

Filip J. Novac, d/b/a FJN Manufacturing and Deborah J. Kemp and Diane Smith and Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO

Filip J. Novac, d/b/a FJN Manufacturing and/or Jovanca Novac, d/b/a KD Sportswear and Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO. Cases 6-CA-22351, 6-CA-22356, 6-CA-22361, and 6-CA-22998

November 21, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon charges filed by Deborah Kemp, an Individual,¹ by Diane Smith, an Individual,² and by Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO,³ against the Respondent, Filip J. Novac, d/b/a FJN Manufacturing (Respondent FJN), the General Counsel of the National Labor Relations Board, on March 1, 1990, issued an order consolidating cases, consolidated complaint and notice of hearing alleging that Respondent FJN has violated Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act. Although properly served copies of the charges, amended charges, and consolidated complaint, Respondent FJN has failed to file an answer.⁴

Upon charges filed in Case 6-CA-22998 on September 10, 1990, and amended on November 9, 1990, by Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO against Filip J. Novac, d/b/a FJN Manufacturing, and/or Jovanca Novac, an Individual d/b/a KD Sportswear (Respondent KD), the General Counsel of the National Labor Relations Board, on November 20, 1990, issued a complaint and notice of hearing alleging that Respondent FJN and Respondent KD were alter egos and a single employer, and that they violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondents have failed to file an answer.⁵

¹ The Charge in Case 6-CA-22351 was filed on January 2, 1990, and amended on February 28, 1990.

² The charge in Case 6-CA-22356 was filed on January 4, 1990, and amended on February 28, 1990.

³ The charge in Case 6-CA-22356 was filed on January 5, 1990, and amended on February 28, 1990.

⁴ Pursuant to two requests from Respondent FJN's counsel for extensions of time to file an answer, two extensions were granted but no answer was filed. On July 3, 1990, an order postponing hearing indefinitely pending settlement issued.

⁵ On December 10, 1990, the Chapter 13 standing trustee filed a document which asserted that Filip J. Novac is a debtor in a vol-

untary Chapter 13 bankruptcy proceeding filed July 30, 1990, and that, under the Bankruptcy Code, the trustee has no authority to correct any improper business practice. The trustee requested that the complaint in Case 6-CA-22998 be dismissed as to the trustee. Although the document was titled "Response to Complaint," it did not purport to respond to the complaint allegations in Case 6-CA-22998.

On November 20, 1990, Cases 6-CA-22351, 6-CA-22356, 6-CA-22361, and 6-CA-22998 were consolidated. On March 11, 1991, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On March 14, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted⁶ No timely response was received by the Board. On March 28, 1991, however, the Board's Regional Office for Region 6 received a document written in behalf of Filip J. Novac, the Respondent, that referred to Case 6-CA-22998. The document stated, inter alia, that Filip J. Novac is a debtor in a voluntary bankruptcy proceeding, that all claims for damages should be filed with the Bankruptcy Court, that the Board has a basis for objecting to confirmation of a plan for reorganization if it believes that wrongful labor practices are continuing, and that the Board has adequate means available through the bankruptcy process to ensure that alleged wrongful conduct does not continue. The document concluded with a request by Respondent Filip J. Novac that the complaint in Case 6-CA-22998 be dismissed. Although the document was styled "Response to Complaint" it did not purport to respond to any complaint allegations in Case 6-CA-22998.⁷

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion For Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations of a complaint shall be deemed admitted if an answer is not filed within 14 days from services of the complaint, unless good cause is shown. Section 102.20 also provides that any complaint allegation that is not denied or disputed is deemed to be admitted as true and shall be so found by the Board.

The consolidated complaint in Cases 6-CA-22351, 6-CA-22356, and 6-CA-22361 states that unless an answer is filed within 14 days of service, "all the alle-

gations of a complaint shall be deemed admitted if an answer is not filed within 14 days from services of the complaint, unless good cause is shown. Section 102.20 also provides that any complaint allegation that is not denied or disputed is deemed to be admitted as true and shall be so found by the Board.

