

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-1398

September Term, 2008

Filed On: October 29, 2008

Goya Foods, Incorporated,
d/b/a Goya Foods of Florida,
Petitioner

v.

National Labor Relations Board,
Respondent

Consolidated with 07-1471

Petition for Review and Cross-Application for Enforcement
of an Order of the National Labor Relations Board

Before: GRIFFITH, *Circuit Judge*, and EDWARDS and WILLIAMS, *Senior Circuit Judges*.

J U D G M E N T

This cause was considered on a petition for review and cross-application for enforcement of an order of the National Labor Relations Board (“Board”) and was briefed and argued by counsel. It is

ORDERED and **ADJUDGED**, by this Court, that the petition for review is hereby denied, and the Board’s cross-application for enforcement is granted essentially for the reasons stated by the Board.

The Board found that the employer took unilateral actions with respect to mandatory subjects of bargaining without giving the union notice and an opportunity to bargain. These acts were found to violate sections 8(a)(5) and 8(a)(1) of the National Labor Relations Act. The company did not meet its burden of showing that the disputed actions adequately conformed to practices defining the status quo ante. See *Sociedad Española de Auxilio Mutuo y Beneficiencia de P.R. v. NLRB*, 414 F.3d 158, 166 (1st Cir. 2005); see also *Adair Standish Corp. v. NLRB*, 912 F.2d 854, 864 (6th Cir. 1990) (“[The employer] argues that the postelection policy amounted to nothing more than a permissible ‘continuation of the status quo. . . .’ This argument unjustifiably presumes that the company’s lay-off practice prior to the election was systematic, as opposed to sporadic. Here . . . the layoffs were

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‘unpredictably episodic’ as well as ‘*ad hoc* and highly discretionary[.]’ Thus, the *Katz* exception for practices which are ‘mere continuation[s] of the status quo’ has no application in this case.” (internal citations omitted); *City Cab Co. of Orlando, Inc. v. NLRB*, 787 F.2d 1475, 1478 (11th Cir. 1986) (“The burden is on the employer to show that [unilateral] changes” are consistent with the status quo.).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

By: */s/*
Michael C. McGrail
Deputy Clerk