

Lechmere, Inc. and Local 919, United Food and Commercial Workers, AFL-CIO. Case 39-CA-3571

September 30, 1992

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On June 15, 1989, the National Labor Relations Board issued a Decision and Order,¹ finding that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by refusing to allow the union representatives to engage in organizing and handbilling in the store's parking lot and by attempting to cause the union representatives to be removed from a public area adjacent to the parking lot.

The Respondent filed a petition for review with the United States Court of Appeals for the First Circuit. On September 17, 1990, the court enforced the Board's Order.² Thereafter, the Supreme Court granted certiorari and reversed the judgment of the First Circuit and denied enforcement of the Board's Order.³ Pursuant to the Supreme Court's decision, the First Circuit recalled its mandate and entered a new judgment (Docket No. 89-1683, Mar. 17, 1992), which reads as follows:

The employer's petition for review is granted. Enforcement of the Board's order is denied. The case is remanded to the Board for reconsideration of the so-called "second unfair labor practice," See 914 F.2d at 325, relating solely to the finding of a violation for attempting to remove union representatives from a public area adjacent to company property, in light of the opinion of the Supreme Court of the United States.

On May 28, 1992, the Board accepted the remand from the First Circuit Court of Appeals and advised the parties that they would be notified of whatever action the Board takes.

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

The Board has considered its original decision and record in light of the court's remand and has decided to adhere to its original decision as to the Respondent's violation of Section 8(a)(1) of the Act by attempting to remove union representatives from a public area adjacent to the Respondent's parking lot.⁴ The

Supreme Court's decision addressed access to an employer's private property; it did not affect the legality of employer attempts to bar access to property that is not the employer's to control. Administrative Law Judge Joel P. Biblowitz inadvertently failed to conform his Order to his Conclusions of Law⁵ and we do so here.

ORDER

The Respondent, Lechmere, Inc., Newington, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Attempting to remove union representatives, engaged in the distribution of union literature to employees, from the public area adjacent to its parking lot.

(b) 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) Post at its Newington, Connecticut store copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

erty rights, if anything, elevates the gravity of its attempt to bar union access to public property.

⁵ 295 NLRB at 100.

⁶ If 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."

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.

WE WILL NOT attempt to remove representatives of Local 919, United Food and Commercial Workers,

¹ 295 NLRB 92.

² 914 F.2d 313.

³ 112 S.Ct. 841 (1992).

⁴ We note that the First Circuit Court of Appeals found that, on this issue, "the Board was well within its domain in concluding that the employer's conduct, seen in the light of the record as a whole, was not within the narrow *de minimis* exception." 914 F.2d at 325. The Supreme Court's vindication of the Respondent's private-prop-

AFL-CIO, or any other labor organization, engaged in the distribution of union literature to our employees in the public area adjacent to the parking lot of our store in Newington, Connecticut.

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

LECHMERE, INC.