⁶ The Notice to Show Cause directed parties to respond to the Board in Washington, D.C., by March 28, 1991.

⁷ The Regional Office contacted counsel for Filip J. Novac to determine whether the document was intended to be a response to the complaint in Case 6-CA-22998 or a response to the Board's Notice to Show Cause and was informed that it was intended to respond to the Notice to Show Cause. Although the document did not comply with the filing requirements specified in the Notice to Show Cause, the Board's Executive Secretary accepted the document.

gations in the Consolidated Complaint shall be deemed to be admitted to be true and shall be so found by the Board.” As noted, the Respondent, Filip J. Novac, d/b/a FJN Manufacturing, although granted two extensions of time in which to file an answer to the consolidated complaint, has failed to file an answer to the consolidated complaint, and has failed to file a response to the Notice to Show Cause. Similarly, the complaint in Case 6-CA-22998 states that unless an answer is filed within 14 days of service, “all the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board.” As noted above, nothing purporting to be an answer to the complaint in Case 6-CA-22998 has been filed⁸ To the extent that the document filed on behalf of Filip J. Novac on December 10, 1990, by the standing trustee, or the document filed on behalf of Filip J. Novac, received by the Regional Office on March 28, 1991, might be considered an answer to the complaint, we note that neither specifically denies any complaint allegation. Accordingly, all allegations are deemed to be admitted.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel’s Motion for Summary Judgment insofar as the consolidated complaint in Cases 6-CA-22351, 6-CA-22356, and 6-CA-22361 alleges that the Respondent violated Section 8(a)(1), (3), and (4) of the Act. In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel’s Motion for Summary Judgment insofar as the complaint in Case 6-CA-22998 alleges that Respondent KD is an alter ego of Respondent FJN, a single employer with Respondent FJN, and that it violated Section 8(a)(3) and (1) of the Act.

The consolidated complaint further alleges that Respondent FJN’s unfair labor practices are so serious and substantial that a bargaining order is required.⁹

In determining whether a bargaining order is appropriate to protect employee sentiments and to remedy an employer’s misconduct, the Board examines the nature

⁸To the extent that either the December 10, 1990, or the March 28, 1991 document raises a claim of bankruptcy as a defense, we note that a respondent’s claim of bankruptcy will not stay unfair labor practice charges against a respondent. It is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985), *Cardinal Services*, 295 NLRB 933 (1989). Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. See *Phoenix Co.*, id., and cases cited therein.

⁹The consolidated complaint relies on the bargaining order requested as the basis for alleging that Respondent FJN violated Sec. 8(a)(5) and (1) by refusing to bargain with the Union. Similarly, the complaint in Case 6-CA-22998 relies on the bargaining order requested in the consolidated complaint in alleging that Respondents FJN and KD violated Sec. 8(a)(5) and (1) by refusing to bargain with the Union.

and pervasiveness of the employer’s unfair labor practices. *NLRB v. Gissel Packing Co.*, 395 U.S. 573 (1969). In weighing a violations’s pervasiveness, relevant considerations include “the number of employees directly affected by the violation, the size of the unit, the extent of dissemination among the work force, and the identity of the perpetrator of the unfair labor practice.” *Michigan Expediting Service*, 282 NLRB 210, 211 (1986).

The consolidated complaint alleges that Respondent FJN threatened, interrogated, and created an impression of surveillance among an unspecified number of employees and unlawfully discharged 10 employees. The consolidated complaint further alleges in conclusionary terms that the unfair labor practices preclude the holding of a fair election and that therefore a bargaining order is warranted. Although the unfair labor practices here are serious, the consolidated complaint does not allege the size of the unit or the extent of the dissemination, if any, of the violations among the employees not directly affected by them. Accordingly, we deny the General Counsel’s Motion for Summary Judgment insofar as it alleges that a bargaining order is appropriate and that the Respondent therefore violated Section 8(a)(5) and (1) of the Act.¹⁰ We shall remand the case for a hearing before an administrative law judge on the issue of whether a bargaining order is an appropriate remedy under the circumstances of this case.¹¹

On the entire record, the Board makes the following

¹⁰See *Control & Electrical System Specialists*, 299 NLRB 642 (1990); *Protection Sprinkler Systems*, 295 NLRB 1072 (1989); *Binney’s Casting Co.*, 285 NLRB 1095 (1987); *Bravo Mechanical*, 300 NLRB 1019 (1990).

