

**Prospect Foods, Inc. d/b/a County Market and
United Food Local 55OR. Cases 33-CA-6552
and 33-RC-2930**

20 June 1984

**DECISION, ORDER, AND DIRECTION
OF SECOND ELECTION**

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 28 December 1983 Administrative Law Judge Richard L. Denison issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision and an answering 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 briefs 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, Prospect Foods, Inc. d/b/a County Market, Danville, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[Direction of Second Election omitted from publication.]

¹ The Respondent 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. We also find totally without merit the Respondent's allegation that the judge resolved credibility conflicts in accordance with a predisposed view of the case. There is no basis for finding that bias and partiality existed merely because the judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *NLRB v. Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact."

In sec. II of the judge's decision, the judge found that Kirpatric asked Milliken if she "had" anything to do with organizing and that it would be bad news for her if she had. The record reveals that Kirpatric asked Milliken if she "heard" anything to do with organizing. We find that Kirpatric's comments violated Sec. 8(a)(1) of the Act. Further, in discussing Kirpatric's "bad news" statement to Milliken in the last paragraph of sec. II of his decision, the judge inadvertently referred to Kirpatric, instead of Milliken, as being threatened.

In the second paragraph of sec. II of his decision, the judge attributes certain statements to Assistant Store Manager Stewart. The record indicates that although Stewart was present at the meeting with employee Prunkard, it was Store Manager Rose who questioned Prunkard about union activity.

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge. This consolidated proceeding was heard on November 7 and 8, 1983, in Danville, Illinois.¹ The charge in Case 33-CA-6552 was filed on June 28. The complaint, issued August 3 and amended August 31, alleges violations of Section 8(a)(1) of the Act in that, in the context of an organizational drive and election campaign, the Respondent allegedly engaged in 18 separate counts of interference, restraint, and coercion. These events allegedly occurred both within and without the critical period between the filing of the Union's election petition on June 6 and the election, lost by the Union, on July 28, as specified in the Regional Director's Report on Objections, Order Consolidating Cases, and Direction of Hearing, dated August 31, which consolidated the complaint allegations in Case 33-CA-6552 with the issues raised by the Union's timely filed Objections 1, 2, and 3 in Case 33-RC-2930 for purposes of hearing.

The Respondent's answer, as amended, denies the commission of any unfair labor practices. All parties were afforded full opportunity to participate in the trial. Oral argument was waived. The briefs have been carefully considered. On the entire record in the case, including my observation of the witnesses, consideration of their demeanor, and consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Based on the allegations of fact in paragraphs 2(a) and (b) of the complaint, as amended, admitted by the Respondent's answer, as amended, and the stipulations entered into by the parties at the outset of the hearing, I find that the Respondent is, and has been at all times material herein, 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. THE UNFAIR LABOR PRACTICES

Among the various grocery stores owned and operated by the Respondent is the County Market located in the Town Centre Mall in Danville, Illinois. This store opened in March following the February closing of Respondent's Holiday Square and Vermilion IGA stores. Some of the County Market employees who testified in this proceeding were formerly employed as either the Holiday Square or Vermilion IGA stores. A few days before County Market opened Patricia Prunkard, who worked in the accounting and bookkeeping and courtesy offices of County Market under Front End Manager Scott Bechtel, contacted the Union and began an organizational drive. She testified that, on the Friday before the County Market store opened, Assistant Store Manager Jack Stewart and Store Manager Vernon Rose talked

¹ All dates are in 1983 unless otherwise specified.

to her. Stewart handed her an anonymous letter which mentioned Prunkard and stated that the Union was trying to organize the store. He asked if this were true, and if she had contacted the Union. Prunkard replied that it was true, and that she had. Stewart asked why, and Prunkard replied that the employees were concerned about the cuts in wages, hours, and benefits, and about their seniority being taken away when they came to County Market from IGA. Rose said that the store would not be able to operate with the Union, that a union was not what it was cracked up to be, and that Respondent had been losing money. He asked if the Union had mentioned the concessions Eisner and A&P had had to make. She remembered that either Rose or Stewart also said that the owner, Garfield McDade, would not allow it. "He just wouldn't have it."

