

MBI Acquisition Corp. d/b/a Gayfers Department Store and International Brotherhood of Electrical Workers, Local Union No. 756, AFL-CIO. Cases 12-CA-15841(1-2)

April 16, 1998

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HURTGEN

On November 8, 1997, the National Labor Relations Board issued a Decision and Order in this proceeding.¹ The Board held that the Respondent had violated Section 8(a)(1) of the Act by prohibiting subcontractor employees from distributing handbills at the entrances to its store, by causing these employees to be arrested for engaging in protected handbilling, and by maintaining and enforcing a presumptively unlawful (overbroad) no-solicitation/no-distribution rule.

On December 15, 1997, the Respondent filed an unopposed Motion to Reconsider or Amend the Board's Order.

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

The Respondent contends that the notice posting and mailing provision of the Order, Section 2(b), is too broad. Section 2(b) requires the Respondent to mail copies of the Board's notice not only to subcontractor Baroco's employees, whose handbilling was unlawfully restricted, but also to the Respondent's own employees and employees of "present and former subcontractors." The Respondent also contends that the Order's requirement that the Respondent mail notices in lieu of posting is inappropriate where, as here, the Respondent has not ceased doing business.

We turn first to the issue of *which employees* should receive notice. We do not agree with the Respondent that the notice should be directed only to employees of Baroco. The Respondent has interfered with the exercise of Section 7 rights by two groups of employees: (1) employees of Baroco whom the Respondent unlawfully threatened to arrest and caused to be removed from its property; and (2) employees of the Respondent itself who, too, were subjected to the Respondent's overly broad no-solicitation/no-distribution rule. Accordingly, we will require notice to both these groups.²

¹ 324 NLRB No. 188. Member Hurtgen did not participate in this decision and does not pass on its merits.

² Chairman Gould would additionally require a mailed notice to any employees similarly situated to Baroco employees, that is, em-

We turn next to the issue of *method* of notice. We find merit in the Respondent's motion in two respects. First, the customary Board Order does not contain a general mailing requirement such as found here. Rather, under *Indian Hills Care Center*, 321 NLRB 144 (1996), the Board usually provides for the mailing of notices in the event that a respondent's facility has closed during the pendency of unfair labor practice proceedings. Thus, as to the Respondent's own employees, we shall provide for mailing only in the event that the Respondent closes. As to Baroco's employees, we shall provide for mailing, inasmuch as the Respondent asserts, without rebuttal, that they no longer work at its facility.³

ORDER

Substitute the following for subparagraph 2(b) of the Order:

"(b) Within 14 days after service by the Region, post at its Daytona Beach, Florida store copies of the attached notice marked 'Appendix'⁸ Copies of the notice, on forms provided by the Regional Director for Region 12, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all of its current and former employees who have worked under its unlawful no-solicitation/no-distribution rule since October 7, 1993. Additionally, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to current or former employees of Baroco who have worked on a regular or exclusive basis at the Respondent's Daytona Beach facility since October 7, 1993."

employees of former contractors or subcontractors of the Respondent who worked on a regular and exclusive basis at the Respondent's Daytona Beach, Florida store at any time since October 7, 1993. In the absence of allegations or evidence that any other groups of employees were subjected to unlawful conduct, Members Fox and Hurtgen do not agree that notice to any other employees is warranted.

³ Consistent with *Excel Container, Inc.*, 325 NLRB No. 14 (Nov. 7, 1997), we have also revised the triggering date of the Respondent's notice obligation to the date of the first unfair labor practice.