April 4, 2018
BCO-064

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No. 18-1549
	:	
v.	:	Board Case Nos.:
	:	04-CA-199438
GRUMA CORPORATION D/B/A MISSION FOODS	:	04-CA-202091
	:	04-CA-209548
Respondent	:	

JUDGMENT

Before: RESTREPO, BIBAS and NYGAARD, Circuit Judges

THIS CAUSE was submitted upon the application of the National Labor Relations Board for the enforcement of a certain order on consent issued by it against Gruma Corporation d/b/a Mission Foods, its officers, agents, successors, and assigns, on February 16, 2018, in Board Case Nos. 04-CA-199438, 04-CA-202091 and 04-CA-209548; and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Third Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and that the Gruma Corporation d/b/a Mission Foods, its officers, agents, successors, and assigns, shall abide by and perform the directions of the Board set forth in its order. (See attached Order and Appendix)

Mandate shall issue forthwith.

BY THE COURT

s/Stephanos Bibas
Circuit Judge

Certified as a true copy and issued in lieu of a formal mandate on April 5, 2018

DATED: April 5, 2018

Teste: Patricia A. Dodszuweit
Clerk, U.S. Court of Appeals for the Third Circuit

NATIONAL LABOR RELATIONS BOARD

v.

GRUMA CORPORATION D/B/A MISSION FOODS

ORDER

Gruma Corporation d/b/a Mission Foods, Mountain Top, Pennsylvania, its officers, agents, successors and assigns, shall

1. Cease and desist from

   (a) Threatening employees with discharge for supporting the Union.

   (b) Threatening employees with closing the facility for supporting the Union.

   (c) Threatening employees with discharge for questioning the Respondent's disciplinary investigations of employees who support the Union.

   (d) Informing employees that it is futile to support the Union.

   (e) Informing employees that the Union was to blame for employees not receiving wage increases.

   (f) Instigating, promoting, assisting, and encouraging employees to sign a petition to decertify the Union.

   (g) Soliciting employees to sign a decertification petition.

   (h) Promising benefits to employees to encourage employees to decertify the Union.

   (i) Threatening employees with discharge for failing to sign a decertification petition.

(j) Telling employees that they are receiving a pay increase and improved benefits because they expressed that they no longer wished to be represented by the Union.

(k) Issuing subpoenas demanding information about employees' union activity and participation in Board investigations.

(l) Suspending or discharging any of its employees or in any other manner discriminating against employees in regard to hire or tenure of employment or any other term or condition of employment because of their protected Union support.

(m) Unlawfully withdrawing recognition from the Union.

(n) Bargaining in bad faith with the Union.

(o) Failing and refusing to meet and bargain with the Union at reasonable times.

(p) Failing and refusing to (i) explain to the Union why the Respondent believes the parties have not reached a collective-bargaining agreement and (ii) meet and bargain with the Union until the Union agrees that the parties have not reached a collective-bargaining agreement.

(q) Engaging in surface bargaining or bargaining without the intention to reach an overall collective-bargaining agreement.

(r) Making changes to employees' terms and conditions of employment to discourage employees from supporting the Union.

(s) Making any unilateral changes to employees' terms and conditions of employment without notifying the Union and bargaining to agreement or lawful impasse.

(t) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the Union or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the

purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

   (a) Within 14 days from the date of the Board's Order, offer Dawizon Martinez and Richard Mondesir full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

   (b) Within 14 days of the Board's Order, remove from the Respondent's files any reference to the suspension or discharge of Dawizon Martinez and Richard Mondesir and within 3 days thereafter, notify those employees, in writing, that this was done and that the suspensions and discharges will not be used against them in any way.

   (c) Make whole Dawizon Martinez and Richard Mondesir for any losses they may have suffered by reason of the discrimination against them, by payment of an amount to be determined by the Regional Director for Region Four of the Board at a later date, in consultation with the parties.

   (d) Make whole the above named employees for any additional loss of pay caused by the Respondent's failure, if any, to reinstate them in accordance with the provisions of this Order, within 14 days from the date of this Order, by payment to them of the respective amounts that they would have earned if properly reinstated, from the 15th day after the date of this Order to the date of a proper offer of reinstatement, less their net earnings during such period, said amounts to be computed with interest on a quarterly basis.

   (e) Compensate the above-named employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards.

   (f) File with the Regional Director for Region Four of the Board, within 21 days of the date the amount of backpay is fixed, a report allocating the backpay awards to the appropriate calendar years for each employee.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Upon request, recognize and bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of all full-time and regular part-time production and warehouse employees, sanitation and maintenance employees, quality control employees, and lead employees employed by the Respondent at its 15 Elmwood Road, Mountain Top, PA facility; excluding all other employees, including office clerical employees, professional employees, confidential employees, sales employees, over the road truck drivers, managers, guards, and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment and other conditions of employment, and if an understanding is reached, reduce it to writing and sign it. On resumption of bargaining, the Union's status as the exclusive collective-bargaining representative of the unit shall be extended for 12 months thereafter, as if the initial year of the certification has not expired.