Whether the discharge of 10 employees and other unfair labor practices have occurred in a unit of 11 employees or 1100 clearly is an important factor in determining whether it is appropriate for the Board to issue a bargaining order. The Board has informed the General Counsel through published precedent that allegations of unit size and dissemination are required in order for the Board to grant the extraordinary remedy of a bargaining order in a no answer summary judgment case. We are merely applying that precedent here. Although the complaints in this case may constitute adequate notice pleadings for purposes of holding a hearing, contrary to our dissenting colleague, we do not find them sufficient to warrant summary judgment based on their factual allegations.

¹¹The consolidated complaint also alleges that December 22, 1989, the Union requested that Respondent FJN recognize and bargain collectively with it as the exclusive representative of the employees in the appropriate unit, and that on the same date, Respondent FJN failed and refused to do so. The complaint in Case 6-CA-22998 also alleges that on about June 18, 1990, the Union requested that the Respondent alter ego, i.e., the collective entity of Respondents FJN and KD, recognize and bargain with it, and that, on the same date, the Respondents refused to do so. In the absence of an answer to the consolidated complaint or to the complaint in Case 6-CA-22998, we find these allegations to be admitted. Because the 8(a)(5) and (1) allegations in both the consolidated complaint and the complaint in Case 6-CA-22998 are tied to the bargaining order remedy, we shall leave their disposition to the judge.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Filip J. Novac, d/b/a as FJN Manufacturing (FJN), is a sole proprietorship engaged in the business of manufacturing and assembling clothing, initially with an office and place of business in Allentown, Pennsylvania, and then in New Bethlehem, Pennsylvania. During the 12-month period ending December 31, 1989, Respondent FJN sold and shipped from its facilities products, goods, and materials valued in excess of \$50,000 directly to American Argo Corp. and Wright's Knitwear Corp., enterprises which are directly engaged in interstate commerce.

Respondent FJN established Respondent KD as a subordinate entity to, and disguised continuation of, Respondent FJN's business of the manufacture and assembly of clothing. Respondent KD commenced operations about early to mid-June 1990 and continues to date, with an office and place of business in Butler, Pennsylvania, where it is engaged in the manufacture and assembly of clothing. Based on a projection of its operations since about June 1, 1990, Respondent KD annually will sell and ship from its facility in Butler, Pennsylvania, products, goods, and materials valued in excess of \$50,000 directly to American Argo Corp., Wright's Knitwear Corp., and Kahn Lucas-Lancaster Inc., enterprises which are themselves directly engaged in interstate commerce.

We find that Respondent FJN and Respondent KD are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act, that the Union is a labor organization within the meaning of Section 2(5) of the Act, and that Respondent FJN and Respondent KD are alter egos and a single employer within the meaning of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On about December 20, 1989, Respondent FJN, acting through Filip J. Novac, the owner of Respondent FJN and a statutory supervisor and agent of it, created an impression among employees that their union activities were under surveillance by Respondent FJN.

On about December 22, 1989, Respondent FJN, acting through Jovanca Novac, a statutory supervisor and agent of Respondent FJN, threatened employees with plant closure if they selected the Union as their bargaining representative.

On about December 22, 1989, Respondent FJN, acting through Filip J. Novac, informed its employees that it would be futile for them to select the Union as their bargaining representative.

