

**MZ Movers, Inc. and Michael Zreik and Local 338,
International Brotherhood of Teamsters.** Case
34-CA-8736

November 30, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN
AND BRAME

Upon charges and amended charges filed by the Union on February 24, April 22, and May 26, 1999, the General Counsel of the National Labor Relations Board issued a complaint on May 27, 1999,¹ against MZ Movers, Inc. and Michael Zreik (collectively referred to as the Respondent), alleging that they have violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charges, the complaint, and the amendment to the complaint, the Respondent failed to file an answer.

On July 14, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On July 16, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

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

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letters dated June 10, and June 25, 1999, notified the Respondent that unless an answer were received by June 17 and July 8, respectively, a Motion for Summary Judgment would be filed.

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.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent MZ Movers, Inc., a New York corporation, with an office and place of business in White Plains, New York, has been engaged in the business of storing and delivering furniture. During the 12-month period ending April 30, 1999, Respondent MZ,

in conducting its business operations described above, purchased and received at its White Plains facility goods valued in excess of \$50,000 directly from points located outside the State of New York. Respondent Michael Zreik is Respondent MZ's president and sole owner and officer. We find that Respondent MZ is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent MZ, by its supervisor and agent Michael Zreik, at its facility:

(a) About February 16, 1999, threatened employees with discharge for engaging in union and other protected activities.

(b) About February 16, 1999, interrogated employees about their union activities.

(c) About February 17, 1999, created an impression among its employees that their union activities were under surveillance.

(d) About February 17 and 23, 1999, informed employees that they were being discharged because of their union activities.

(e) About February 19, 1999, informed employees that they had to refrain from engaging in union activities in order to continue their employment with Respondent MZ.

(f) About February 19, 1999, conditioned continued employment with Respondent MZ upon the signing of a document in which the employees agreed to withdraw their support from and cease any activity on behalf of the Union.

On about February 18, 1999, Respondent MZ, by its supervisor and agent Foreman Andrew Krzewicki, in a truck on the way to its facility:

(a) Threatened employees with loss of employment for engaging in union and other protected concerted activities.

(b) Created an impression among its employees that their union activities were under surveillance by Respondent MZ.

(c) Informed employees that it would be futile to select the Union as their collective-bargaining representative.

(d) Interrogated employees about their union activities.

(e) Informed employees that other employees had been discharged because of their union activities.

On about February 15, 1999, Respondent MZ, by Zreik, assigned employee Robert Jackson, a leading union organizer, to more onerous and rigorous work.

About February 18, 19, and 22, 1999, Respondent MZ, by Zreik, denied work to employee Pete Simmons, a leading union organizer.

Respondent MZ, by Zreik, on about February 17, 1999, terminated employees Pete Simmons and Charles

¹ An amendment to the complaint issued on June 15, 1999.

Taylor; on about February 19, 1999, terminated employees Derek Schmidt and Robert Jackson; and on about February 23, 1999, terminated employee Matthew Mills.

Since about February 15, 1999, Respondent MZ, by Zreik, has reduced the wages of employees Jackson, Mills, Simmons, and Taylor.

The Respondents assigned employee Jackson to more onerous and rigorous work, denied work to employee Simmons, reduced the wages of employees Jackson, Mills, Simmons, and Taylor, and terminated employees Jackson, Mills, Schmidt, Simmons, and Taylor because the named employees joined the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

The following employees of Respondent MZ, consisting of approximately 12 employees, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, helpers and loaders employed by Respondent MZ at its White Plains, New York facility; but excluding all non-payroll employees, the foreman, the operations manager, sales representatives, office clerical employees, and guards, professional employees and other supervisors as defined in the Act.

At a union meeting held on February 14, 1999, a majority of the unit designated and selected the Union as their representative for the purposes of collective bargaining with Respondent MZ. At all times since February 14, 1999, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

By letter dated February 16, 1999, and received by Respondent MZ on February 17, 1999, the Union requested that Respondent MZ recognize it and bargain collectively as the exclusive collective-bargaining representative of the unit.

