

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DERRICK PALMER et al.,

Plaintiffs,

– against –

AMAZON.COM INC. et al.,

Defendants.

20 CV 2468 (BMC)

**Memorandum of Proposed Amici Curiae
RWDSU and UNI
in Support of the Plaintiffs’
Motion for a Preliminary Injunction**

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PRELIMINARY STATEMENT

Proposed amici curiae Retail, Wholesale and Department Store Union, UFCW, AFL-CIO (hereinafter “RWDSU” or the “Union”) and UNI Global Union (hereinafter “UNI”) believe the Court’s attention to this case, brought by workers in Amazon’s Staten Island facility to seek remedies for unsafe work conditions, could not be more important or crucial for the future of worker safety and health in New York City and, because of Amazon’s predominance, throughout the United States and the rest of the world. RWDSU and UNI represent workers all over the world who enjoy collective bargaining and powerful union oversight of workplace safety and health conditions. For this reason, RWDSU and UNI can provide perspectives that will assist the Court in understanding the the issues in this lawsuit, the urgency of the Plaintiffs’ request for a preliminary injunction, and the far-reaching repercussions if the injunction is denied.

RELEVANT FACTS

I. PROPOSED AMICI CURIAE

The proposed amicus Retail, Wholesale and Department Store Union, UFCW, AFL-CIO (hereinafter “RWDSU” or the “Union”) represents tens of thousands of workers in retail establishments, food processing, grocery stores, drug stores, and nursing homes with local unions spread across the Midwest, South, and Northeast. (*See* the accompanying Declaration of Stuart Appelbaum dated June 5, 2020, ¶ 2.)

With respect to COVID-19, most of RWDSU’s members are frontline workers and essential employees. (*Id.*) RWDSU has long been critical of Amazon’s treatment of its workers. (*Id.* ¶ 6.) RWDSU fought fiercely against Amazon’s planned construction of a new headquarters in Long Island City, Queens in exchange for \$3 billion in government

subsidies. (*Id.*) RWDSU’s message was simple – if Amazon wanted the largesse of New York and taxpayer subsidies, it had to respect workers and the community. (*Id.*)

UNI Global Union (hereinafter “UNI”) is a federation of more than 600 trade unions from 150 countries with its headquarters near Geneva, Switzerland. UNI’s member unions (“affiliates”) together represent workers in 11 sectors of the economy, including retail and e-commerce. UNI’s purpose is to support unions in all of its sectors to raise standards through shared strategies. (*See* the accompanying Declaration of Christy Hoffman dated June 3, 2020, ¶ 2.)

As part of its activities, UNI frequently brings together unions from around the world that share the same multi-national employer. To that end, UNI has gathered unions that represent employees at Amazon facilities (or unions which aim to organize Amazon workers in their countries) since 2014. This grouping is called the UNI Amazon Alliance and includes unions from 22 countries. The Amazon Alliance meets and communicates regularly and has especially done so during the period of the COVID-19 pandemic.

Christy Hoffman is UNI’s General Secretary. Stuart Appelbaum is the chair of the UNI Amazon Alliance and also the President of the RWDSU. (*See* Hoffman Decl. ¶¶ 3-4; Appelbaum Decl. ¶¶ 1, 5.)

II. RWDSU’S EARLIER INVOLVEMENT WITH AMAZON

Amazon operates a warehouse in Staten Island that predated the company’s planned headquarters. (Appelbaum Decl. ¶ 9.) RWDSU determined that unionization would help and protect those workers after the Union found that Amazon engaged in deadly and dehumanizing employment practices and anti-union activities. (Appelbaum Decl. ¶ 8; Ex. 1 to Appelbaum Decl.) The RWDSU demanded that Amazon agree to be neutral in any labor organizing at that facility (that is, Amazon would commit not to

conduct an anti-union campaign among its employees). The fulfillment center in the facility employed around 2,500 workers at the time; it has expanded since then. In the Union's view, if taxpayers were giving Amazon \$3 billion, then taxpayers had the right to demand that Amazon stop being a union-busting company. (Appelbaum Decl. ¶ 9.) If not, then Amazon didn't deserve the \$3 billion deal. (Appelbaum Decl. ¶ 12.)

