

**Albertsons, Inc. and United Food and Commercial  
Workers International Union, AFL-CIO, Local  
No. 7. Case 27-CA-5891**

26 August 1983

**SUPPLEMENTAL DECISION AND  
ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
JENKINS AND ZIMMERMAN**

On 29 September 1980 the National Labor Relations Board issued its Decision and Order in this proceeding,<sup>1</sup> in which it adopted the Administrative Law Judge's refusal to defer to an arbitration award and found that Respondent had violated Section 8(a)(1) of the Act by discharging employee Jeri Smith on 16 February 1978 because she engaged in concerted protected activity. Upon a petition for review and a cross-petition for enforcement of the Board's Order, the United States Court of Appeals for the Ninth Circuit reversed the Board, finding that it failed to consider evidence that Smith would have been discharged for incompetency, that there is substantial doubt that Smith's

<sup>1</sup> 252 NLRB 529, former Member Penello dissenting.

alleged "union activity" was anything more than pursuance of her own complaints, and that the Board abused its discretion by not deferring to the arbitrator's decision.<sup>2</sup> The court remanded the case to the Board for further consideration consistent with its opinion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board, having accepted the remand, accepts the court's opinion as the law of the case. We shall accordingly revoke our prior Decision and Order in this case and dismiss the complaint in its entirety.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that its prior Decision and Order in this case be, and it hereby is, revoked and the complaint be, and it hereby is, dismissed in its entirety.

<sup>2</sup> *Albertson's, Inc. v. NLRB*, 609 F.2d 312 (9th Cir 1982).