Since about February 17, 1999, Respondent MZ, by Zreik, has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

The Respondents have interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1) of the Act by: (1) threatening employees with discharge for engaging in union and other protected concerted activities; (2) interrogating employees about their union activities; (3) creating the impression among employees that their union activities were under surveillance; (4) informing employees that they were being discharged because of their union activities and that they had to refrain from union activities in order to continue their employment; (5) conditioning continued employ-

ment on the signing of a document in which employees agreed to withdraw their support and cease any activity on behalf of the Union; and (6) informing employees that it would be futile to select the Union as their collective-bargaining representative.

In addition, by terminating employees, assigning them more onerous work, denying them work, and reducing their wages, the Respondents have discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

Further, by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees since about February 17, 1999, the Respondents have violated Section 8(a)(5) and (1) of the Act.

The Respondent's above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (3) of the Act by terminating Robert Jackson, Matthew Mills, Derek Schmidt, Pete Simmons, and Charles Taylor, we shall order the Respondent to offer them full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed. In addition, we shall order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any references to the employees' unlawful discharges, and to notify the discriminatees in writing that this has been done.

In addition, we shall order the Respondent to make employees Jackson, Mills, Simmons, and Taylor whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful denial of work to Simmons and the unlawful reduction of these four employees' wages. Backpay in this regard shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, *supra*.

The complaint alleges that the Respondent's violations of Section 8(a)(1) and (3) 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 balance, be protected better by the issuance of a bargaining order than by traditional remedies alone." In accord with the complaint, we find that a bargaining order is warranted in this case under the principles set forth in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

Under *Gissel*, the Board will issue a bargaining order, absent an election, in two categories of cases. The first category involves "exceptional cases" marked by unfair labor practices so "outrageous" and "pervasive" that traditional remedies cannot erase their coercive effects, thus rendering a fair election impossible. The second category involves "less extraordinary cases marked by less pervasive practices which nonetheless have a tendency to undermine majority strength and impede the election processes." In this second category of cases, the "possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, although present, is slight and . . . employee sentiments once expressed [by authorization] cards would, on balance, be better protected by a bargaining order." *Id.* at 613–615.

On the basis of our findings here, we conclude that a bargaining order is necessary to remedy the Respondent's unfair labor practices under the second category of the *Gissel* standards. Those findings are based on allegations that are uncontested and must be accepted as fact as a result of the Respondent's failure to answer the General Counsel's allegations. Indeed, the General Counsel has pled only the *Gissel* category II standards in his complaint, and the Respondent has admitted by not answering the complaint only the category II justification for a bargaining order.² First, we have found that the Union attained majority status in the unit on February 14, 1999, and that it has been the unit employees' collective-bargaining representative since that date. We have also found that within 9 days after that date, Michael Zreik, the Respondent's president and sole owner, discharged 5 of the 12 unit employees—including two leading union organizers—because they had joined the Union and engaged in protected concerted activities. In addition, within the first week after the majority of the unit selected the Union, Zreik reduced the wages of four employees, denied work to an employee who was a leading union organizer, and assigned more onerous work to another leading union organizer.

Further, during the 5 days after the unit designated the Union as its bargaining representative, President Zreik

and Foreman Krzewicki engaged in a series of threats and other actions that delivered the unmistakable message to unit employees that they would be discharged if they did not immediately cease their union activities and withdraw their support from the Union. Thus, in response to the employees' selection of the Union as their bargaining representative, the Respondent's highest official swiftly reacted with the discharges of almost half of this small unit. Indeed, Zreik informed some of them that they were being discharged because of their union activities. And, just 2 days after receiving the Union's recognition request and after having unlawfully discharged union supporters Simmons and Taylor, Zreik insisted that employees sign a document withdrawing support from the Union as a condition of continued employment. Zreik required employees to sign this document on the day that he unlawfully discharged the third and fourth of the five discriminatees. On that same date, Zreik also told employees who had not been unlawfully fired that they had to refrain from engaging in union activities in order to remain employed by the Respondent. In addition, the Respondent's foreman told employees that their fellow employees had been terminated because of their union activities.