As widely reported, Amazon abandoned its plans for a Long Island City headquarters on February 14, 2019. (Appelbaum Decl. ¶ 13.) Amazon never agreed to be neutral in unionization of the Staten Island facility. (Appelbaum Decl. ¶¶ 11, 13.) The RWDSU thought Amazon's behavior was reprehensible with respect to its treatment of workers and labor unions in connection with the Long Island City headquarters deal. (Appelbaum Decl. ¶ 14), and it is unsurprising that Amazon's treatment of workers in response to the COVID-19 pandemic has not appreciably improved since then. (Appelbaum Decl. ¶ 15.)

III. AMAZON'S ACTIONS AND INACTIONS DURING THE COVID-19 PANDEMIC TO DATE

A. As online shopping increased during the COVID crisis, Amazon's workers were exposed to unnecessarily high risks in both the US and Europe

The coronavirus ("COVID-19") pandemic has had profound implications for Amazon and its workforce. The company's explosive growth has accelerated as a result of COVID-19 public health restrictions, creating new stress on the company's operations. (Ex. A to Hoffman Decl.) With millions of households living in quarantine, Amazon's online retail and grocery home delivery service, its Amazon Web Services, and its Amazon Prime Video are seeing surging demand as more households order goods online, telecommute, and turn to online entertainment. (Ex. A, B, and C to Hoffman Decl.)

The flood of orders presented Amazon with increased challenges in managing, and abruptly growing, its workforce. In the United States alone, the company has hired 175,000 full- and part-time workers in response to the COVID-19 pandemic. (Ex. D to Hoffman Decl.) This increase in demand also took place in Europe, where Amazon has warehouses in eight countries.

After the declaration of a global pandemic in March 2020, the World Health Organization made a series of recommendations to employers to reduce the risk of COVID-19 transmission in the workplace. These include enhanced workplace cleaning and hygiene practices, hand-washing, use of hand sanitizers, and encouraging sick workers to stay at home. (Ex. E, pp. 2-3, to Hoffman Decl.) Public health authorities have also encouraged employers to establish social distancing practices such as telework, staggered shifts, and increased physical space between employees, as well as to implement engineering controls such as sneeze guards and air filters, and to provide personal protective equipment. (Ex. F to Hoffman Decl.; Ex. G, pp. 4 and 7, to Hoffman Decl.)

While many of the employees in Amazon's headquarters in Seattle, Washington were able to work from home to practice social distancing in response to the COVID-19 epidemic (Ex. H to Hoffman Decl.), delivery drivers and workers in Amazon's warehouses must come to work to complete their tasks. Unfortunately, conditions at many Amazon warehouses did not meet the basic health and safety standards prescribed by the WHO or local authorities. As the company strained to meet the increased demand for its deliveries, it did not allow sufficient time for safety protocols, which by necessity require a slower pace of work in order to allow time for hand washing and distancing. (Hoffman Decl. ¶ 7.)

Workers across Europe raised similar complaints. There was insufficient time for safety protocols to be implemented, including hand washing, and there was overcrowding

and an inability to maintain appropriate distance. There were insufficient PPEs and disinfectant, and workstations were not sufficiently disinfected after positive cases emerged. (*Id.*) In France, Italy, and Spain, the unions also complained that the company was refusing to negotiate with union representatives. (*Id.*) In Germany, workers told media that equipment was not adequately sanitized, and physical distancing measures were not always followed. (Ex. I to Hoffman Decl.) In the United Kingdom, GMB Union representatives reported that workers at various Amazon fulfilment centres worked in crowds of 200-300 people and had to re-use equipment without available hand sanitizer. (Ex. J to Hoffman Decl.)

The situation was much the same in the United States, but many employees were also outraged that the company failed to disclose positive COVID-19 cases among workers in a specific or timely manner. (Ex. K to Hoffman Decl.) Instead, employees reportedly found out about infection through rumors and Facebook groups. (*Id.*) When outbreaks occurred, employees were often unaware and thus unable make an informed decision about their health or to organize with their colleagues to demand management close the facility for deep cleaning. (*Id.*)

The company's leave and compensation perhaps encouraged people to come to work while sick because, for example, workers in Chicago did not accrue paid time off. (Ex. L to Hoffman Decl.) Amazon did offer employees unlimited unpaid time off, a luxury many Amazon warehouse workers can ill afford. (Exs. N and Q to Hoffman Decl.) On March 11, 2020, Amazon announced that all employees diagnosed with COVID-19 or placed into quarantine would be eligible to receive up to two weeks of paid leave. (Ex. M to Hoffman Decl.) However, Amazon workers in the U.S. have reported confusion regarding implementation of the new policy and difficulty accessing paid leave benefits in

part because of the limited availability of COVID-19 testing (Ex N. to Hoffman Decl.) and “lots of hoops that workers have to jump through” to get paid while in quarantine. (Ex. O to Hoffman Decl.)

