

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Kathy Drew King, *Regional Director of Region 29
of the National Labor Relations Board, for and on
behalf of the National Labor Relations Board,*

Petitioner,

MEMORANDUM & ORDER
22-CV-01479 (DG) (SJB)

-against-

Amazon.com Services LLC,

Respondent.

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DIANE GUJARATI, United States District Judge:

Pending before the Court is the Amended Petition for Temporary Injunction Under Section 10(j) of the National Labor Relations Act (the “Amended Petition”), filed on July 8, 2022 by Petitioner Kathy Drew King, Regional Director of Region 29 of the National Labor Relations Board, for and on behalf of the National Labor Relations Board. *See* Amended Petition (“Am. Pet.”), ECF No. 44. The Amended Petition relates to the April 2020 discharge from employment of Gerald Bryson by Respondent Amazon.com Services LLC (“Amazon”). By way of the Amended Petition, Petitioner seeks certain injunctive relief, pursuant to 29 U.S.C. § 160(j) (“Section 10(j)”), pending the disposition by the National Labor Relations Board (“NLRB” or “Board”) of certain matters before the Board relating to the discharge of Bryson.

Petitioner alleges that there is reasonable cause to believe that Respondent has engaged in unfair labor practices affecting commerce in violation of Section 8(a)(1) (“Section 8(a)(1)”) of the National Labor Relations Act (“NLRA”) with respect to Bryson, who Petitioner alleges was unlawfully terminated from employment by Amazon for having engaged in certain protected concerted activity. Respondent opposes the Amended Petition, arguing that Bryson was lawfully terminated for cause – not because of his participation in protected concerted activity.

More specifically, Petitioner alleges that in March and April 2020, Bryson – then an Amazon employee – engaged in certain protected concerted activity by advocating, with his co-workers, for workplace health and safety protections in light of the Covid-19 pandemic and by protesting with his co-workers Amazon’s failure to provide greater Covid-19 safety protections to employees, and that Bryson was terminated in April 2020 as a result of his participation in those protected activities. Petitioner alleges that Respondent’s discharge of Bryson and failure and refusal to reinstate him – or to offer to reinstate him – violates Section 8(a)(1) and, therefore, Respondent is depriving Bryson of his rights guaranteed by Section 7 of the NLRA.

Respondent, in turn, concedes that Bryson engaged in certain protected activity, but maintains that he was terminated following an investigation by Amazon into his verbal altercation with another Amazon employee in the parking lot of Amazon’s JFK8 Fulfillment Center in Staten Island, New York (the “JFK8 Facility” or “JFK8”), during which Bryson and the other employee verbally exchanged insults with one another in connection with the other employee voicing skepticism about the protest in which Bryson was participating. Petitioner argues that Amazon conducted a sham investigation into the altercation and that the reason given by Amazon for Bryson’s termination was pretextual.

Petitioner seeks to have this Court enter an order directing Amazon, pending the final disposition of the matters currently before the Board, to cease and desist from taking certain actions and to take certain actions, including: reinstating Bryson to his position or to a substantially equivalent position; rescinding Bryson’s discharge, expunging the adverse employment action from Bryson’s employment records, and refraining from relying on the discharge in assessing any future disciplinary actions; and posting physical copies of the order in the JFK8 Facility, distributing electronic copies of the order to employees at the JFK8 Facility,

and reading the order to employees at one or more mandatory meetings.

For the reasons set forth below, and to the extent described below, the Court grants in part and denies in part Petitioner's request for temporary injunctive relief. The Court finds that there is reasonable cause to believe that an unfair labor practice has been committed by Amazon with respect to the termination of Bryson, and determines that the issuance of an order directing Respondent to cease and desist from taking certain actions and directing Respondent to post, distribute, and read the Court's order to employees at the JFK8 Facility is just and proper, but that the requested affirmative relief specific to Bryson – *i.e.*, directing Respondent to reinstate Bryson to his position or to a substantially equivalent position, rescind Bryson's discharge, expunge the adverse employment action from Bryson's employment records, and refrain from relying on the discharge in assessing any future disciplinary actions – is not warranted under the applicable legal standards governing the granting of relief in this context.

