

Orval Kent Food Company, Inc. and General Teamsters, Warehousemen and Helpers Union Local 890, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 32-CA-4210

1 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 16 May 1983 Administrative Law Judge George Christensen issued the attached decision. Thereafter, the General Counsel filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Orval Kent Food Company, Inc., Salinas and Imperial, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On November 4 and 5, 1982, I conducted a hearing at Salinas, California, to try issues raised by a complaint issued on March 30, 1982, and amended on October 26, 1982, based on a charge filed by Teamsters Local 890 (Union) on January 1, 1982.

The amended complaint alleged Orval Kent Food Company, Inc. (Company) violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (Act), by: (1) interrogating employee Luz Tanori concerning her reasons for signing a union authorization card and soliciting her to advise the Company what grievances were causing employee dissatisfaction and support of the Union; (2) threatening Tanori with onerous treatment for supporting the Union; (3) reassigning Tanori to less desirable employment, issuing warning no-

tices to her, suspending her, and discharging her, all for supporting the Union; (4) granting a wage increase to employees to undermine their support of the Union; and (5) more stringently enforcing its disciplinary system after December 1, 1981.

The Company denied the alleged interrogation, solicitation, and threat occurred; denied it more stringently enforced its disciplinary system after December 1, 1981; denied any discriminatory job reassignment; conceded it warned, suspended, and discharged Tanori, but denied it did so because of her union activities; and denied any wage increases were granted for the purposes of undermining employee support of the Union.

The issues for determination are whether:

1. In October 1981,¹ Production Manager Robert Chester, by telephone, interrogated Tanori concerning her reasons for supporting the Union and solicited her to ascertain employee grievances and supporting the Union and solicited her to ascertain employee grievances and report them to him.

2. On November 6, Chester and Production Supervisor Sylvia Harvell issued warning notices to and suspended Tanori because of her union activities.

3. On or about December 15, Production Supervisor Gilberto Avina threatened Tanori with onerous treatment because of her union activities.

4. On or about December 21, Production Supervisor Leticia Avina assigned Tanori to a less desirable job than the one she was performing; on December 23 Assistant General Manager William Schmidt issued a warning notice to and suspended Tanori; and on December 31 General Manager David Kent discharged Tanori, all because of her union activities.

5. Beginning in December, the Company more stringently enforced its disciplinary system because of the employees' union activities.

6. In early 1982, the Company granted a wage increase to employees to undermine their support of the Union.

7. By any of the foregoing, the Company violated the Act.

The parties appeared by counsel at the hearing and were afforded full opportunity to adduce evidence, to examine and cross-examine witnesses, to argue, and to file briefs. A brief was filed by the General Counsel.

Based on my review of the entire record,² observation of the witnesses, persual of the brief, analysis and research, I enter the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleged, the answer admitted, and I find that at all pertinent times the Company was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization within the meaning of Section 2 of the Act.

¹ Read 1981 after all further date references omitting the year.

² The General Counsel's motion to correct the transcript is hereby noted and corrected.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Company is a wholly owned subsidiary of Kane Miller Corporation, a Delaware corporation. At all material times, it was engaged in the business of processing and packing lettuce for sale as shredded lettuce to the fast food industry and restaurants. The Company conducted operations at Salinas, California, between April and November and at Imperial California, between December and March. Its production and maintenance work force ranged between 30-60 employees on two work turns, one running from approximately 3 to 11:30 a.m. and the second from approximately noon to 8:30 p.m. An unpaid 30-minute lunchbreak normally was scheduled midway in each shift and two paid 10-minute rest breaks normally were scheduled approximately 2 and 6 hours after the start of each shift. The Company utilized air-conditioned trailers in its operations, moving them between Salinas and Imperial when it shifted its operations. At times pertinent, David Kent was the Company's general manager, William Schmidt was assistant general manager, Robert Chester was production manager, John Kelly, Sylvia Harvell, Leticia Avina, and Gilberto Avina (to December 31) were production supervisors. Kelly acted in Chester's place during his absence.³