German workers represented by UNI affiliate ver.di condemned performance bonuses offered early during the pandemic, when workers were offered a bonus for showing up. This had the effect of encouraging the ill to come to work regardless of how they felt and regardless of what risk they might pose to colleagues. (Ex. P to Hoffman Decl.)

Effective April 30, Amazon ended its unlimited unpaid leave policy. (Ex. Q to Hoffman Decl.) Amazon did offer workers an extra two U.S. dollars hourly pay hike or hazard pay (and equivalent pay in other countries), during the crisis, but announced that this extra pay would end at the end of May. (Ex. R to Hoffman Decl.)

In response to the alarming evidence that Amazon was failing to protect its employees, the UNI Amazon Alliance called on Amazon to give its workers adequate paid sick leave, necessary PPE, hand-washing breaks, and required space for social distancing. (Ex. S to Hoffman Decl.) The Alliance called Amazon “to open a dialogue with workers and unions, at local, regional, and national levels regarding steps taken to protect workers and subcontractors.” (Ex. S to Hoffman Decl.)

As of May 27, nearly 75 of Amazon’s 110 U.S. warehouse facilities have had at least one worker test positive for COVID-19.¹ Amazon refused to disclose the total

¹ See Michael Thomsen, “Workers rights group says more than HALF of Amazon’s US warehouses have had a coronavirus infection and predicts ‘exponential growth’ of cases by the end of April,” *Daily Mail* April 17, 2020, accessed on June 6, 2020 at <https://www.dailymail.co.uk/sciencetech/article-8230241/Workers-rights-group-says-HALF-Amazons-warehouses-coronavirus-infection.html>.

number of workers infected with COVID-19, but unofficial tallies put the number at more than 900 workers. (Ex. T to Hoffman Decl.)

There were no definitive reports of how many workers in Europe were infected, but in a call with Amazon investors, a representative from the Spanish union and UNI affiliate Federación de Servicios a la Ciudadanía, Comisiones Obreras (“FSC-CCOO”) reported that in his Madrid warehouse about 80 workers were suspected to have COVID-19 and 40 were in quarantine.² In Germany, 53-68 cases of COVID-19 were traced to the Amazon warehouse in the town of Winsen in the western state of Lower Saxony. (Ex. P to Hoffman Decl.) At least another seven have been discovered at another location in the city of Pforzheim in southern Germany. (*Id.*)

B. Workers in Europe who were represented by a union took action to mitigate these risks

After several workers in Europe were diagnosed with COVID-19 in March, Amazon workers across Europe began to protest workplace safety and heavy workloads. (Ex. U and V to Hoffman Decl.)

In March, after Amazon announced its first three COVID-19 cases in two Spanish warehouses (Ex. W to Hoffman Decl.), FSC-CCOO began to complain that the worksite was unsafe because of failures to enforce physical distancing, lack of personal protective equipment, and transparency around infection. Representatives ultimately filed a request with the Labor Inspectorate (*Inspección de Trabajo y Seguridad Social*). A labor ministry team carried out a 10-hour inspection at a facility outside Madrid and ordered Amazon to correct deficiencies within two days. (Ex. X, Y, and Z to Hoffman Decl.) Those measures

² Statements by FSC-CCOO representative Julian Marvel during webinar posted on YouTube at 17:33, “Workplace & Investor Risks in Amazon.com, Inc.’s COVID-19 Response,” CtW Investment Group, May 22, 2020, accessed on June 6, 2020 at <https://www.youtube.com/watch?v=fRLGTygcubw&feature=youtu.be>.

included accommodating physical distance between workers, disinfecting facilities where workers have been diagnosed with COVID-19, providing personal protective equipment, relaxing productivity quotas, and providing daily updates on confirmed and presumed cases. (Ex. Y and Z to Hoffman Decl.)

At a facility near Milan, union representatives from UNI affiliate FILCAMS CGIL complained that the company had not implemented proper hygiene and social distancing, including not making adaptations to conform to the one-meter social distancing required by the Italian government at entrances, locker rooms, briefings, and security check points. (Ex. Y and AA to Hoffman Decl.)

