

**Target Stores, a Division of the Dayton-Hudson Corporation and Kentucky State District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.**

**Bashford Manor Mall, a Joint Venture of Bashford Manor Corporation and Long Corporation and Kentucky State District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.** Cases 9-CA-26181 and 9-CA-26329

December 21, 1990

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On June 6, 1990, Administrative Law Judge Irwin Kaplan issued the attached decision. Respondent Target Stores filed exceptions and a supporting brief,<sup>1</sup> and the Charging Party filed 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,<sup>2</sup> 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, Target Stores, a Division of the Dayton-Hudson Corporation, Louisville, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> Respondent Target Stores has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

<sup>2</sup> In affirming the judge's decision, we note that no exceptions were filed to the judge's finding that neither Respondent Target Stores nor Respondent Bashford Manor Mall wrongfully removed handbillers from the Bashford Manor Mall property, nor to his finding that Respondent Target had met its threshold obligation of proving a property interest in the sidewalks in front of both its Jeffersontown and Westport stores.

The judge stated that the Act "does require that the Union show that it actually tried all possible alternative means of communicating its message." It is apparent from the cases cited by the judge immediately preceding his statement that the word "not" was inadvertently omitted from the sentence. We correct that error.

*Deborah Jacobson, Esq.*, for the General Counsel.  
*James U. Smith III, Esq.*, (*Smith & Smith*), of Louisville, Kentucky, for Respondent Bashford.  
*Samuel R. Born, Esq.*, and *Michael H. Boldt, Esq.*, (*Ice, Miller, Donadio & Ryan*),<sup>1</sup> of Indianapolis, Indiana, for Respondent Target.  
*Charles R. Isenberg, Esq.*, and *Thomas J. Schultz, Esq.*, (*Segal, Isenberg, Sales, Stewart & Cutler*), of Louisville, Kentucky, for the Charging Party.

300 NLRB No. 136

DECISION

STATEMENT OF THE CASE

IRWIN KAPLAN, Administrative Law Judge. These consolidated cases were heard on July 10 and 11, 1989, in Louisville, Kentucky. The underlying charges in Cases 9-CA-26181 and 9-CA-26329 were filed by Kentucky State District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Charging Party, Carpenters, or Union), on February 16 and April 5, 1989. On May 11, 1989, the Union filed amended charges in Case 9-CA-26329.

In essence, the charges in Case 9-CA-26181 allege that Target Stores, a Division of the Dayton-Hudson Corporation (Respondent Target or Target), prevented union representatives from distributing handbills on the sidewalk directly in front of Target stores in three shopping malls located in Louisville, Kentucky, by requesting and obtaining the assistance of local police departments to stop such activities. Similarly, the charges in Case 9-CA-26329 allege that Bashford Manor Mall, a joint venture of Bashford Manor Corporation and Long Corporation (Respondent Bashford), the lessor of one of the aforementioned shopping malls, prohibited union handbill distribution on the sidewalk directly in front of Target's store in Respondent Bashford's mall. These charges gave rise to an order consolidating cases, consolidated complaint and notice of hearing dated May 23, 1989 alleging that by so curtailing the Union's handbill distribution, Respondent Target and Respondent Bashford violated Section 8(a)(1) of the National Labor Relations Act (the Act).

Respondent Bashford and Respondent Target (collectively, Respondents) filed separate answers conceding, inter alia, certain jurisdictional facts but denying the alleged unfair labor practices. Basically, the Respondents contend that their property rights at the locations where the disputed activity occurred are greater than the Union's Section 7 right to handbill.

It is contended, the record supports, and I find that these are prototype "access" cases to be assessed within the analytical framework of the Board decision in *Jean Country*, 291 NLRB 11 (1988), and its progeny.