B. The Union's Organizational Campaign

The Union's campaign to organize the Company's production and maintenance employees commenced on October 13 with a visit to the Union's business offices by Luz Tanori, accompanied by her sister Maria Tanori, Pedro Ponce, Maria Chester (Robert Chester's wife), Supervisor Gilberto Avina, and Supervisor Leticia Avina (Maria Chester's sister and Gilberto's wife). The incident which prompted the contact was Luz Tanori's discharge the preceding day by Supervisor Sylvia Harvell (which shall be detailed hereafter). Prior to her discharge, Luz Tanori was an employee of the Company, as was her sister Maria (Maria quit when Luz was discharged). All the others were also employed by the Company. The six signed union authorization cards and took blank cards for the purpose of soliciting other employees to sign and return them to the Union. After signing their cards, the six went to the Tanori house and the Tanori sisters began soliciting employees to come and sign cards. Those efforts continued at the Salinas worksite the following several days. The Union filed a petition for certification as the exclusive collective-bargaining representative of the Company's production and maintenance employees in late October (Case 32-RC-1497).

Luz Tanori was prominent in the Union's organizational efforts.

All of the complaint allegations but two⁴ involve Luz Tanori. I shall discuss and enter findings concerning the

³ The complaint alleges, the answer admits, and I find at pertinent times Kent, Chester, Schmidt, Kelly, Harvell, and the two Avinas were supervisors and agents of the Company acting on its behalf within the meaning of Sec. 2 of the Act.

⁴ The alleged more stringent enforcement of the Company's disciplinary system after December 1 and the alleged undermining wage increase.

incidents involving Luz Tanori, followed by discussion and findings concerning the remaining issues.

C. Luz Tanori's Job History Prior to Her October 12 Discharge

At times pertinent, sisters Luz and Maria Tanori and their mother lived in Imperial. Luz Tanori commenced working for the Company in 1977 on a part-time basis, while attending school. She did not work for the Company at Salinas during the period it conducted operations there. She continued working for the Company on that basis between 1977-1981, including the December 1980-April 1981 season at Imperial. In 1981, however, she did not cease working for the Company in April but continued in the Company's employ at Salinas. During her entire employment, she worked at most of the jobs commonly assigned to women (those jobs not requiring heavy lifting). She therefore worked on the trim and core line, assembled boxes, packed boxes, and taped boxes. She also received instructions on how to perform quality control work and worked on that job (which required breaking random heads of lettuce and checking them for quality, checking the temperature of and chlorine content in the water in which the lettuce was placed, and associated duties).

On April 19, she was issued a disciplinary warning notice for tardiness.

On May 11, she received a second warning notice for tardiness, plus a 3-day disciplinary layoff.

On June 2, she received a third warning notice for leaving work prior to the end of her shift without the permission of her supervisor and for overstaying break-times.

Between June 4 and July 20, Tanori did not work. She testified she ceased work on June 4 to attend a graduation exercise, and continued off work until July 20 because her mother was ill and needed her help.

D. The October 12 Discharge, October 13 Reinstatement, and Commencement of Union Activity

On October 12, Supervisor Sylvia Harvell directed Tanori to go to work at the trim and core line. Tanori protested the assignment, stating she was a packer.⁵ When Harvell insisted Tanori report to the trim and core line, both Luz Tanori and her sister Maria protested vociferously. Harvell advised Luz Tanori either to report as assigned or she was fired; Tanori replied she was not going to report, she felt ill. Harvell, suspecting Tanori was malingering, told her, if she did not go to work immediately on trim and core, she was fired. Tanori repeated she was ill and stated she was leaving. Harvell informed her she was fired. Maria Tanori stated she was quitting and left with her sister.

⁵ Work on the trim and core line was considered the least desirable job assignment. The temperature in that trailer was in the 30's and constant hand labor was required. Employees sought other jobs and when they had them, protested reassignment to trim and core. Uncontradicted testimony, which I credit, established all jobs were interchangeable in the sense the supervisors moved employees between jobs according to production needs or requirements.