BACKGROUND

This case arises from Respondent's termination of Gerald Bryson, who was an employee at Respondent's JFK8 fulfillment center. In Spring 2020, Bryson, along with others, protested Respondent's failure to take certain health and safety measures during the Covid-19 pandemic. In late March 2020, Bryson and others organized and participated in a protest to demand that Respondent provide employees with protective equipment and shut down JFK8 for proper cleaning. Bryson and others then planned another protest for April 6, 2020 to continue to press their Covid-19 safety concerns.

During the April 6, 2020 protest, Bryson got into a verbal altercation with another Amazon employee, Dimitra Evans, who had called out to Bryson during the protest. The verbal altercation between Bryson and Evans – which was recorded on video – escalated, with Bryson

and Evans trading insults.¹ Evans eventually went inside the facility and stopped engaging with Bryson. Neither Evans nor Bryson reported this incident to Respondent.

Respondent thereafter commenced an investigation regarding the incident between Bryson and Evans. This investigation resulted in Bryson's termination on April 17, 2020. Evans, on the other hand, received only a written warning for her use of inappropriate language.

On June 17, 2020 – two months after he was discharged from employment by Amazon – Bryson filed an unfair labor practice charge with the Board in Case No. 29-CA-261755, alleging that Respondent suspended and subsequently discharged him in violation of Section 8(a)(1). *See* Am. Pet. ¶ 3. On December 22, 2020, Petitioner issued a Complaint and Notice of Hearing in Case No. 29-CA-261755, alleging that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1). *See* Am. Pet. ¶ 4. A trial before an Administrative Law Judge (the “ALJ”) was held on various dates in 2021.

In or about April 2021, approximately one year after Bryson was terminated, Amazon's employees formed a union, the Amazon Labor Union (the “ALU”). *See, e.g.*, Petitioner's Memorandum of Points and Authorities in Support of Amended Petition for Temporary Injunction Under Section 10(j) of the NLRA (“Pet. Br.”) at 10-11, ECF No. 45; Respondent's Brief in Opposition to Petitioner's Amended Petition for a Section 10(j) Injunction (“Resp. Br.”) at 8, ECF No. 46-1. On October 25, 2021, the ALU filed with Region 29 of the Board a petition for a representation election to determine whether employees at Amazon's four Staten Island facilities wished to be represented by the ALU for the purposes of collective bargaining. *See* Am. Pet. ¶ 8(c). The ALU withdrew that petition on November 12, 2021 because the ALU did

¹ Familiarity with the specifics of these insults – as reflected in the record before the Court – is assumed.

not have a sufficient showing of interest to support the processing of the petition. *See* Am. Pet. ¶ 8(c). On December 22, 2021, the ALU filed a second petition for a representation election to determine whether employees at the JFK8 Facility wished to be represented by the ALU. *See* Am. Pet. ¶ 8(d). An election was thereafter scheduled for March 25, 26, and 28-30, 2022. *See* Am. Pet. ¶ 8(d).

On March 17, 2022, months after the trial before the ALJ concluded but before the ALJ had issued a decision, and only eight days before the ALU election was scheduled to begin, Petitioner filed the first Petition for Temporary Injunction Under Section 10(j) (the “Initial Petition”) in the instant action. *See* Initial Petition, ECF No. 1. In connection with the filing of the Initial Petition, Petitioner argued that injunctive relief – including in the form of an order directing Respondent to reinstate Bryson – was necessary in advance of the ALU election. Petitioner represented that it was “imperative for employees to be reassured of their rights under the National Labor Relations Act before the representation election has closed” to ensure that Respondent did not benefit “in the election from the coercive effects of its unfair labor practices at issue in this case.” *See* ECF No. 12 at 2; *see also* Transcript of March 23, 2022 Oral Argument at 29-30, ECF No. 49 (“It is important to have this matter decided before the election in order to ensure employees that they can freely exercise their rights in this election, and generally, if they choose to support the [ALU] without fear of retaliation knowing that the Government will protect their rights and act swiftly to achieve justice and restore them to the workplace if Amazon somehow retaliates against them. So, in order to have a fair election, we believe that it’s imperative to have Bryson restored to the workplace, or at least for this matter to be resolved in advance of the election.”).

Petitioner requested that the Initial Petition be tried on the official evidentiary record

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