On the entire record, including my observation of the demeanor of the witnesses as they testified, and after careful consideration of the posttrial briefs,<sup>2</sup> I make the following

FINDINGS OF FACT

I. JURISDICTION

It is alleged, the Respondents admit, the record supports, and I find that Respondent Bashford and Respondent Target are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is alleged, the Respondents stipulated, the record supports, and I find that the Union is now, and has been at all

<sup>1</sup> Attorney Michael T. McNelis of Ice, Miller, Donadio & Ryan, requests to withdraw his appearance on behalf of Respondent Target in Case 9-CA-26181 dated April 2, 1990, is granted.

<sup>2</sup> Respondent Target's unopposed motion to correct the transcript which was served on September 12, 1989, is granted and received in evidence as R. Target (T) Exh. 13.

times material a labor organization within the meaning of Section 2(5) of the Act.

## II. THE UNFAIR LABOR PRACTICES

### A. *Background and Sequence of Events*

In early fall, 1988, the Dayton-Hudson Corporation, parent corporation of Respondent Target, purchased a group of Richway Gold Circle stores, including one in Lexington, Kentucky. These stores were all to be remodeled and to open on or about April 30, 1989, as Target Stores. The Union's unsuccessful efforts to secure the carpentry work for the remodeling of the Target Store in Lexington, Kentucky, led to the Union's handbilling of Target's Louisville, Kentucky, stores (approximately 70 miles away) resulting in the instant controversy.

The subject of the remodeling work at Target's Lexington store had come up in early November, 1989, in a chance conversation on a commuter flight to Lexington, Kentucky, between Edwin Eugene Wells, a construction superintendent of remodels employed by Target, and Bill Gibbs (also referred to as Goetz), a Carpenters Union representative. Wells and Gibbs sat in adjacent seats on the plane, introduced themselves to each other, and carried on a friendly conversation. On that occasion, Wells told Gibbs, that he was going to Lexington to look after the construction work to be performed at the Lexington Target Store, formerly called Gold Circle. Gibbs told Wells that he was with the Carpenters Union and was familiar with that Gold Circle store. He also asked Wells whether union labor would be doing the remodeling work. According to Wells, he told Gibbs that he would not be making that decision. (Gibbs did not testify.)

On or about December 8, 1988, Michael Ginn, business service representative for the Carpenters, appeared at the Lexington Target Store location in an effort to secure the carpentry work for the Union. While Ginn's responsibilities to secure work for members cover the entire State of Kentucky, his primary geographical territory is the Lexington area which is comprised of 43 counties. According to Ginn, Gibbs told him of his plane conversation with Wells and that the latter told him (Gibbs), that the work would be done with union labor. Thus, Ginn appeared at the Lexington site to meet with Wells to discuss the prospects of union carpenters doing the remodeling work. Ginn testified that he met with Wells briefly but the latter told Ginn to discuss the matter with the general contractor, R. D. Robinson Inc. (Robinson), of Brentwood, Tennessee and that said general contractor would return to the site, Monday, December 12, 1988. While the essence of Ginn's testimony of his conversation with Wells is not materially in dispute, Wells asserted that the conversation was over the telephone and not at the site. Wells however, also asserted (denied by Ginn), that Ginn said something about hating to see any picketing in front of the Target Lexington store.

According to Wells, after the aforementioned telephone conversation on December 8, he did not talk with Ginn again. On the other hand, Ginn testified that he returned to the Target site in Lexington on December 12 and Wells introduced him to Robert Leytem, job superintendent for Robinson. As testified by Ginn, he told Leytem that he heard that the work was going to be done with union labor and gave the latter a copy of the local agreement. Leytem assertedly stated that

he would fax the agreement to his corporate office in Brentwood, Tennessee, and would get back to him. Ginn testified that he told Leytem that he could supply him with a list of union subcontractors to bid for the carpentry work in the Lexington area and left the names of three such contractors with him.