Toward the end of May, around May 26, Prunkard was at work in the breakroom when Head Cashier Julie Davis told her Rose and Stewart wanted to see her in the office. Rose began by saying since she had been very honest with them before, he wanted to ask her if she knew anything more about union activity or card signing. Prunkard answered, "Possibly." Then Stewart asked why people wanted the Union. Prunkard stated that the employees were concerned about their seniority, pay, hours, and benefits. Stewart asked who signed, and who passed out cards. Prunkard responded that she would not say. Stewart said that, even though the store was doing well, they could not offer more pay or benefits at that time. He asked why the people did not come to him with their problems, and Prunkard replied that they were scared of him, and did not care for him. The conversation ended with Stewart remarking that perhaps he should work on his attitude and try to change it.

Prunkard further testified that, about the last of May or first of June, Rose talked to her again in the store's courtesy office. They were alone. He asked if she had received a 25-cent raise, and Prunkard answered she had not. Rose told her she should have received one because it had been recommended and approved, and to see Bechtel about it. Accordingly, Prunkard inquired about the promised raise on the following day. She and Bechtel were alone. Bechtel responded that her raise had been approved, and would appear on her next paycheck. He said not to discuss the matter with anyone, since some were not receiving raises, and it was a matter between her and management. Nevertheless, Prunkard learned from certain other employees that they had received raises, and had also been cautioned not to discuss this matter. Prunkard testified that in the past, at IGA, the raises had been given haphazardly. On cross-examination Prunkard acknowledged that she had worked for Prospect Foods since February 1981, but never at a new store before. She testified that she had never heard of any company policy concerning employees receiving a 25-cent raise after the first 30 days of employment.

Prunkard was a calm, precise, and deliberate witness who displayed an excellent memory. Her entire testimony conveyed the impression that she knew precisely what she was talking about. I am persuaded that she should be credited.

Beatrice Kerchief was hired by the Respondent in February 1979, and worked at the Vermilion IGA store until it closed in March. She then became employed the next day at County Market as receiving clerk. In early July, Manager Rose talked with her alone concerning the upcoming NLRB election. He told her that as a salaried employee who was a part of management she was not eligible to vote. Consequently, she did not vote. After the election was over she learned that her name was on the eligibility list. On cross-examination she denied the suggestion that this conversation occurred in March or April, and again insisted that it took place as she testified. Kerchief's brief testimony was delivered with precision and self-assurance.

Maxine Weir has worked for Prospect since April 1973. She is currently deli cook at County Market under the supervision of Deli Manager Gail Pratt. She testified that about midmorning in early July, at home, she received a telephone call from Pratt, who asked if she had been approached by the Union or overheard conversations about the Union in the breakroom. The record does not disclose whether or not Weir answered the question. About 45 minutes later Pratt called again and asked if she had filled out a union card. Weir responded, "No," and the conversation ended.

About a week and half later Pratt talked to Weir at her work station. They were alone. Pratt said she had received some union papers from a union employee and turned them into the Company, and requested that Weir give her copies of any union literature she had received. Weir accused Pratt of violating her rights by talking to her about the Union, and Pratt retorted that there would not be a union in the store.

Finally, Weir testified that Pratt talked to her a final time in mid-July in the presence of Sally Kittell, the bakery manager. Pratt asked if Weir was the person who had been putting all the union literature in the breakroom. Weir replied that she did not know from whom Pratt received this information, but that she was not doing it.

Spring Milliken first worked for Prospect Foods at the Vermilion IGA beginning February 1978. She came to County Market when it opened in March, and last worked there on October 8 as a cashier. Around the end of May she was approached by Health and Beauty Aids Manager Kathy Kirpatric who asked if she had anything to do with organizing the Union. When Milliken responded she had not, Kirpatric stated that it would be bad news for her if she had.

About the second week in June, while at home, she called Scott Bechtel, and asked why she did not get a pay raise. Bechtel said he had not had time to evaluate her file, and for her to come to the office later to talk about the matter. At the store office, she again asked why she did not receive a pay raise, and Bechtel answered that the Respondent could not legally give her a raise until the union stuff was over. He asked who told her that raises were being given out. Milliken refused to tell him.