On about December 28 and 29, 1989, Respondent FJN, acting through Filip J. Novac, interrogated employees regarding their union membership, activities, and sympathies.

On about December 28, 1989, Respondent FJN, acting through Filip J. Novac, by telephone, interrogated its employees regarding their union membership, activities, and sympathies.

On about December 28, 1989, Respondent FJN, acting through Filip J. Novac, by telephone, threatened employees by conditioning their continued employment on their renouncing their support for the Union.

By the conduct described in the paragraphs above, we find that Respondent FJN has interfered with, restrained, and coerced and is interfering with, restraining, and coercing employees within the meaning of Section 8(a)(1) of the Act.

On December 20, 1989, Respondent FJN discharged Deborah J. Kemp. On December 28, 1989, Respondent FJN discharged Judith Guthrie, Karla Kreibel, Diane Smith, Debra Toy, and Joyce Truitt. On December 29, 1989, Respondent FJN discharged Donna Atcheson and Crystal Rearick. On January 2, 1990, Respondent FJN discharged Michael Delp and Maxine Duncan. On December 29, 1989, Respondent FJN conditioned the reemployment of its employees on their renouncing their support for the Union.

Respondent FJN discharged and refused to reemploy the employees named above because the employees, joined, supported, or assisted the Union, because they engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in those activities. By the conduct described in this paragraph, Respondent FJN has discriminated and is discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and Respondent FJN has been engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

The discharge of Deborah J. Kemp on December 20, 1989, was for the additional reason that Kemp filed an unfair labor practice charge with the Board. By this conduct, Respondent FJN has discriminated and is discriminating against employees for filing charges under the Act, and has thereby been engaging in an unfair labor practice within the meaning of Section 8(a)(4) and (1) of the Act.

In early to mid-June 1990, Respondent FJN established Respondent KD as a subordinate entity to and disguised continuation of Respondent FJN's business. Respondent FJN and Respondent KD are, and at all material times have been, alter egos and a single employer within the meaning of the Act.

Since about June 18, 1990, and continuing to date, Respondent KD, and Respondent FJN and Respondent KD collectively as alter egos and a single employer, have refused to employ Linda Fair, Linda Helper, Michael Delp, Maxine Duncan, Judith Guthrie, Karla

Kreibel, Crystal Rearick, Diane Smith, Debra Toy, Joyce Truitt, and Deborah J. Kemp. Respondent FJN and Respondent KD collectively refused to hire these persons because they joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in those activities. By the conduct described in this paragraph, Respondent KD and Respondents FJN and KD have discriminated and are discriminating in regard to the hire or tenure or terms or conditions of employment of their employees, thereby discouraging membership in a labor organization, and Respondent KD and Respondent FJN have been engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. By creating an impression among employees that their union activities were under surveillance; by threatening employees with plant closure if they selected the Union as their bargaining representative; by informing employees that it would be futile for them to select the Union as their bargaining representative; by interrogating employees regarding their union membership, activities, and sympathies; by interrogating by telephone employees regarding their union membership, activities, and sympathies; and by threatening employees by conditioning their continued employment on their renouncing their support for the Union, Respondent FJN interfered with, restrained, and coerced and is interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, and Respondent FJN thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

2. By discharging its employees Deborah J. Kemp, Judith Guthrie, Karla Kreibel, Diane Smith, Debra Toy, Joyce Truitt, Donna Atcheson, Crystal Rearick, Michael Delp, and Maxine Duncan because they joined, supported, or assisted the Union, because they engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities, and by conditioning their reemployment on their renouncing their support for the Union, Respondent FJN has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) of the Act.

3. By discharging Deborah J. Kemp for the additional reason that Kemp filed an unfair labor practice charge with the Board, Respondent FJN has engaged in an unfair labor practice within the meaning of Section 8(a)(4) and (1) of the Act.