Leytem testified that he told Ginn that he would be interested in a "project only" agreement but that the latter stated he required a 1-year contract. According to Leytem, he tried to get Ginn to relax some of the Union's contractual requirements but that the latter would not bend. Leytem also asserted that Ginn told him that his carpenters were hungry and had not worked for some time and that he "would hate to see violence or vandalism occur on the job." Ginn denied making any such threats. (For reasons noted below, I find that the factual matters in dispute occurring prior to February 14, 1989, the date the alleged violations occurred, have little or no bearing on the outcome of the allegations. The events prior to February 14 serve mainly as backdrop.)

According to Respondent Target's witnesses, on Monday, December 12, 1988, members of the Carpenters Union commenced handbilling at the Lexington Target store which at that time was still undergoing remodeling work and not scheduled to open for business until the spring. Further, the handbilling lasted only for approximately 3 hours and did not resume thereafter at that site.<sup>3</sup> According to Ginn, the handbilling first occurred in late December 1988, or early January 1989 and lasted 5 days. In any event, there are no outstanding charges or complaint allegations against the Union and the record does not disclose any credible evidence of wrongdoing or misconduct either on the part of the Union in handbilling at that site or on the part of Target in responding thereto.

Ginn testified that sometime in December 1988, after his first meeting with Leytem earlier in the month, the latter informed him over the telephone that Robinson was willing to sign an agreement and use union labor if Target would go along with the arrangement. Thus, according to Ginn's testimony, Leytem told Ginn that the decision was left to Target. (Tr. 30) Ginn telephoned Sykes (Wells had identified Sykes for Ginn as the person to deal with for Target) and told him what he had heard from Leytem regarding Target's control vis-a-vis union or nonunion labor. Sykes corroborates Ginn on this point and noted that Ginn appealed to him on the basis that the Union had performed such carpentry work for Target's predecessor, Richway Gold Circle. Sykes testified that this conversation occurred on December 30, or much later in the month than indicated by Ginn. (As noted previously, many of the non-essential facts regarding the events in December, 1988 are in dispute, particularly as to dates of

<sup>3</sup> Respondent Target adduced testimony from four witnesses setting the initial date of the union handbilling as December 12: Deborah Saunier, Robert Sykes, Wells, and Leytem. Saunier, then employed as a secretary for Robinson (now employed by Target) worked inside the construction trailer and did not testify that she actually saw the handbilling activity. I found her testimony on direct somewhat unreliable. For example, Saunier responded affirmatively to a leading question that the handbilling occurred on "December 12, a Friday" (Tr. 318); it is noted that December 12 was a Monday. Sykes, then Target's labor relations specialist had not observed the handbilling either but learned about the activity from Wells over the telephone. Neither Wells nor Leytem saw any handbilling activity but both assertedly learned about it from others. In these circumstances, while noting a degree of internal consistency, I find that the evidence falls short of definitively establishing that the handbilling commenced on December 12, as contended by Respondent Target.

phone conversations and handbilling.) In any event, it is undisputed, that Sykes told Ginn that under no circumstances would he dictate to general contractors to select companies on a "union or non-union" basis but rather "on the basis of bids through the generals." (Tr. 401-402; see also Tr. 31.)

By cover letter dated December 27, 1988, Ginn requested Wells to examine an enclosed handbill and gave him 5 working days to respond regarding the truthfulness of its contents (G.C. Exhs. 2, 3).<sup>4</sup> Wells called Sykes on December 28 about these documents and then faxed the material to him. Sykes telephoned Ginn on December 30 to respond orally to Ginn's letter to Wells. Ginn pressed Sykes to respond in writing but the latter refused stating that Target was not so obligated. According to Ginn, Sykes told him that he did not know whether any of the contents of the handbill were true or not but he considered its use as unfair (Tr. 33). Sykes denied ever referring to the handbill as unfair and testified that he told Ginn that he "considered the handbill in its entirety to be materially misleading and untruthful" (Tr. 403). During this telephone conversation, Sykes noted that he had some reports that Ginn made some threats to vandalize Target's property which threats Ginn denied having made.

