

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 EXCEPTIONS TO  
ADMINISTRATIVE LAW JUDGE'S DECISION

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UNITE HERE incorporates by reference General Counsels' exceptions to the findings and conclusions of Administrative Law Judge Lana H. Parke, JD(SF)-29-07 (10/5/07). UNITE HERE specifically excepts to the following:

1. "On April 27, the District Court denied the Respondent's [Milum Textile's] request for injunction on grounds the issues were preempted by federal law." Decision, 6. The District Court denied the Milum Textile's request because Milum Textile did not show actual malice necessary to prevail in a defamation action arising out of a labor dispute; and because the injunction would be an improper prior restraint of speech. GCX12, p.20.
2. "The Respondent continued to maintain and prosecute its lawsuit until May 26 when it obtained voluntary dismissal of the action without prejudice." Decision, 6. This finding is inaccurate to the extent that it implies that Milum Textile did anything concerning the lawsuit between April 27, when it lost the TRO motion, and May 26. As reflected by the docket sheet, GCX7, Milum Textile did nothing during this interval to pursue the litigation. The litigation essentially ended with Judge Teilborg's denial of the TRO.
3. "[T]he existence or nonexistence of a reasonable basis for those [fraud, slander and libel] allegations is not clear." Decision, 16. The nonexistence of a reasonable basis for the state law claims is clear. Milum Textile had no realistic expectation of being able to produce, at the TRO hearing, any

evidence of actual malice or actual damages necessary to prove its state law claims.

4. “While the question of whether a lawsuit has a reasonable basis in fact or law may be answered by its outcome in court, here the Respondent obtained voluntary dismissal of its lawsuit before an outcome was reached. Consequently, other evidence must provide the key.” Decision, 16. However, Milum Textile filed its lawsuit to obtain the TRO, and for no other reason. Judge Teilborg’s order denying the TRO was effectively a final outcome. Therefore, no evidence, apart from that produced during for the TRO proceedings, is likely to be relevant.
5. “The General Counsel must show the lawsuit had no reasonable basis in fact or law; it is not the Respondent’s burden to show the contrary.” Decision, 16. General Counsel carried his burden by producing the litigation record, and showing that Milum Textile produced no evidence of actual malice to the Court. It then became Milum Textile’s burden to produce any additional relevant evidence. Milum Textile did not carry its burden.
6. “While relevant, the voluntary dismissal of the remaining allegations of the lawsuit does not establish that the Respondent subjectively believed its lawsuit had no merit when it was filed and prosecuted or that it acted in bad faith in doing so.” Decision, 16. To establish whether the lawsuit was reasonably based, an objective test is employed. The test is whether a reasonable litigant could realistically expect success on the merits. A subjective belief or bad

- faith is irrelevant. Milum Textile could not realistically have expected to prevail. Subjective belief or bad faith may be relevant to establish retaliatory motive. Milum Textile's motive was sufficiently retaliatory to violate the Act.
7. Judge Parke failed to find that the litigation was factually baseless because Milum Textile could not show actual malice.
  8. Judge Parke failed to find that the litigation was factually baseless because Milum Textile could not show actual damages.
  9. Judge Parke failed to find retaliation other than that she "accept[ed], arguendo, that the lawsuit embodied the Respondent's desire to retaliate against the Union's appeal to the Respondent's customers to cease doing business with the Respondent ...." Decision, 16.
  10. "I find the Respondent did not violate Section 8(a)(1) of the Act by continuing to prosecute the undismissed allegations of its lawsuit." Decision, 16. Milum Textile's lawsuit violated §8(a)(1) in its entirety.
  11. Judge Parke held that Milum Textile's tolerance of employees' exercise of some §7 rights "suggest[s] that the coercive effects of the Respondent's conduct can be adequately remedied by the Board's traditional remedies." Decision, 26. Milum Textile's unfair labor practices were so pervasive and severe that they cannot be adequately remedied by the Board's traditional remedies. A *Gissel* order is necessary.

12. “The lingering effects of the Respondent’s unlawful interference with Section 7 rights can be addressed by detailed notice postings, and the lingering effects of the discriminatory discharges of Ms. Knox and Mr. Min and the discriminatory suspension of Ms. Guzman can be remedied by reinstatement and backpay. In the circumstances of this case, the traditional remedies are likely to assure employees that interference with their Section 7 rights will not be tolerated.” Decision, 26-27. The lingering effects of Milum Textiles unfair labor practices can only be remedied by a *Gissel* order.
13. “I declined to recommend a *Gissel* bargaining order as a remedy herein.” Decision, 27. A *Gissel* order is necessary.

Respectfully submitted,



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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 UNITE HERE's exceptions and supporting brief by electronic mail on December 3, 2007.



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Ira Jay Katz

Dated: December 3, 2007