In view of the magnitude and scope of the discharges and the threats in the context of the size of this unit, there is a strong likelihood that the Respondent's unfair labor practices will have a pervasive and lasting deleterious effect on the Respondent's employees' exercise of their Section 7 rights. The complaint, on its face, mentions only the names of the five employees who were the victims of 8(a)(3) conduct. Although it is probable that a hearing would show that other employees were aware of this misconduct or were victims of 8(a)(1) conduct, we cannot, on the pleadings, make this finding. However, we think that the pleadings nonetheless furnish the basis for a *Gissel II* bargaining order. In this regard, we note that (1) almost one-half of the unit was victimized by 8(a)(3) conduct; (2) there was extensive 8(a)(1) conduct; (3) many of the violations were committed by the Respondent's president and sole owner; (4) the unit is a small one; and (5) the Respondent, by its nonanswer, has admitted that the unlawful conduct "is 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 balance, be protected better by the issuance of a bargaining order than by traditional remedies alone."

This case is distinguishable from prior no-answer summary judgment proceedings in which the Board declined to grant the General Counsel's request for a *Gissel* bargaining order. See, e.g., *Center State Beef & Veal Co.*, 327 NLRB 1246 (1999); *Imperial Floral Distributors*, 319 NLRB 147 (1995); *FJN Mfg.*, 305 NLRB 656

² In view of the pleadings, we find it unnecessary to pass on whether a bargaining order is warranted under category I of the *Gissel* standards.

(1991); *Bravo Mechanical*, 300 NLRB 1019 (1990); *Control & Electrical System Specialists*, 299 NLRB 642 (1990); *Binney's Casting Co.*, 285 NLRB 1095 (1987); *Michigan Expediting Service*, 282 NLRB 210 (1986); *Handy Dan's Convenience Store*, 275 NLRB 394 (1985); and *Power Jet Cleaning, Inc.*, 270 NLRB 975 (1984).

In the cited cases, the Board found that the respective complaints did not allege sufficient facts to enable the Board to evaluate the pervasiveness of the violations. For example, in those cases, the complaints, in one or more respects, did not allege the size of the units, the number of employees directly affected by the violations, the extent of dissemination, if any, of the violations among the employees not directly affected by them, or the identity of the perpetrator of the unfair labor practice.

In marked contrast to those cases, however, here the complaint alleges sufficient facts on which to assess the pervasiveness of the unfair labor practices and to sustain a category II order. Thus, in the instant case we know the size of the unit, and that at least 5 members, if not all, of that 12-person unit were directly affected by the violations, which included discharge and insistence that employees cease their union activities as a condition of continued employment. We also know the identity of the management officials who committed all of the violations: its president, sole owner and officer, and its foreman. We conclude that there are no material facts bearing on the appropriateness of a bargaining order that are absent from the complaint. Accordingly, we find that the General Counsel has demonstrated that a bargaining order is warranted to remedy the Respondent's unlawful conduct.

ORDER

The National Labor Relations Board orders that the Respondents, MZ Movers, Inc. and Michael Zreik, their officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Threatening employees with discharge for engaging in union and other protected concerted activities.
 - (b) Interrogating employees about their union activities.
 - (c) Creating the impression among employees that their union activities are under surveillance.
 - (d) Informing employees that they were being discharged because of their union activities; that they must refrain from union activities in order to continue their employment; that other employees had been discharged because of their union activities; and that it would be futile for them to select the Union as their collective-bargaining representative.
 - (e) Conditioning employment upon the signing of a document in which employees agree to withdraw their support from and cease any activity on behalf of the Union.