By letter to Sykes from Ginn dated January 5, 1989, Ginn wrote as follows (G.C. Exh. 4):

Mr. Sykes:

Following my telephone conversation with you on Friday, December 30, 1988, I advised our Local Counsel that, although you were unable to find any error as to the facts stated in the enclosed handbill [G.C. Exh. 2], you were of the opinion that the handbill was "unfair."

Our Counsel has suggested that, as a courtesy to you, we afford you a second opportunity to more adequately articulate your objections.

I assure you any error of law or fact can be remedied, at time, if you will simply advise us in writing, of specific errors, within five days of your receipt of this communication.

Respectfully,  
Michael W. Ginn  
Business/Service Representative

Ginn did not receive any response to his second letter. According to Ginn, on or about January 5, 1989, the Union commenced distributing a generic or different handbill entitled "rat alert" (G.C. Exh. 5) on public property in front of the Target store in Lexington. The handbill does not identify

<sup>4</sup>The text of the handbill in its entirety reads as follows (G.C. Exh. 2):

PLEASE DON'T PATRONIZE THIS TARGET STORE.

Target's use of non-union out-of-state contractors shows their lack of concern for our community.

Target wants this community to support this store after they have taken the construction jobs away from the people living in this area.

Target's out-of-state contractors don't pay wages and benefits equal to our area standards.

It's a small inconvenience for you to go elsewhere to shop, but loss of jobs, wages and benefits is a very real danger to us and our families.

THANKS FOR NOT PATRONIZING TARGET

TELL YOUR FRIENDS THAT TARGET DOES NOT SUPPORT OUR COMMUNITY

Kentucky State District Council of Carpenters  
Member of the Kentucky Fair Wage Coalition

any contractor or company but informs the public, inter alia, that the construction site is infested with rats. Target shared the same parking lot with employees and customers of Chi Chi's Restaurant and Arby's Restaurant. They, as well as Target's general contractor, Robinson, and its construction workers all used the same entrance way as the handbillers. According to Ginn, as the overall traffic at the site was limited (Target was not yet open for business), the dispute was not effectively communicated to Target's patrons (the intended audience). Ginn also testified, without contradiction, that Robinson was not performing work anywhere else in the State of Kentucky. As there were no other open Target stores in Lexington, the Union decided to transfer its handbilling activity to Louisville, Kentucky, some 70 miles away, where Target had five open stores. The Target stores in Louisville were its only stores open for business in the State of Kentucky at that time. (Tr. 38, 64)

Ginn was one of four staff representatives or organizers who reported to Lawrence W. Hujo III, the Union's director of organizing for the State of Kentucky. Hujo directed the handbilling that was to take place at the Target stores in Louisville. In doing so, Hujo testified that he had visited each of the Target Louisville sites (all located in shopping malls), to determine the safest place to position the handbillers and concluded that it was on the sidewalks immediately in front of each of the Target stores.

The five Target stores in Louisville are located in Jeffersontown, St. Matthews, Bashford Manor, Preston Highway, and Dixie Highway. Hujo testified that two members were assigned to handbill each of the Target locations. According to Hujo, handbilling took place at each location, but the handbillers were removed only from Jeffersontown, St. Matthews, and Bashford Manor sites. (The allegations pertain only to these three locations.) The handbilling at each location occurred on February 14, 1990. The respective chiefs of police in each of the locations were informed by the Union of the dispute with Target and of the planned handbilling activity.