Milliken further testified that during the period between July 22 and 27 the Company held a series of meet-

ings for employees in the upstairs staff office. Each meeting lasted about an hour and a half. She attended two of these meetings, of which the last was held on July 26. The meetings were conducted by Produce Manager Bob Gillian. Scott Bechtel also attended, but merely passed out literature and said little. Store Manager Rose came in and participated near the end of the meeting. According to Milliken, Gillian stated that if the Union got in the senior people would get the better wages, hours, benefits, store times, and vacation times. He said the Company would negotiate from zero, that their wages would go to the minimum wage and would work their way up to whatever was put in the contract, and that the Company did not have to agree to anything. Gillian used Milliken's name in hypothetical examples of how, under union, seniority and bumping affected employees. After Rose came in, he stated that if the Union came in more than likely the store would close, because they could not work with a union in that store. He said he did not have to agree to anything—he would simply attend negotiations and that would be it.

Lora Peat is employed at County Market under the supervision of Deli Manager Gail Pratt. Peat testified that one morning during the first week of June, while they were alone in the women's restroom, Pratt asked if Peat had heard anything about the Union. Peat answered that she had heard nothing.

On another morning during the first or second week of June, according to Peat, Gail Pratt approached her at work and asked how she was going to vote. Pratt answered that the Union's initiation fee was going to be \$50 or \$100. Peat replied it was only \$15. Pratt said not to believe everything she heard. Pratt also stated that under a union they would have to get permission from three or four union people to take their days off.

On another occasion in mid-June, Pratt told Peat that she was going to receive a 25-cent raise, but not to tell anyone else. According to Peat, she knew nothing of the raise prior to this time.

One day at the end of June, while they were working in the bakery, Sally Kittell asked Peat if she knew where the meetings for the Union were being held. Peat answered that she did not know.

Lastly, in July, Peat attended one of the meetings the Company held for employees. Bob Gillian spoke, but Bechtel, Rose, and about a dozen other employees attended. She remembered Gillian said, during this meeting, that the reason the Kroger store had closed was because of the union, because the company had to raise prices in order to pay their employees.

Although Peat clearly remembered only a portion of what occurred during the July company meeting for employees, which she attended, she impressed me as being quite positive and sincere about the events she was in fact able to recall.

Diane Barnett was employed as a cashier and in the courtesy office from the last of March until August 5, under the supervision of Scott Bechtel. Around the first of June, she learned from Bechtel that she would be receiving a 25-cent-per-hour raise. Bechtel told her in the staff room that she had done a good job, would receive an additional 25 cents per hour, and should not tell

anyone about the increase since everyone was not getting a raise. He said if she heard anything about the Union or that the Union was engaging in harassment of employees she should let him know.

Barnett also attended one of the employee meetings held by the Company shortly before the election. Bechtel, Gillian, and about 10 other employees were present. Gillian spoke. He said that if the Union came in they would have to lower the employees' wages, raise prices, probably would have to lay some people off, and probably have to close the store. He said the Union was why A&P and Kroger were closing.

About 2 days before the election, Barnett received in the mail a copy of the company letter introduced into evidence as General Counsel's Exhibit 4.

Melaine Brinkley has worked as a cashier at County Market since March under the supervision of Bechtel. She testified that on the morning of June 9 in the staff room, Scott Bechtel asked if she had noticed a difference in her paycheck. When Brinkley replied in the negative, Bechtel stated that she was receiving a 25-cent raise. He said for her to tell no one because some employees did not receive a raise. Then he asked if she wanted to know his opinion about the Union. He asked if she knew where negotiations concerning her wages would start under the Union. When she said she did not, he wrote a zero on a piece of paper, showed it to her, and said, "This is what they're going to start your wages at." Bechtel stated that they were starting with a clean slate at County Market, and they were going to install a 6-month merit raise system. Then he talked about union dues and fees. He said that the unions had a lot of fees and assessments, and caused strikes and violence. He stated he would like for her to vote no, and that she could ask him any questions she wanted any time she wanted.

Brinkley also attended two of the company meetings for employees. One was on July 26 in the staff room along with between 9 and 12 other employees. Spring Milliken was not present at these two meetings. She also remembered that Gillian did most of the talking as Bechtel looked on, but that Rose came into the meeting at a later time. Gillian talked about the store's history, and how the Company gave full-time employees vacation and insurance and made insurance available for purchase by part-time employees. He said to vote no against the Union to protect their job security. He stated that Kroger had closed their store because of the Union. She recalled that he mentioned the topic of union fees and assessments. He talked about strikes, violence, and replacements, and said that striking employees might not regain their jobs. He said, in response to Brinkley's question concerning former Holiday Square and Vermilion IGA employees losing seniority, that she was lucky to be hired by County Market after the other two stores had closed.