4. By refusing to employ Linda Fair, Linda Helper, Michael Delp, Maxine Duncan, Judith Guthrie, Karla

Kreibel, Crystal Rearick, Diane Smith, Debra Toy, Joyce Truitt, and Deborah J. Kemp because those persons joined, supported, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities, Respondent FJN and Respondent KD, individually and as alter egos and single employers, have engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

5. These unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents, Filip J. Novac, d/b/a FJN Manufacturing and/or Jovanca Novac, d/b/a KD Sportswear, Allentown, New Bethlehem, and/or Butler, Pennsylvania, have violated Section 8(a)(1), (3), and (4) of the Act, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondents to offer to employees Deborah J. Kemp, Judith Guthrie, Karla Kreibel, Diane Smith, Debra Toy, Joyce Truitt, Donna Atcheson, Crystal Rearick, Michael Delp, and Maxine Duncan immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. We shall also order the Respondents to offer Linda Fair and Linda Helper the employment that they would have been offered but for the Respondents' unlawful discrimination against them. Backpay shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall order the Respondents to remove from their files any references to the unlawful discharges of or refusals to hire the above-named employees and to notify them in writing that this has been done and that the discharges will not be used against them in any way. Finally, as noted above, we shall also remand the 8(a)(5) allegations for a hearing on the limited issue of whether a bargaining order is an appropriate remedy under the circumstances of this case.

ORDER

The National Labor Relations Board orders that the Respondents, Filip J. Novac, d/b/a FJN Manufacturing and/or Jovanca Novac, d/b/a KD Sportswear, Allentown, New Bethlehem, and/or Butler, Pennsylvania, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating the impression among employees that their union activities are under surveillance.

(b) Threatening employees with plant closure if they select Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO as their bargaining representative.

(c) Informing employees that it would be futile to select Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO as their bargaining representative.

(d) Interrogating employees regarding their union membership, activities, and sympathies.

(e) Threatening employees by conditioning their continued employment on their renouncing their support for Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO as their bargaining representative.

(f) Discharging and refusing to employ employees, or otherwise discriminating against employees, because they supported or assisted Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO or because they filed charges under the National Labor Relations Act.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Offer Deborah J. Kemp, Judith Guthrie, Karla Kreibel, Diane Smith, Debra Toy, Joyce Truitt, Donna Atcheson, Crystal Rearick, Michael Delp, and Maxine Duncan immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) Remove from their files any references to the unlawful discharges or refusals to employ of the above-named employees and notify them in writing that this has been done and that the discharges and the refusals to employ will not be used against them in any way.

(c) Offer to Linda Fair and Linda Helper the employment that would have been offered to them but for the unlawful discrimination against them, if those jobs no longer exist, to substantially equivalent positions, and make them whole for any loss of earnings and other benefits resulting from the discrimination against them, with interest.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-

cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under this Order.

(e) Post at their Allentown, New Bethlehem, and/or Butler, Pennsylvania facilities copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

IT IS FURTHER ORDERED that the 8(a)(5) and (1) allegations are remanded to the Regional Director for the purpose of holding a hearing before an administrative law judge on those issues.

MEMBER RAUDABAUGH, dissenting in part.

Contrary to my colleagues, I would impose a bargaining order on the Respondents, as requested by the General Counsel in the complaint.

By failing to file an answer, the Respondents have admitted to the following unfair labor practices: threatening employees with plant closure if they selected the Union as their bargaining representative; creating an impression among their employees that their union activities were under surveillance; informing their employees that it would be futile for them to select the Union as their bargaining representative; interrogating their employees regarding their union membership, activities, and sympathies; threatening their employees by conditioning their continued employment on their renouncing their support for the Union; discharging nine employees because of their union or other concerted activities; discharging another employee because of her union or other concerted activities and because of her filing an unfair labor practice charge with the Board; and conditioning the reemployment of these employees on their renouncing their support for the Union.