Hujo's father, Lawrence William Hujo (L. Hujo), and Charles Meador, both union members, were assigned to handbill Target at the Jeffersontown location. (That store is also referred to as the J-town Target store and Taylorsville Road store.) The J-town Target store is situated between a grocery and a drugstore and shares the same shopping center with a bank, movie theaters, and several other shops (G.C. Exh. 6(a) and 6(b); Resp. T. Exh. 11). The only entrances into the shopping center are from Taylorsville Road, a four-lane main artery—two lanes in both directions—with a 35-mile-per hour speed limit. While cars do slow down to about 20 to 25 miles per hour in making turns from Taylorsville Road into the parking lot, there are no delineated deceleration lanes. The only controlled traffic light in the area is at the intersection of Patty Lane and Taylorsville Road. Between the light and the shopping center is a concrete island. Thus, cars cannot be driven directly into the shopping center from Patty Lane without first making a turn onto Taylorsville Road. There are no sidewalks in front of the shopping center but there is a grassy strip, approximately 15 feet wide immediately off a traffic lane.

According to Hujo, he did not want the handbillers out on the road stopping traffic with the potential to cause accidents. In assessing traffic congestion, Hujo noted, inter alia, that the

weather was cold and that cars would have to slow down and windows rolled down for divers to accept handbills.

Respondent Target operates its J-town store as a lessee (R.T. Exh. 10). The lessor or owner of the property is the New Plan Realty Company (an unrelated entity) (Tr. 468). Under the lease, the lessor retained possession and control of the sidewalks, driveways and parking areas (R. Exh. 10). Since at least 1982, Target has largely, if not absolutely maintained and strictly enforced a written no-solicitation/no-distribution policy restricting the use of its parking lots and facilities to business use only (R. Exh. 6). The lessor does not maintain its own no-solicitation/no-distribution policy at the shopping center (Tr. 468). According to Patrick Osborne, the Target store manager at J-town, the lessor has not objected to his actions when he has previously asked "Girl Scouts or other people soliciting or selling to leave" (Tr. 471).

On February 14, 1990, at around 10 a.m.,<sup>5</sup> L. Hujo and fellow union member Meador began handbilling (G.C. Exh. 2) on the sidewalk in front of the entrance to the J-town Target store. Store Manager Osborne arrived at the shopping center around 10.15 a.m., and approached L. Hujo and Meador at the store entrance. Osborne identified himself as the store manager, made some reference to Target's no-solicitation policy and asked the handbillers who had given them permission to engage in such activity. In turn, the handbillers handed Osborne a document which discussed a recent Board decision, *Jean Country*, 291 NLRB 11 (1988), and its impact on certain union activity on shopping mall property (G.C. Exh. 9). L. Hujo was asked by Osborne "Why Target?," to which the former explained that Target was using nonunion carpenters to do the remodeling work. Osborne called the police when the handbillers refused to leave. Two police officers appeared at around 10.45 a.m., and after talking to Osborne, they told the handbillers to go out to the street to handbill or to leave. When L. Hujo responded that handbilling in the street was too dangerous, he was told by the police that he and Meador faced arrest. The handbillers than left the property.

The handbilling of Target's St. Matthews location (also called Westport Road store) is also encompassed by the allegations. There too, Target is a tenant in a shopping center. Target shares the use of the parking lots and sidewalks with an adjacent Kroger store. There are three entrances which can be used to enter the common parking lot. The main entrance is off Westport Road, which from that point has one lane of traffic in the direction of side-streets, Thierman Lane (left of Westport Road) and Primrose Drive (a right turn from Westport Road), and two lanes of traffic in the opposite direction (closest to the parking lot entrance) towards Hubbards Lane (G.C. Exh. 7(a) and 7(b)). The speed limit on Westport Road is 35 miles per hour. Another entrance into the parking lot is from Thierman Lane (a side street), with a 25-mile-per-hour speed limit and two lanes of traffic going in both directions. The Target store is approximately the same distance from the Westport Road and Thierman Lane entrances. The only other entrance is from Hubbards Lane, which entrance appears somewhat hidden behind a Volkswagon dealership. The only traffic light is at the corner of Westport Road and Hubbards Lane. There are stop signs

on the side streets on to Westport Road as well as a stop sign in the exit lane leaving the center parking lot.