The two went to the office of the California Labor Commission to lodge a complaint over the incident. The office was closed. They went to the Union's office to seek assistance. It also was closed.

The next day, the sisters saw Chester. Luz and Maria related their versions of what transpired the previous day and Luz stated she was going to file a complaint with the Labor Commission if she were not reinstated. Maria requested reinstatement. Chester advised the sisters he would let them know later if they were going to be reinstated.

As noted above, the two, accompanied by Ponce, Maria Chester, and the two Avina supervisors, then went to the Union's office, signed union authorization cards, and began to solicit other employees to sign.

That same day (October 13), Chester telephoned Luz, advised her he was going to credit her claim she refused the job assignment the previous day because she felt ill, and offered her reinstatement the following day. She accepted. Maria also was offered an accepted reinstatement.

E. The Alleged Unlawful October 15 Interrogation and Solicitation

The complaint alleges in October 1981 Chester telephoned Luz Tanori at her home, interrogated her concerning her reasons for signing a union authorization card, and solicited her to find out and advise him what the employee grievances were.

Tanori and Chester agreed a telephone conversation took place between them on or about October 15 and that, in the course of that conversation, Chester informed Tanori the Company had a good medical plan and offered to make it available to Tanori.⁶ Chester testified he telephoned Tanori to make that statement and offer because he had been informed by his sister-in-law, Supervisor Leticia Avina, that Tanori was telling employees the Company did not have an adequate medical plan and because he knew (through Leticia Avina) Tanori was active in the union campaign and influential among the employees. Chester denied, however, that he asked Tanori why she signed a union authorization card, denied he asked her if he should give the employees (and Tanori in particular) a raise, and denied he solicited her to find out and advise him what the employee grievances were.

In addition to stating Chester asked her why she signed a union authorization card and asked her if he should give her and other employees a raise, Tanori testified Chester said he knew she was a leader in the union organizing campaign because the Company had received a letter from the Union so naming her, that he stated he knew the employees would listen to her and her sister, and that he asked her to tell the employees about the medical benefits the Company was providing.

I credit the mutually corroborative testimony Chester telephoned Tanori on or about October 15 to tell her the Company had a good medical plan, that he so advised her, at the same time offering to show her the plan, and

⁶ They also agreed Chester presented a copy of the plan to Tanori for her scrutiny a few days later.

that she accepted his offer. I also credit Tanori's testimony to the effect Chester told her he was aware she was influential among the employees and asked her to disseminate among the employees information concerning the level of benefits the plan provided.⁷

I do not credit Tanori's testimony Chester asked her why she signed a union authorization card, that Chester stated he knew she was a union leader because the Company received a letter from the Union so naming her, and that he asked her whether he should grant her and other employees a wage increase. Chester reasonably was aware why Tanori signed a card, since he knew she had been discharged, he knew she went to the Labor Commission for redress, and he knew at the time she went to the union hall with Leticia Avina and his wife and signed a card, he had not yet offered her reinstatement. It is unlikely Chester on or before October 15 saw a letter from the Union to the Company naming Tanori as one of its in-house organizers, since the card-gathering effort began only 2 days before,⁸ and I find it doubtful Chester would ask Tanori's "advice" on whether or not to grant wage increases. Tanori showed an unfortunate tendency to tailor her testimony to suit her purposes⁹ and this testimony appears to be such an effort.

On the basis of the foregoing, I find and conclude on or about October 15 Chester did not ask Tanori why she signed a union authorization card and did not solicit her to ascertain and advise him what the employees' grievances were. I therefore shall recommend the dismissal of the portions of the complaint so alleging.

F. The Alleged November 5 Unlawful Warning Notices and Suspension

The complaint alleged on November 5 the Company issued warning notices to and suspended Luz Tanori because of her union activities.

