



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S ELMWOOD AVE
STE 630
BUFFALO, NY 14202-2387

Agency Website: www.nlr.gov
Telephone: (716)551-4931
Fax: (716)551-4972

February 28, 2012

[REDACTED]
443 N FRANKLIN ST
STE 300
SYRACUSE, NY 13204-5423

Re: Mott' s
Case 03-CA-027863

[REDACTED]

We have carefully investigated and considered your charge that MOTT'S has violated the National Labor Relations Act.

Decision to Dismiss: As a result of the investigation, it does not appear that further proceedings are warranted, and I am dismissing your charge for the following reasons:

Your charge alleges that the Employer violated Section 8(a)(1) and (3) of the Act by terminating you because of your membership and activities on behalf of the Union. The investigation revealed that the Employer terminated you after you failed to report for the first scheduled work day following the conclusion of a strike based on a strike settlement agreement between the Union and Employer. The investigation revealed that the strike settlement agreement clearly and unmistakably waived your right as a returning striker to a reasonable amount of time to accept the offer of reinstatement and to be free from affirmative obligations to preserve your reinstatement rights. Inasmuch as the strike settlement agreement effectively modified your right to reinstatement as a striker, the question of what steps an employee had to take to comply with the strike settlement agreement's requirement to report for the first scheduled work day became a matter of contract interpretation that was subject to the grievance arbitration process, rather than a statutory issue under the National Labor Relations Act. The investigation disclosed that a grievance was filed over your termination and an arbitrator interpreted the strike settlement agreement to obligate you to physically report to work on September 20, 2011, effectively resolving the contract interpretation issue.

In addition, to the extent that you claim that the Employer fired you because of your public support for the strike, a review of the arbitrator's award reveals that the arbitrator was presented with this issue, enunciated the correct legal standards and expressly concluded that the Employer did not fire you because of your union activity. Therefore, the arbitration award is not repugnant to the Act and otherwise satisfies the proposed standards for post-arbitration deferral set forth in NLRB GC Memorandum 11-05 and the existing standards as outlined in Spielberg Manufacturing Corp., 112 NLRB 1080 (1955) and Olin Corp., 268 NLRB 573 (1984). Accordingly, I am dismissing your charge.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlr.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **March 13, 2012**. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than March 12, 2012.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before March 13, 2012**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/Michael J. Israel

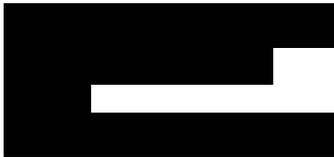
MICHAEL J. ISRAEL
Acting Regional Director

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS
BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570


MOTT'S
4363 ROUTE 104
WILLIAMSON, NY 14589


131 S DEARBORN ST STE 2400
CHICAGO, IL 60603-5577



UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 - 14th Street, N.W.
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)