Cloyce L. Gill and Charles Aschbacher were the union handbillers at Target's Westport store. They had been handbilling on the sidewalk in front of the Target store for approximately 5 minutes when the store manager, Thomas Tinklenberg, came out and told the handbillers to stop and that Target does not permit such activity. Gill told Tinklenberg that he was interfering with his constitutional rights and handed him a document which discussed, among other things, union activity at shopping malls (G.C. Exh. 9). Tinklenberg spoke to an off-duty policeman, in uniform, who then happened to be in the store and got him to remove the handbillers. Gill credibly testified that he asked the policeman if he'd permit handbilling on a small asphalt island just inside the entrance way which offer was rejected; the policeman stated that Target wanted such activity off the property and out on the street on Westport Road (Tr. 169-172).<sup>6</sup>

As noted above, union handbillers were also removed from a third location on February 14, the Bashford Manor Mall (Bashford Manor). Bashford Manor is an enclosed shopping mall located on 55 acres. There are three major anchor tenants: Bacon—a general department store, Hess—a general department store, and Target—a discount store. The mall has approximately 540,000 square feet of leasable area of which, 190,000 square feet is leased by Bacon, 108,000 by Target and 64,000 by Hess. Each of these so-called anchor stores can be entered from the outside as well as from inside the enclosed mall. There are approximately 63 other smaller tenants within the enclosed mall which collectively lease about 185,000 square feet.

The mall has been owned since its inception by the Long Corporation and the Bashford Manor Corporation (collectively lessor or landlord), was a joint venture. Target has been a tenant since sometime in 1980 when it assumed the lease of Ayr-Way Stores, Inc, which lease is still in effect (R.B. Exhs. 3, 4). The lessor has long maintained a no-solicitation no-distribution statement in its standard lease. It reads that the tenant shall "neither solicit business nor distribute advertising matter in the parking lot or in other common areas" (R.B. Exh. 5, p. 12, sec. 502(j)). While Target and Bacon are the only tenants without the standard lease, their individually negotiated leases provide, among other things, that the landlord's rules and regulations for the use of the common area shall be applicable to all tenants (R.B. Exh. 3, p. 24, sec. 607). The policy has been largely but not absolutely enforced. For at least 2 years prior to the instant handbilling, there had been no departures from such policy. The lessor prohibits all forms of handbilling and posts a sign to that effect at each entrance to the mall (R.B. Exh. 6).

There are entrances into the mall from three roads: Bashford Manor lane on the north (two lanes at 40 miles per hour), Bardstown Road on the east (six lanes at 40 miles per hour), and Mall Lane on the south and west (two lanes at 35 miles per hour) (G.C. Exh. 8(a) and 8(b); R. Bashford (B)

<sup>6</sup>According to Tinklenberg, he "believed" the suggestion to handbill on the asphalt island had come from the policeman and not the handbiller (Tr. 440). Tinklenberg first testified that he did not make a commitment to the policemen as to the alternative place to handbill only to testify a moment later that he told the police officer, "I don't know why they couldn't do that." (Compare Tr. 440 with Tr. 443.) I found Tinklenberg to be inconsistent, elusive, less than forthright, and unreliable as a witness.

<sup>5</sup>All dates are in 1990, unless otherwise indicated.

Exh. 2). There are two entrances into the mall from Bashford Manor Lane, neither of which is regulated by a traffic signal. There are also two lanes entering and exiting and a stop sign for vehicles leaving the parking lot. The western most entrance on that road is directly in front of the Target store but cars proceeding in that direction must turn to avoid a 50- to 60-foot concrete island or barrier. There are grassy areas on both sides of the Bashford Manor entrance in front of the Target store that extend from 35 to 40 feet. According to Respondent Bashford's manager, Charles Costabell, pedestrians frequently walk from the condominium project across the way to the mall through that area (Tr. 290). There are two entrances from Mall Road, one of which is behind the Target store but neither entrance is controlled by a traffic signal. The only other entrance into the mall is from Bardstown Road which at that point is regulated by a traffic signal. That entrance is closest to the Bacon store and furthest from Target.