On cross-examination Brinkley remembered "negotiations" being mentioned at the July 26 meeting, and the word "zero" with a line drawn beneath it having been written on the blackboard in the meeting room. She remembered Gillian stating that the bargaining relationship between the Company and the Union would start with

zero and work up to a point. She recalled Gillian also mentioning that in the Union there was potential for fines and fees and the possibility of replacement during a strike. Brinkley's testimony was very similar to that of Milliken.

Store Manager Vernon Rose testified that, although the store opened March 29, he first actually knew about the existence of a union campaign when he received the Union's formal letter demanding recognition, dated May 27. However, he admitted that he had seen the anonymous letter warning the Company about a union campaign, and was present when Jack Stewart questioned Prunkard about it in March before the store opened. He also acknowledged first hearing rumors about the Union during either the last week of March or the first week of April.

Concerning the Company's wage increase policy and the increases granted to employees during May and June, Rose testified that it was company policy to dispense wage increases based on merit. Thus, according to Rose, at the end of the first 30 days of employment a new employee either received a 25-cent-per-hour increase or was terminated. Thereafter employees are reviewed every 6 months. Employees who transferred to County Market from the IGA stores which closed were considered new employees within the meaning of this policy. He testified that the decision to grant certain increases in the face of an active union campaign was his alone. He stated that in proceeding in this manner he took into consideration his previous experience at the Richards Supermarkets, owned by Prospect, where, during an election campaign, the company was accused of objectionable conduct by withholding raises. Therefore, he decided to go ahead and give the 25-cent raise "on schedule." However, on cross-examination, on the basis of Respondent's records, it was pointed out to Rose that these wage increases were granted well after either 30 to 60 days. Rose attempted to explain by stating that the store needed to operate for a while in order to assess the state of its business. Thus, I find Rose's efforts to explain the wage increases granted to certain employees in terms of following "normal" company policy inconsistent with the events as they actually occurred. This inconsistency, coupled with the antiunion remarks made to certain employees at the time they were first informed that they were to receive a wage increase, convinces me that the increases were benefits granted employees for the purpose of defeating the Union. As such, the granting of the wage increases violated Section 8(a)(1) of the Act, as alleged in paragraph 5(i) of the complaint, and I so find.

Rose admitted telling Kerchief that as a salaried employee she was ineligible to vote in the election. Rose explained that this statement was based on his past experience that usually salaried people were not eligible to vote. He stated that it was only later that he learned that the Company had agreed in the stipulation for certification upon consent election that salaried persons were in fact eligible. However, he never bothered to tell Kerchief she was, in fact, eligible. Also, he claimed that his conversation with Kerchief took place much earlier than she testified. In testifying, Rose was frequently general, conclusionary, and imprecise. He contradicted himself,

or else was contradicted by admitted facts on a number of occasions. I do not credit his testimony where it conflicts with that of other witnesses except where specifically stated.

Rose remembered having a "general conversation" with Prunkard in March about the Union, based on his experience and newspaper articles about the closing of other stores. He denied telling her McDade would not allow a union in the store. He denied having any conversation with Prunkard about why people wanted the Union or about union cards. He agreed he talked with Prunkard about the subject of the Company's cash flow, but denied promising employees raises. I credit Prunkard's testimony and find that Rose interrogated and threatened Prunkard as alleged in paragraphs 5(b), (c), (d), and (e) of the complaint.

Concerning the testimony of Spring Milliken, Rose denied stating that the store might have to close because of a union but admitted stating that, based on his experience and newspaper releases, the Company's costs might increase to the point where they were not able to compete in the marketplace. He remembered mentioning specifically a newspaper article which said that a Kroger store in Champaign closed because it could not compete with other stores in the area. Rose also denied stating that he would not negotiate with the Union, but remembers saying if the Union won he would sit down and negotiate, but everything depended on being able to come up with a contract. He denied stating that more stores would close because of union involvement.

Although Spring Milliken was able to relate only a portion of what occurred at the company meetings, her account of Rose's remarks are reasonably complete. Furthermore, Milliken is supported by the testimony of others present at the meetings held for employees by the Company. It is plain from this credited testimony and from Rose's letter to employees, dated July 25, that Rose intended to convey to employees the distinct message that a successful organizational drive by the Union at County Market would be futile, since it would not result in a collective-bargaining agreement but would only bring about adverse economic consequences for the employees, including loss of jobs and store closure. In this manner the Respondent further violated Section 8(a)(1) of the Act as alleged in paragraphs 5(n), (q), and (r) of the complaint.