The Respondents have further admitted that these acts "are so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices and of conducting a fair election by the use of traditional remedies is slight, and the employees' sentiments regarding representation, having been expressed through authorization cards, would, on bal-

¹²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ance, be protected better by issuance of a bargaining order than by traditional remedies alone.” In addition, the Respondents have admitted that the Union represented a majority of the unit employees, that the Union was their exclusive bargaining representatives, that the Union demanded recognition, and that the Respondents’ failure and refusal to recognize and bargain with the Union violated Section 8(a)(1) and (5) of the Act.

Despite these admissions, my colleagues refuse to impose a bargaining order. The sole basis for their refusal is that the complaint “does not allege the size of the unit or the extent of the dissemination, if any, of the violations among the employees directly affected by them.” There is no legal or logical basis for this position.

The Board’s Rules and Regulations provide that the complaint must contain “a clear and concise description of the acts which are claimed to constitute unfair labor practices.” See Section 102.15. However, there is no requirement that the complaint contain *the evidence which establishes* that these acts are unfair labor practices. Thus, for example, an 8(a)(3) complaint would plead that the respondent discharged an employee because of his union activities and that the discharge violated Section 8(a)(3). The complaint need not plead the evidentiary support for this allegation, i.e., that the employee was a union adherent, that the respondent had knowledge of his union activities, that the timing of the discharge was suspect, and that the respondent had animus toward the union. Although such facts are clearly relevant to the alleged unfair labor practice and would be adduced at the hearing by the General Counsel, the complaint states a valid cause of action and the General Counsel is entitled to summary judgment in such case if the respondent fails to file an answer. Similarly, complaints, such as the instant one, routinely plead the supervisory status of those alleged to have committed unfair labor practices, without pleading the evidentiary indicia of their supervisory status, and the Board, including my colleagues in this case, give effect to a respondent’s admission of this legal conclusion.

Applying these principles to the instant case, the General Counsel’s complaint alleged the acts that constitute the 8(a)(1) and (3) unfair labor practices; he further alleged the *Gissel*¹ test for the imposition of a bargaining order; and he alleged the refusal to bargain as the act that constituted an 8(a)(1) and (5) unfair labor practice. The Respondents admitted all of that. It was not necessary for the General Counsel to allege the evidentiary factors that support these allegations. Accordingly, I would not find technical fault with the

complaint and I would enter a bargaining order based on the Respondents’ admissions.²

²In view of my position, I would overrule the case cited at fn. 10 of the majority opinion.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT create the impression among employees that their union activities are under surveillance.

WE WILL NOT threaten employees with plant closure if they select Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO as their bargaining representative.

WE WILL NOT inform employees that it would be futile to select Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO as their bargaining representative.

WE WILL NOT interrogate employees regarding their union membership, activities, and sympathies.

WE WILL NOT threaten employees by conditioning their continued employment on their renouncing their support for Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO as their bargaining representative.

WE WILL NOT discharge or refuse to employ employees, or otherwise discriminate against employees, because they supported or assisted Mid-Atlantic Regional Joint Board a/w Amalgamated Clothing and Textile Workers Union, AFL-CIO or because they filed charges under the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer the following employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and WE WILL

¹*NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

make them whole for any loss of earnings and other benefits resulting from our discrimination against them, with interest.

- Deborah J. Kemp
- Karla Kreibel
- Debra Toy
- Donna Atcheson
- Michael Delp
- Judith Guthrie
- Diane Smith
- Joyce Truitt
- Crystal Rearick
- Maxine Duncan

WE WILL notify the above-named employees that we have removed from our files any references to their unlawful discharges and/or refusals to employ and that

we will not use the discharges or refusals to employ against them in any way.

WE WILL offer to Linda Fair and Linda Helper the employment that they would have been offered to them but for the unlawful discrimination against them, or to substantially equivalent positions, and WE WILL make them whole for any loss of earnings and other benefits resulting from our discrimination against them, with interest.

FILIP J. NOVAC, D/B/A FJN MANUFACTURING AND/OR JOVANCA NOVAC, D/B/A KD SPORTSWEAR