedies."[216] She does

[215] 332 NLRB 670, 674, fn.28 (2000); 332 NLRB 733, fn.2 (2000).
[216] Decision, 26.

not suggest how Milum Textile's present tolerance of Union activity among the very few employees who have not been intimidated, will ameliorate the effect of the discharges and other misconduct upon the many employees who do not participate because they have been intimidated. Judge Parke also did not consider the effects of the unfair labor practices that she erroneously failed to find; nor of those filed after the hearing started.

Conclusion

Unions are increasingly exercising their First Amendment and §7 rights under *Servette*[217] and *DeBartolo*[218] to make secondary appeals. Employers do not like these tactics, and go into court to enjoin them. The employers know, or should know, that they will ultimately lose the injunctions, and the unions will be permitted to continue their campaigns.

Courts rarely enjoin these appeals. In *San Antonio Community Hospital*, Judge Reinhardt, writing for three other dissenters, complained that the Ninth Circuit had "become not only the first circuit court in the 66-year history of the Norris-LaGuardia Act to uphold a preliminary injunction against peaceful labor speech on the basis that the content of the message constitutes 'fraud,' but also the first circuit court in the 34-year history of *New York Times* … to uphold an injunction against speech subject to the First Amendment's 'actual malice' standard."[219] Like Judge Teilborg, Judge Reinhardt was

[217] 377 U.S. 46.
[218] *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building Trades Council*, 485 U.S. 568 (1988).
[219] 137 F.3d at 1090.

concerned both with the difficulties of proving defamation under *New York Times*, and with the First Amendment restrictions on prior restraints of speech.[220]

But as Judge Reinhardt indicated, *San Antonio Community Hospital* was an aberration. Those injunctions, especially TROs, which are granted, are usually promptly dissolved or reversed on appeal.[221] They are initially granted not because they are meritorious, but because some courts sympathize with employers, at least initially.

And while the union waits for the courts to correct the mistake, the union and the employees are deprived of their rights, and the employer escapes the lawful pressure to accede to its employees' lawful demands. The employer's litigation is baseless, yet the employer "wins" because of the delays inherent in the judicial system. Employers abuse process by filing quick, frivolous TRO applications against union speech. They violate §8(a)(1), and should pay the unions' attorney fees.

Milum Textiles is one more justification for unions' reliance on the secondary tactics approved by *Servette* and *DeBartolo*. Employers frequently subject employees to unlawful campaigns of such severity and pervasiveness that fair elections cannot be held. Unions have to use secondary tactics to pressure employers to refrain from these attacks, to stay neutral while the unions have some time to acquire and demonstrate majority status with signed cards.

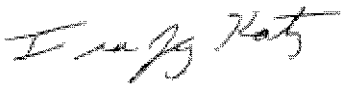
At Milum Textile, however, there is an alternative to the Union's pressure campaign. Early in its campaign, UNITE HERE acquired majority status. It lost its majority

[220] *Id.*; GCX12, p.20.
[221] See fn.187 on page 35 above.

because of Milum Textile's unlawful conduct. Because Milum Textile's unlawful campaign caused UNITE HERE to lose its majority status, the Union is entitled to a *Gissel* order.

For the above reasons, and for the reasons set forth by Counsel for General Counsel, the Union requests that the alleged violations be found and that appropriate remedies be imposed; and, specifically, that a *Gissel* order be imposed.

Respectfully submitted,



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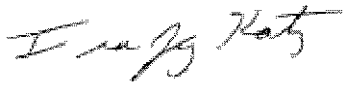
ikatz@unitehere.org

Dated: December 3, 2007

Certificate of Service

I hereby certify that counsel for General Counsel and for the Employer have consented to service by electronic mail, and are being served by electronic mail on December 3, 2007.



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Ira Jay Katz

Dated: December 3, 2007

UNITED STATES OF AMERICA
~~AMENDED~~ NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case	Date Filed
28-CA-21489	Aug. 29, 2007

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Number of workers employed
Milum Textile Services	80

c. Address (street, city, state, ZIP code)	d. Employer Representative	e. Telephone No.
333 N. 7th Ave. Phoenix, AZ 85007	Craig Milum	(602) 253-5173

f. Type of Establishment (factory, mine wholesaler, etc.)	g. Identify principal product or service
Commercial Laundry	launders, rents restaurant and hospital linen

h The above named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) & (4) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about March 5, 2007, the Employer discharged Evangelina Guzman because of her union and activity and because of her testimony at the Board.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
UNITE HERE

4a. Address (street and number, city, state, and ZIP code)	4b. Telephone No.
275 7th Ave., NY, NY 10001	212-265-7000

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
UNITE HERE

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Emily Katz
(Signature of representative or person filing charge)

Associate General Counsel
(title, if any)

Address: 275 7th Ave., NY, NY 10001 Phone 212-332-9308 Date August 28, 2007

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case	Date Filed
28-CA-21567	Sept. 14, 2007

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Number of workers employed
Milum Textile Services	80

c. Address (street, city, state, ZIP code)	d. Employer Representative	e. Telephone No.
333 N. 7th Ave. Phoenix, AZ 85007	Craig Milum	(602) 253-5173

f. Type of Establishment (factory, mine wholesaler, etc.)	g. Identify principal product or service
Commercial Laundry	launders, rents restaurant and hospital linen

h. The above named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about August 13, 2007, the Employer has interrogated employees about their Union activity.

On or about September 6, 2007, the Employer disciplined Maria Minjares because of her Union activity.

On or about September 4, 2007, the Employer disciplined Luz Acosta because of her Union activity.

Since on or about September 6, 2007, the Employer has told employees that they could not wear Union buttons.

On or about September 6, 2007, the Employer disciplined Adela Montoya because of her Union activity.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
UNITE HERE

4a. Address (street and number, city, state, and ZIP code)	4b. Telephone No.
275 7th Ave., NY, NY 10001	212-265-7000

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
UNITE HERE

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Irma B. Katz — Associate General Counsel

(Signature of representative or person filing charge) (title, if any)

Address: 275 7th Ave., NY, NY 10001 Phone 212-332-9308 Date September 13, 2007

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case	Date Filed
28-CA-21645	Nov. 5, 2007

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: Milum Textile Services

b. Number of workers employed: 80

c. Address (street, city, state, ZIP code): 333 N. 7th Ave. Phoenix, AZ 85007

d. Employer Representative: Craig Milum

e. Telephone No.: (602) 253-5173

f. Type of Establishment (factory, mine wholesaler, etc.): Commercial Laundry

g. Identify principal product or service: launders, rents restaurant and hospital linen

h. The above named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about October 19, 2007, the Employer has interfered with employees' participation in Union activity.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
UNITE HERE

4a. Address (street and number, city, state, and ZIP code)
275 7th Ave., NY, NY 10001

4b. Telephone No.
212-265-7000

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
UNITE HERE

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Tim Jay Katz
(Signature of representative or person filing charge)

Associate General Counsel
(title, if any)

Address: 275 7th Ave., NY, NY 10001

Phone 212-332-9308 Date November 5, 2007

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)