With representation at work, Amazon employees in Italy decided to protest and strike to address these concerns. Workers went on strike in at least five separate Amazon facilities in Italy near Milan, Florence, Torrazza Piemonte, Passo Corese, and Castel San Giovanni. (Ex. AA, BB, CC, EE, FF, and GG to Hoffman Decl.) Workers were concerned about crowding, availability of PPE and enhanced safety measures; other workers demanded that Amazon be more transparent about where outbreaks had occurred. (Ex. AA and BB to Hoffman Decl.)

In particular, workers demanded that Amazon agree to abide by the protocol negotiated between the government, unions, and employer federations at the national level. (Ex. FF to Hoffman Decl.) Amazon claimed it was abiding by the protocol, but workers disagreed. One union representative said, “At entrances, locker rooms, briefings, and security checkpoints, conditions are created where it’s near impossible to maintain separation.” (Ex. AA to Hoffman Decl.) Another representative said that “we strike because our health comes first. . . . The masks arrived only a week ago and we only have one a day available. With the COVID-19 emergency, work rates have not decreased, on

the contrary.” (Ex. EE to Hoffman Decl.) Workers ended the two-week strike after Amazon agreed to abide by the protocol and agreed to create a health and safety committee. (Ex. DD to Hoffman Decl.)

In France, workers also protested and struck over unsafe conditions beginning in March. Unions complained that Amazon was failing to put in place measures necessary to protect employee health, in violation of the Labour Code, and specifically, UNI affiliate Federation des Services, Confédération Française Démocratique du Travail (CFDT) noted a lack of masks and hydro-alcoholic gel in sufficient quantities, not enough regular hand-washing breaks, no disinfection of machines and surfaces, an inability to respect minimum safety distances in relation to the number of employees, and the massive hiring of temporary workers. Many workers had exercised their “right to withdraw” from unsafe work. In April, having earlier called a strike, this union intervened in a civil case brought by other unions alleging that the company had not taken adequate steps to protect workers from the risk of COVID-19 and was trying to sidestep the unions as they sought improved conditions. (Hoffman Decl. ¶ 50; Ex. KK to Hoffman Decl.)

In response to the case, the Nanterre tribunal ordered Amazon to limit deliveries to essential goods while it conducted a more thorough assessment of COVID-19 contagion risks with staff representatives, or Amazon would face a fine of one million euros per day. The court said that Amazon had disregarded its obligation of safety for the health of employees and temporarily prohibited Amazon from delivering non-essential goods. (Ex. MM to Hoffman Decl.)

The court determined that Amazon could return to normal operations after it evaluated the risks linked to Covid-19 with staff representatives and put in place appropriate safety measures. (Ex. NN to Hoffman Decl.) In response, Amazon chose to

shut down six warehouses that employ 10,000 workers and cease all deliveries in France starting April 16. (Ex. HH, II, JJ, and KK to Hoffman Decl.) The company said that it would use warehouses outside of France to serve its French clients. (Ex. NN to Hoffman Decl., second page of article.)

After the unions prevailed on the company's appeal, the trade unions eventually negotiated an agreement that was signed on May 15. (Ex. II to Hoffman Decl.) The agreement provided mandatory consultation with worker representatives around safety measures; hiring of external experts by union representatives to assess effectiveness of measures; arrangements to reduce the risk of contamination; an increase in the hourly rate for salaried workers returning to work; opening of negotiations by the end of 2020 to determine a consultation process on preventive measures in the event of a new health crisis; and reduction of shifts by 15 minutes without loss of pay to allow for more distancing at shift change. (*See id.*)

In sum, the evidence shows that in three countries with similar problems, unions were ultimately able to pressure Amazon into finding a resolution to enable safe work, but only after extensive resistance from Amazon and only after judicial or regulatory engagement, and in one case, a lengthy strike.

C. In the United States and without a union, Amazon workers were left to fend for themselves

In the United States, none of Amazon's direct employees are represented by a union, which means that there is no obligation for dialogue between management and workers about safety conditions and there are no mechanisms in place to encourage management to respond to employee concerns. Workers were clearly frightened about the situation but lacked any clear avenue for relief.

The first reported case of COVID-19 occurred at an Amazon delivery station in Queens, New York. (Ex. 3 to Appelbaum Decl.) The workers in that facility walked off the job. (*Id.*) Next, workers at the Staten Island facility struck. (Appelbaum Decl. ¶ 16; Ex. 2 to Appelbaum Decl.) Similar Amazon worker walkouts took place in Chicago, Illinois (Ex. 2 to Appelbaum Decl.) and near Detroit, Michigan (Ex. 4 to Appelbaum Decl.). Workers near Detroit protested Amazon’s continued shipment of non-essential items that increase workloads and reduce the ability to implement social distancing. (Ex. 5 to Appelbaum Decl.)