On November 5, Luz Tanori was scheduled to work the first (approximately 3 to 11 a.m.) shift under Supervisor Gilberto Avina. She failed to report at the shift starting time, arriving at the worksite about 9 a.m. Avina asked her why she was late. Tanori replied her car broke down. Avina asked why she had not called in.¹⁰ Tanori

⁷ It is reasonable he made such statements in view of his testimony he knew she was a leader in the union campaign and influential among the employees.

⁸ Unions often list their employee supporters in a recognition demand addressed to an employer following the receipt of signed authorization cards from a majority of that employer's employees, to place the employer on notice and hopefully proscribe any discriminatory treatment of the named employees.

⁹ For example, on direct examination she testified that company attorney Carey at an October 26 employees meeting solicited grievances from the employees in attendance by asking the reasons for their dissatisfaction; under cross-examination, she shifted, identifying Chester as the employer representative who made that request; still later, she conceded Chester only asked the employees if they had any question, after he and Carey concluded remarks concerning a scheduled NLRB hearing and a prospective election.

¹⁰ The Company expected employees who anticipated being unable to work their scheduled shift or those unable to report on time due to unexpected circumstances to notify the Company so replacements could be secured.

replied no telephone was available at the location where the car broke down, asked for her check,¹¹ and stated she wanted to go to work. Avina proffered her paycheck and told her since it was so late, to report for work on the second shift beginning at noon, for work on Supervisor Harvell's crew. Tanori accepted the paycheck and left the worksite without further comment. Avina notified Harvell that Tanori would be reporting for work on her crew at noon. Tanori, however, neither reported for work on the second shift nor gave notice of her intent not to report.¹²

Harvell wrote up two warning notices; one for Tanori's tardiness on the first shift and failure to notify the Company of the reason therefor and expected time of arrival, and a second for Tanori's failure to report for work on the second shift and failure to notify Harvell of her intended absence, the reason therefor, and for failure to secure permission therefor.¹³

On reviewing the two notices and the reasons for their issuance, Chester placed his signature below that of Harvell on the first notice. Both notices were issued to Tanori, plus a 3-day disciplinary suspension.

Based on my findings above, I conclude the two notices were issued for cause; i.e., for unexcused and unreported absences from work on both the first and second shifts on November 5, and that the accompanying suspension, since it followed the issuance of previous warning notices of a similar nature, was also for cause.

I therefore find and conclude the General Counsel failed to establish the Company issued the November 5 disciplinary notices and suspended Tanori because of her union activities; rather, I find they were issued for cause.

G. The Alleged Unlawful Mid-December Threat

The complaint alleged in mid-December Supervisor Gilberto Avina threatened Luz Tanori with onerous treatment because of her union activities.

Tanori testified in mid-December Avina, in the presence of a group of employees, told her Chester stated to him that he was going to come down hard on Tanori because she was not working fast enough and because of the headaches she gave him in Salinas due to the union organizing effort.

Avina testified Tanori was in his crew on the date in question and he indeed addressed some of his crew during a rest break, including Tanori, but stated what he told them was that Chester was complaining his crew was not working fast enough, that Chester said the crew worked faster under the previous supervisor and, unless he got them to work faster, his job as a supervisor was in jeopardy; and that he pleaded with the crew to increase their speed. Avina denied at any time he stated Chester threatened to come down hard on Tanori because of her union activities.

¹¹ It was payday.

¹² The findings in this section are based primarily on the testimony of Gilberto Avina, who impressed me as a sincere and honest witness, and partial corroboration of his testimony by Sylvia Harvell. Any contrary testimony by Tanori is not credited.

¹³ Gilberto Avina was a supervisor trainee and did not issue disciplinary notices or penalties. Harvell was authorized to issue disciplinary notices and penalties.

I credit Avina's testimony; he was a forthright and direct witness, while Tanori demonstrated a proclivity to the contrary.

I therefore find and conclude the Company, by Avina, in mid-December did not threaten Tanori with more onerous treatment because of her union activities and will recommend those portions of the complaint so alleging be dismissed.