Deli Manager Gail Pratt first denied having any conversation with Weir about union activity, but immediately thereafter agreed that she asked Weir if she signed a card, because she was "curious." Pratt displayed virtually no independent recollection of the events which she described with the assistance of specific leading questions from counsel. Pursuant to one of these, she agreed that her conversation with Weir occurred before June (and thus outside the critical period). Pratt did not specifically deny asking Weir for copies of union literature. She admitted she had heard a lot of talk about the Union, and had observed employees engaged in union activity. I credit Weir and find that the Respondent violated Section 8(a)(1) of the Act in accordance with Weir's testimony as set forth in paragraph 5(j) of the complaint.

Concerning Lora Peat's testimony, Pratt admitted talking to Peat about the Union, but had no recollection whatsoever of the conversation. All her answers were in response to specific leading questions. Pursuant to one of these, she set the date of the conversation prior to the critical period. She then acknowledged telling Peat that she received a raise and not to talk to employees about it pursuant to her instructions from management. Then she admitted that she did not remember when she talked to Peat or how many times she talked to her since they worked together all the time. I credit Peat's clearly superior memory and find that the Respondent, through Pratt, violated Section 8(a)(1) of the Act as alleged in paragraphs 5(i) and (j) of the complaint.

Jack Stewart admitted asking Prunkard about the anonymous letter concerning her having started a union. During the conversation, which lasted about 15 or 20 minutes, he admitted talking to her "basically" about why she was "unhappy with her job," but denied questioning her about the Union. He also denied threatening her that the store would close because of the Union. Stewart acknowledged that he did say it was possible some day County Market might not be able to operate, because the Kroger stores had not been able to compete under a union and had closed in Danville. Prunkard remembered her conversations with Stewart in much greater detail. Stewart's more general version varies mainly in emphasis. He did not testify at all about the conversation with Prunkard near the end of May. Prunkard is credited, and I find that through Stewart Respondent violated Section 8(a)(1) of the Act as alleged in paragraphs 5(b) and (d) of the complaint.

Produce Manager Bob Gillian testified that he held small group meetings, of approximately 10 to 15 employees each, during regular work hours of the days immediately prior to the election. Gillian related his experiences concerning "bumping" by seniority when he worked for Kroger. He discussed negotiating contracts. He referred to "zero" and a blank sheet of paper as a starting point for bargaining. He also mentioned two Kroger stores that were about to close in Champaign and an A&P that was up for sale because of the cost of a union, and discussed job security in the context of a statement that neither the Union or the Company could guarantee job security whereas the only guarantee of a job was a well run store. He also raised the subject of strikes, explained that economic strikers could be replaced, and then recalled first when there was an opening for which they were qualified. He remembered talking to Brinkley at one meeting about economic strikes. He denied stating that the Company would "start from scratch" in negotiations.

As discussed earlier, Brinkley, Milliken, Peat, and Barnett each testified about the remarks made by Gillian and Rose at the employee meetings they attended. Each attended different meetings. However, their testimonies are mutually corroborative. At each Gillian's remarks were markedly similar, heavily emphasizing the futility of organization, with considerable emphasis on loss of benefits through union "bumping" or from "zero" negotiation, strikes, and store closure. I credit their testimonies, which vary from Gillian's only in that Gillian clearly at-

tempted to soften the tenor of his remarks in order to avoid the legal consequences to Respondent. Thus, Gillian's conduct violated the Act as alleged in paragraphs 5(m), (o), and (p) of the complaint.

I do not find in the record any testimony that Gillian threatened that if the Union got in Respondent would withhold wage increases during negotiations. I shall dismiss that allegation.