Workers continued to take action. Over 300 workers across more than 40 Amazon facilities in California, Texas, Wisconsin, Florida and New York, among other states, signed a pledge not to work on April 21, 2020. (Ex. 5 and 6 to Appelbaum Decl.) They took unpaid time off and alerted Amazon of their absence via the company’s app. (Ex. 5 to Appelbaum Decl.) Over 5,000 people have signed an Amazon worker’s petition calling on the company to suspend its disciplinary rate-based write-ups to allow for proper workstation and package sanitation. (Ex. 7 to Appelbaum Decl.) For example, a worker in a U.S. warehouse expressed concerns that Amazon’s productivity targets do not allow sufficient time for workers to make the 2-3 minute walk to the bathroom to wash their hands. (Ex. 8 to Appelbaum Decl.)

In response to widespread and mounting public criticism and employee protests, Amazon apparently lashed out. Amazon fired Chris Smalls in apparent retaliation for speaking out about Amazon’s working conditions during the COVID-19 pandemic. (Appelbaum Decl. ¶ 17; Ex. 9 to Appelbaum Decl.) Smalls and other employees struck to call attention to the lack of protections for warehouse workers. (Ex. 9 and 10 to Appelbaum Decl.) Smalls blew the whistle on poor working conditions but was fired

instead. (Appelbaum Decl. ¶ 17.)

According to Amazon, the company fired Smalls for allegedly violating the company's quarantine rules after having come into contact with a sick employee. (Ex. 9 to Appelbaum Decl.) After his firing, in a meeting with CEO Jeff Bezos, Amazon General Counsel David Zapolsky denigrated Smalls as "not smart or articulate," and proposed a public relations strategy to make him "the most interesting part of the story, and if possible make him the face of the entire union/organizing movement." (Ex. 10 to Appelbaum Decl.)

New York State Attorney General Letitia James called Smalls's termination "disgraceful" given that he bravely stood up to protect himself and his colleagues and she called on the National Labor Relations Board to investigate the firing. (Ex. 11 to Appelbaum Decl.) New York City Mayor Bill de Blasio ordered the City's Human Rights Commission to launch a civil investigation. (Ex. 12 to Appelbaum Decl.)

At least three Amazon warehouse employees have been fired for "violating internal company policies" after they had advocated for better working conditions during the COVID-19 pandemic. (Ex. 13 to Appelbaum Decl.) A member of the U.S. House of Representatives requested that the Occupational Safety and Health Administration investigate the dismissal of two workers at a warehouse in Minnesota who had filed a whistleblower complaint. (Ex. 14 to Appelbaum Decl.) Amazon also dismissed two user experience designer employees who, as leaders of Amazon Employees for Climate Justice, had advocated that the company do more to reduce its climate impact. The two were fired after they circulated a petition about health risks for Amazon warehouse workers during the COVID-19 pandemic. (Ex. 15 and 16 to Appelbaum Decl.) The company said it dismissed the two for "repeatedly violating internal policies." (Ex. 15 to Appelbaum Decl.,

second page).

In total, Amazon has reportedly fired at least six employees who have been vocal against the company's policies during the pandemic in the U.S., and several other workers reportedly face disciplinary write-ups from Amazon after protesting. (Ex. 17 to Appelbaum Decl.) On May 4, 2020, one of Amazon's top engineers, Vice-President Tim Bray, resigned in protest and penned a public letter to Amazon condemning its behavior toward workers. (Ex. 18 to Appelbaum Decl.) On May 5, it appears that a worker at the Staten Island facility tragically died from COVID-19. (Appelbaum Decl. ¶ 18.)

Amazon's ongoing failure to meaningfully engage with its employees creates significant risks for employees, their families, and communities at large. In the middle of the worst public health emergency in the modern era, Amazon has ended unlimited unpaid time off. (Ex. 19 to Appelbaum Decl.) In the context of the worst economic crisis in the modern era, this move will surely help spread the virus as Amazon's low wage workers come to work sick because they are afraid of losing their jobs.

Amazon had the information, resources, and ability to do better. In its arrogance and determination for growth and dominance, it made only piecemeal fixes while failing to address the underlying issues.

CONCLUSION

For all these reasons, RWDSU and UNI respectfully request that the Court grant the preliminary injunction requested by Plaintiffs.

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Respectfully submitted,

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