H. The Alleged December Discriminatory Job Reassignment

The complaint alleged on or about December 21 the Company reassigned Luz Tanori from her current job to a more disagreeable one because of her union activities.

It is undisputed that in mid-December Chester assigned Luz Tanori from trim and core to quality control work and that her supervisor was Leticia Avina. It is also undisputed that on December 21 Avina assigned Tanori to work on the trim and core line for the last 2 hours of her shift and for the last 4 hours of her shift on December 22.

Tanori testified Chester promised her the quality control job would be her permanent assignment when he offered it to her and she accepted it; and that she was unprepared for the trim and core assignments and did not have sufficient warm clothing for work on the trim and core line.¹⁴

Avina, Chester, and David Kent testified employees regularly were shifted between jobs, to keep production flowing, and as the supervisor in charge saw any need therefor; Avina testified following the December 1 move of the operations from Salinas to Imperial, she was utilizing Tanori, Maria Guzman, and Elvia Escamilla on quality control work,¹⁵ that she alternated the three at quality control work, with only one of them performing that work at a time; and that she reassigned Tanori from quality control to trim and core on the dates and during the times in question as part of that practice, replacing Escamilla, who took over quality control during those times. Avina also testified employees assigned to either job had to wear warm clothing, since both jobs were performed in the same trailer or trailers; and that all employees normally kept clothing changes at the worksite. Chester testified when he gave Tanori the quality control assignment, he made no guarantees concerning its permanence. All the supervisors testified employees assigned to jobs such as box assembly, quality control, etc., often complained when reassigned to trim and core, but their protests were just as regularly overruled and the employees informed they would work as and where assigned or be subject to discipline.

I credit Avina's testimony, as supported by Chester and Kent, that employees are regularly assigned from one job to another, at the dictates of the Company's needs (as interpreted and applied by its supervisors), and that Tanori's assignment from quality control to trim and core on December 21 and 22 were in accordance with

¹⁴ The Company maintained temperatures within the trailer where the trim and core line worked in the 30's.

¹⁵ Normally only one quality control clerk performed quality control work on a shift.

those practices; I therefore find and conclude the General Counsel failed to establish the Company, by Avina, assigned Tanori to trim and core line work on December 21 and 22 because of her union activities and will recommend those portions of the complaint so alleging be dismissed.

I. The Alleged Unlawful December 23 Warning Notice and Suspension; the Alleged Unlawful December 31 Termination

The complaint alleges on December 23 the Company issued a warning notice and indefinite suspension to Luz Tanori and on December 31 discharged her because of her union activities.

Prior to a 10-minute rest break on Luz Tanori's shift on December 23, Tanori was working on quality control and Elvia Escamilla was working on the trim and core line. Shortly before the trim and core line took its break their supervisor, Leticia Avina, instructed Tanori to replace Escamilla on the trim and core line following the break and instructed Escamilla to replace Tanori on quality control following the break. Following completion of both the trim and core line's break and that of the MPM workers (who commenced their break when the trim and core workers returned from their break), Avina noticed Tanori was not working on the trim and core line. She telephoned Acting Production Manager Kelly (Chester was on vacation) and informed him Tanori had not followed her instructions. Kelly located Tanori at the box assembly trailer conversing with an employee working in that trailer and asked Tanori what she was doing there. Tanori replied she was on her break. When Kelly expressed dissatisfaction with her explanation, Tanori went to work on the trim and core line. She arrived there approximately 25 minutes after the time the trim and core line began their break.¹⁶ At the following lunchbreak Avina instructed Tanori to report to Assistant Manager Scheidt. When Tanori saw Scheidt, he issued her a written warning notice for disobeying her supervisor's instructions by overstaying her break; she was also suspended until further notice.

Following a December 31 "version conference"¹⁷ conducted by General Manager Kent, Kent reviewed

¹⁶ The findings in this section are based primarily on the testimony of Avina, who was a convincing witness.