(i) Upon request, bargain collectively in good faith with the Union for at least 24 hours per month, in sessions lasting not less than 6 hours, until an agreement or lawful impasse is reached.

(j) At the Union's election, rescind the Respondent's unilateral changes to employees' terms and conditions of employment of a 3-percent wage increase, provision of three paid sick days, and modification of attendance policy.

(k) Within 14 days of service by the Region, post at its Mountain Top, Pennsylvania plant copies of the attached notice marked "Appendix A" in English, Spanish, and Haitian-Creole. Copies of the notice, on forms provided by Region Four, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous

places, including all places where notices to employees are customarily posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 2016.

(l) Within 10 days of the Board's Order, (i) hold a mandatory employee meeting or meetings, on working time and at times when the Respondent customarily holds meetings, and scheduled to ensure the widest possible employee attendance, at which the notice marked "Appendix A" will be read to employees in English, Spanish and Haitian-Creole by a responsible Respondent official in the presence of a Board agent or, at the Respondent's option, have a Board agent and/or translator read the Order in the presence of a responsible Respondent official; (ii) announce the meeting(s) for the notice reading in the same manner it would customarily announce a meeting of employees; and (iii) require that all employees at the facility involved in this proceeding attend the meeting(s).

(m) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES

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

POSTED PURSUANT TO A STIPULATION
FOR A BOARD ORDER AND CONSENT JUDGMENT
OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

United Food and Commercial Workers Local 1776 is the employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit:

INCLUDED: All full-time and regular part-time production and warehouse employees, sanitation and maintenance employees, quality control employees and lead employees employed at the 15 Elmwood Road, Mountain Top, Pennsylvania facility.

EXCLUDED: All other employees, including office clerical employees, confidential employees, sales employees, over the road truck drivers, managers, guards, and supervisors as defined in the Act.

WE WILL NOT instigate, promote, assist, or encourage you to sign a petition to decertify the Union.

WE WILL NOT ask you to sign a petition to decertify the Union.

WE WILL NOT promise you a raise and better benefits to encourage you to decertify the Union.

WE WILL NOT threaten to fire you for failing to sign a petition to decertify the Union.

WE WILL NOT discipline or fire you because of your Union activity.

WE WILL NOT unlawfully withdraw recognition from the Union or refuse to recognize and bargain with the Union as your bargaining representative.

WE WILL NOT inform you of our unlawful withdrawal of recognition of the Union or say to you that the Union is no longer your collective-bargaining representative.

WE WILL NOT bargain in bad faith with the Union or bargain without the intention to reach an overall collective-bargaining agreement.

WE WILL NOT unlawfully fail and refuse to meet and bargain with the Union.

WE WILL NOT unlawfully fail and refuse to meet and bargain with the Union at reasonable times.

WE WILL NOT tell you that you are receiving a raise and better benefits as a reward for no longer supporting the Union.

WE WILL NOT threaten to fire you if you choose to be represented by or support a union.

WE WILL NOT threaten to close the plant in order to discourage you from engaging in union activities.

WE WILL NOT threaten to fire you for questioning disciplinary investigations of employees who support the Union.

WE WILL NOT tell you that a union cannot help you and that you will only receive benefits if we want to give them to you.

WE WILL NOT tell you that we will never sign a contract with your union.

WE WILL NOT tell you that the Union is to blame for you not receiving a raise.

WE WILL NOT issue subpoenas demanding information regarding your union activities or participation in National Labor Relations Board investigations.

WE WILL NOT make changes in wages, hours and working conditions without notifying the Union and bargaining to agreement or lawful impasse with the Union and **WE WILL NOT** make any changes in wages, hours and working conditions to persuade you to stop supporting the Union.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the National Labor Relations Act.

WE WILL offer Dawizon Martinez and Richard Mondesir full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed; and **WE WILL** make them whole for any loss of earnings and other benefits resulting from their discharges, with interest.

WE WILL compensate Dawizon Martinez and Richard Mondesir for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and **WE WILL** file with the Regional Director for Region Four of the Board, within 21 days of the date the amount of backpay is fixed, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL remove from our files any reference to the suspensions and discharges of Dawizon Martinez and Richard Mondesir and **WE WILL** notify them that we have done so and that their suspensions and discharges will not be used against them in any way.

WE WILL, on request, bargain in good faith with the Union as the exclusive bargaining representative of our employees in the unit described above, concerning rates of pay, wages, benefits and other terms and conditions, and put in waiting and sign any agreement reached as a result of such bargaining. The Union's certification year shall be extended for 1 year from the resumption of bargaining.

WE WILL, on request, meet to bargain with the Union for a minimum of 24 hours per month, for at least 6 hours per session until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining.

WE WILL, if requested by the Union, rescind the changes regarding your wages, sick days, and attendance policy.

GRUMA CORPORATION d/b/a MISSION FOODS

The Board's decision can be found at www.nlrb.gov/case/04-CA-199438 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.