Scott Bechtel remembered talking to Spring Milliken about a raise. He admitted stating that he did not know whether they legally could give raises or not, and insists he had no "further conversation" with her. He did not specifically deny stating that the Company could not legally give raises until the "union stuff was over," and asking who told her about the raise. He also remembered talking to Diane Barnett, and cautioning her not to discuss her raise with anyone, since it was no one else's business. He did not deny telling Barnett that if she heard about the Union, or was harassed by the Union, to let him know. Bechtel did not testify at all concerning his conversation with Brinkley. I credit Milliken's, Brinkley's, and Barnett's versions and find that the Respondent violated Section 8(a)(1) of the Act, as alleged in paragraph 5(i) of the complaint, by linking the granting and denial of raises to employees to their union activities as indicated in Bechtel's conversations with Milliken and Barnett. However, the record contains no evidence that Bechtel told Brinkley, in their June 9 conversation, to protect her job security by voting against the Union, as alleged in paragraph 5(h) of the complaint. I shall dismiss this allegation.

Bakery Manager Sally Kittell denied questioning Peat about the location of union meetings. However, she remembered raising the subject of the Union with Peat by saying that there was a lot of union activity at the store about this time, after which Peat "volunteered" that union meetings were being held at the Danville Sheraton. Kittell could not recall the date of their conversation. In view of the Respondent's other interrogations and threats to employees, I find it highly unlikely that Peat would volunteer such information. I credit Peat's version, and find that the Respondent violated Section 8(a)(1) of the Act, through Kittell, by questioning Peat as alleged in paragraph 5(k) of the complaint.

Kathy Kirpatric remembered talking to Milliken about the Union, and admitted asking her if she knew of any union activity going on in the store, to which Milliken allegedly replied, "If you hear of anything else let me know." She agreed with counsel for Respondent that this conversation occurred sometime in May (and thus outside the critical period). She did not deny threatening Kirpatric that it would be "bad news" if she had anything to do with union organizing. I credit Milliken's testimony and find that the Respondent violated Section 8(a)(1) of the Act as alleged in paragraph 5(f) of the complaint.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of their rights under Section 7 of the Act by interrogating employees concerning their union support, activities, sympathies, and the location of union meetings; threatening employees with store closure, loss of jobs, and loss of hours of employment; that Respondent would not allow a union in the store; and that the Respondent would bargain from zero on wages if the employees selected the Union; by telling employees who were eligible voters that they were ineligible to vote in the NLRB election; and by granting wage increases during the election campaign for the purpose of undermining support for the Union; the Respondent violated Section 8(a)(1) of the Act as alleged in the complaint.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not violated Section 8(a)(1) of the Act as alleged in paragraphs 5(g), (h), and (l) or in any respects other than those specifically found.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, including the posting of an appropriate notice at the County Market store in Danville, Illinois. Since much of Respondent's unlawful conduct occurred during the critical period between the filing of the election petition and the election of July 28, 1983, I shall also recommend that the election be set aside and a new election held.²

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Prospect Foods, Inc. d/b/a County Market, Danville, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their union support, activities, sympathies, and the location of union meetings.

(b) Threatening employees with store closure, loss of jobs, loss of hours of employment, that Respondent would not allow a union in the store, and that the Respondent would bargain from zero on wages if the employees selected the Union.

(c) Telling employees who were eligible voters that they were ineligible to vote in the NLRB election.

² *Goodyear Tire & Rubber Co.*, 138 NLRB 453 (1962).

³ 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.

(d) Granting wage increases during the election campaign for the purpose of undermining support for the Union.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its County Market store in Danville, Illinois, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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 Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER RECOMMENDED that those portions of the Union's Objections 1, 2, and 3, which fall within the critical period, as set forth in the Regional Director's Report on Objections, Order Consolidating Cases, and Direction of Hearing, dated August 31, be sustained, and that the results of the election of July 28 be set aside and a new election directed.

IT IS FURTHER RECOMMENDED that the complaint be dismissed in all other respects.

⁴ 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

WE WILL NOT interrogate employees concerning their union support, activities, sympathies, and the location of union meetings.

WE WILL NOT threaten employees with store closure, loss of jobs, or loss of hours of employment; nor will we threaten employees that we will not allow a union in the store.

WE WILL NOT threaten employees that we will bargain from zero on wages if our employees select the Union as their bargaining agent.

WE WILL NOT inform employees who are in fact eligible voters that they are ineligible to vote in an NLRB election.

WE WILL NOT grant wage increases during an election campaign for the purpose of undermining support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the Act.

All our employees are free to engage in union activities on behalf of any labor organization, or concerted activities for the purposes of collective bargaining or other mutual aid or protection. Our employees also are free to

refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

PROSPECT FOODS, INC. D/B/A COUNTY
MARKET