¹⁷ The "version conference" was a new step in the Company's disciplinary procedure; previously, the normal disciplinary sequence was the issuance of oral warnings; in the event such warnings were ineffective and further infractions occurred, the issuance of written warnings, sometimes accompanied by short-term disciplinary layoffs, at the discretion of the supervisor; if infractions continued, either additional warnings and suspensions followed or discharge, again within the supervisor's discretion. Sometime in the fall of 1981, the Company decided in the case of an employee who had received repeated warnings and short-term suspensions but again violated company rules, it would lay off such employee for an indefinite period, hold a conference with the employee to receive the employee's version of what occurred and, after reviewing that explanation, the supervisor's version of what occurred and the previous disciplinary history of the employee, to then decide whether to lift the suspension or convert it into a discharge. That procedure was followed for the first time following Tanori's December 23 suspension. It has been followed regularly since, in some cases resulting in a decision to discharge and in other cases in a decision to lift the suspension.

Tanori's version of the December 23 incident (Tanori claimed she did not overstay her breaktime, but reported within 10 minutes of the time she commenced her break, Avina's and Kelly's report of the incident, Tanori's history of warnings on April 19, May 11, June 2, and November 5 and suspensions on May 11 and November 5, consulted with Chester, and decided to convert the December 23 suspension into a discharge. Tanori was duly notified of that decision.

The General Counsel contends the December 23 warning notice and suspension were issued and the December 31 discharge was effected to rid the Company of its most active union supporter and not for cause.

I cannot accept the General Counsel's contention; since I have found Tanori overstayed her break by approximately 15 minutes, in defiance of her supervisor's instructions to commence work on the trim and core line following the completion of their break, the Company certainly had good cause for issuing her a warning notice for disobeying her supervisor by overstaying her break and, in view of previous warnings for both a similar and other infractions of company rules and practices, suspending her. I further find the Company's decision to discharge Tanori after a review of the reasons for the issuance of that notice and suspension and Tanori's previous disciplinary history, also was for good cause. Other employees have been issued similar notices, suspension, and discharged for similar offenses. While it is certainly true Tanori was a union activist and known as such by the Company, the credible evidence is insufficient to establish Tanori was discharged because of her role in the Union's organizational campaign.

I therefore shall recommend dismissal of those portions of the complaint alleging the Company issued the December 23 warning notice and suspension to Tanori and discharged her on December 31 because of her union activities.

J. The Alleged More Stringent Enforcement of the Disciplinary System after December 1

The complaint alleges the Company violated the Act by more stringently enforcing its disciplinary system after December 1 because of its employees' union activities.

The record discloses oral and written warnings, suspensions, and discharges were effected both prior and subsequent to December 1 for employee infractions of the Company's policies, rules, and practices; no showing was made that such warnings, suspensions, and discharges were issued and effected with greater frequency subsequent to December 1 than prior to December 1, nor that union supporters were singled out for discipline after December 1 in any greater degree after December 1 than prior to December 1. The only change in the disciplinary system after December 1 consisted of the addition of a new step prior to effecting any discharge; i.e., conducting a "version conference" with the affected employee to hear his or her statement of the events which precipitated the suspension prior to making a decision as to whether or not to convert such suspension into a discharge.

On the basis of the foregoing, I find the General Counsel failed to support this allegation of the complaint with sufficient credible evidence to warrant a finding of violation,¹⁸ and will recommend those portions of the complaint so alleging be dismissed.

K. The Alleged Unlawful Wage Increases in Early 1982

The complaint alleges the Company violated the Act by granting employees an increase in early 1982.

It is undisputed 16 increases were granted on January 11, 1982; 1 on January 30; 13 on February 15; 7 on March 8; 6 on March 15, and 9 on March 22. It is also undisputed no increases were granted in January 1981; 2 on February 16, 1981, 9 on March 1, 1981; and 2 on March 23, 1981. As noted heretofore, the 1982 increases were granted at the time the Union's petition for certification as the exclusive representative of the employees who received the increases in question.