(f) Assigning employees more onerous and rigorous work because they engage in union activities.

(g) Denying employees work because they engage in union activities.

(h) Reducing employees' wages because they engage in union activities.

(i) Discharging or otherwise discriminating against employees because they form, join, or assist the Union, or because they engage in concerted activities.

(j) Refusing and failing to recognize and bargain with Local 338, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the appropriate unit set forth below.

(k) 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) Within 14 days from the date of this Order, offer Robert Jackson, Matthew Mills, Derek Schmidt, Pete Simmons, and Charles Taylor full reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

(b) Make employees Jackson, Mills, Schmidt, Simmons, and Taylor whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of employees Jackson, Mills, Schmidt, Simmons, and Taylor, and within 3 days thereafter, notify them in writing that this has been done and that their discharges will not be used against them in any way.

(d) Make employee Simmons whole for any loss of earnings and other benefits suffered as a result of the Respondent's denying him work on February 18, 19, and 22, 1999, in the manner set forth in the remedy section of this decision.

(e) Make employees Jackson, Mills, Simmons, and Taylor whole for any loss of earnings and other benefits suffered as a result of the Respondent's reduction of their wages since February 15, 1999, in the manner set forth in the remedy section of this decision.

(f) On request, recognize and bargain with Local 338, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time drivers, helpers and loaders employed by Respondent MZ at its White Plains, New York facility; but excluding all non-payroll

employees, the foreman, the operations manager, sales representatives, office clerical employees, and guards, professional employees and other supervisors as defined in the Act.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in White Plains, New York, copies of the attached notice marked "Appendix."³ 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 Respondents 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 Respondents 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 February 15, 1999.

(i) 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 Respondents have taken to comply.

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 threaten you with discharge for engaging in union and other protected concerted activities.

WE WILL NOT interrogate you about your union activities.

WE WILL NOT create the impression among you that your union activities are under surveillance.

WE WILL NOT inform you that you were being discharged because of your union activities; that you must refrain from union activities in order to continue your

employment; that other employees had been discharged because of their union activities; and that it would be futile for you to select the Union as your collective-bargaining representative.

WE WILL NOT condition employment upon your signing of a document in which you agree to withdraw your support from and cease any activity on behalf of the Union.

WE WILL NOT assign you more onerous and rigorous work because you engage in union activities.

WE WILL NOT deny you work because you engage in union activities.

WE WILL NOT reduce your wages because you engage in union activities.

WE WILL NOT discharge or otherwise discriminate against you because you form, join, or assist the Union, or because you engage in concerted activities.

WE WILL NOT refuse and fail to recognize and bargain with Local 338, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the appropriate unit set forth below.

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.

WE WILL, within 14 days from the date of this Order, offer Robert Jackson, Matthew Mills, Derek Schmidt, Pete Simmons, and Charles Taylor full reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make employees Jackson, Mills, Schmidt, Simmons, and Taylor whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of employees Jackson, Mills, Schmidt, Simmons, and Taylor, and within 3 days thereafter, notify them in writing that this has been done and that their discharges will not be used against them in any way.

WE WILL make employee Simmons whole for any loss of earnings and other benefits suffered as a result of our denying him work on February 18, 19, and 22, 1999, with interest.

WE WILL make employees Jackson, Mills, Simmons, and Taylor whole for any loss of earnings and other benefits suffered as a result of our reduction of their wages since February 15, 1999, with interest.

WE WILL, on request, recognize and bargain with Local 338, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

³ 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."

All full-time and regular part-time drivers, helpers and loaders employed by us at our White Plains, New York facility; but excluding all non-payroll employees, the foreman, the operations manager, sales representatives,

office clerical employees, and guards, professional employees and other supervisors as defined in the Act.

MZ MOVERS, INC. AND MICHAEL ZREIK