Chester testified he granted the increases; that the Company had no policy or practice for granting wage increases (such as a periodic review and grant thereof) but rather were granted as and when he decided employees should receive them. Neither Chester nor Kent made any effort to explain or justify the grant during the first quarter of 1982 of such an extraordinary number¹⁹ of increases, at a time an election was reasonably anticipated due to the Union's pending petition for certification as the collective-bargaining representative of a majority of the Company's production and maintenance employees.

In the absence of proof that wage increases granted prior to an election to determine the validity of a union claim of majority representative status were effected in the course of a preexisting wage adjustment policy or practice or for valid economic reasons, the Board and the courts frequently have concluded it may reasonably be inferred they were intended to discourage employee support of the petitioning union and therefore violative of the Act.²⁰

I so conclude here, finding and concluding, the Company granted the increases in question to undermine employee support of the Union in the anticipated election and thereby violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. At all pertinent times the Company was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization within the meaning of Section 2 of the Act.

2. At all pertinent times Kent, Schmidt, Chester, Kelly, Harvell, Leticia Avina, and Gilberto Avina were supervisors and agents of the Company acting on its behalf within the meaning of Section 2 of the Act.

¹⁸ The General Counsel neither cited any evidence nor argued for such a finding in his post-hearing brief.

¹⁹ Extraordinary in the sense the entire unit at no time exceeded 60 employees and 53 increases were granted in that quarter, as contrasted with the grant of 13 increases the year prior.

²⁰ *NLRB v. Exchange Parts Co.*, 375 U.S. 405 (1964); *NLRB v. Broadmoor Lumber Co.*, 578 F.2d 238 (9th Cir. 1978); *NLRB v. Squire Shops*, 559 F.2d 486 (9th Cir. 1977); *NLRB v. Takyo*, 543 F.2d 1120 (9th Cir. 1976); *Highland House Nursing Center*, 222 NLRB 134 (1976); *Crown Zellerbach Corp.*, 225 NLRB 911 (1976); etc.

3. The Company violated Section 8(a)(1) of the Act by its grant of numerous wage increases to employees in the first quarter of 1982 for the purpose of undermining their support of the Union in an anticipated election due to the Union's pending petition for certification as their collective-bargaining representative.

4. The Company did not otherwise violate the Act.

5. The aforesaid unfair labor practice affected and affects commerce as defined in Section 2 of the Act.

THE REMEDY

Having found the Company violated the Act, I recommend it be ordered to cease and desist from such violation and take certain affirmative action designed to effectuate the Act. Having found the Company did not commit the balance of the violations alleged in the complaint, I shall recommend those portions of the complaint be dismissed.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I recommend the issuance of the following

ORDER²¹

The Respondent, Orval Kent Food Company, Inc., Salinas and Imperial California, its officers, agents, successors, and assigns, shall

1. Cease and desist from granting wage increases to its employees during the pendency of an election to determine whether Teamsters Local 890 or any other labor organization represents a majority of those employees, for the purpose of undermining employee support of such labor organization in the election.

2. Take the following affirmative action designed to effectuate the purposes of the Act.

(a) Post at its premises at Salinas and Imperial, California, copies of the attached notice marked "Appendix."²² Copies of that notice, on forms provided by the Regional Director for Region 32, shall be signed by an authorized representative of the Company, posted immediately upon their receipt and maintained for 60 consecutive days thereafter in conspicuous places including all places where notice to employees are customarily posted. Reasonable steps shall be taken to ensure the notices are not altered, defaced, or covered by other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Company has taken to comply herewith.

IT IS FURTHER RECOMMENDED that all portions of the complaint issued against the Company in this case other than those just set out be dismissed.

²¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²² 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."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing before the National Labor Relations Board, it decided we committed an unfair labor practice

and directed that we post this notice advising you we will do the following to remedy that unfair practice.

WE WILL NOT grant wage increases to our employees during the pendency of an election to determine if a majority of our employees wish to be represented by Teamsters Local 890, or any other labor organization, for the purpose of undermining our employees' support of such labor organization in the election.

ORVAL KENT FOOD COMPANY, INC.