David Costello and Donald Aschbacher engaged in handbilling at Target's Bashford Manor store. The activity and circumstances were much the same as at the other locations described above. Here, unlike the situation at the town and Westport stores, the lessor (Respondent Bashford), not Target, had the handbillers removed.

#### B. Discussion and Conclusions

These cases involve the denial of trespassory access to the Union to inform an employer's clientele by handbilling, that said employer (Respondent Target), uses nonunion contractors who pay employees less than area wages and benefits. As noted previously, it is contended, the record supports, and I find, that the handbilling activity in question must be assessed within the analytical framework of the Board decision in *Jean Country* supra, and its progeny.<sup>7</sup>

The record disclosed that in early fall, 1988, Respondent Target's parent corporation purchased a group of Richway Gold Circle stores (Richway), including one in Lexington Kentucky and they were to be remodeled as Target stores. Target contracted with Robinson, an out-of-state nonunion general contractor to do the remodeling work on the former Richway store in Lexington. In December 1988 or January 1989, the Union circulated a generic handbill or "RAT ALERT" at the Lexington store, which noted, inter alia, that the construction site was infested with rats and asking for community support to rid themselves of rats. The handbilling at that Target store proved to be ineffective. In this regard, it is noted, inter alia, that the store in question was not to

<sup>7</sup> Respondent Target contends that the handbilling activity in dispute manifests conventional proscribed secondary conduct which is not protected by the proviso to Sec. 8(b)(4). It argues that Ginn threatened to picket Target, a secondary employer, to obtain an agreement to use only union contractors to do the remodeling work, which agreement is assertedly proscribed by Sec. 8(e) of the Act. Further, it contends that the contents of the handbill are untruthful. Thus, Respondent Target argues, that as the Union's activities were violative of Sec. 8(b)(4), *Jean Country* and its progeny do not apply. First, I credit Ginn's testimony that he did not threaten to picket Target's premises. While Sykes told Ginn that he heard of such reports, Ginn denied them and no such threat was made to Sykes. It is also noted that no picketing occurred. As for the contents of the handbill, for reasons noted infra, I find them truthful within the meaning of the proviso. In these circumstances, Sec. 8(b)(4) does not prohibit secondary handbilling. See generally *DeBartolo v. Florida Gulf Coast Building Trades Council*, 485 U.S. 568 (1988). It is also noted, that while Respondent Target argues that *Jean Country* does not apply, its brief contains a comprehensive analysis thereof.

open until late April 1989 or several months after that initial handbilling. Thus, the Union decided to engage in handbilling activity at Target's open stores in Kentucky, which were located in Louisville, approximately 70 miles away.

It is the Union's handbilling at Target's Louisville stores located in Jeffersontown (Target's J-town store), St. Matthews (Westport store), and Bashford Manor Mall (Bashford Manor store), where the handbillers were denied trespassory access that are in issue. Respondent Target is a lessee at all three locations. Respondent Bashford is the owner and lessor of Bashford Manor Mall and is also alleged to have denied the handbillers access in violation of Section 8(a)(1) but only as to that location. The handbilling at J-town, Westport, and Bashford Manor occurred on the same day, February 14, 1989, with the identical message and will be treated below seriatim within the framework of a *Jean Country* analysis.

In *Jean Country*, supra, the Board reexamined and clarified access cases where there are, as here, competing claims of Section 7 and property rights and concluded that the availability of reasonable alternative means of communication must always be considered in conjunction therewith. The Board delineated numerous factors which tend to support each of the categories labeled as "property rights," "Section 7 rights," and "alternative means," while also noting that these categories are not entirely distinct and self-contained.<sup>8</sup> Then the Board instructed as follows:

Accordingly, in all access cases our essential concern will be the degree of impairment of the Section 7 right if access should be denied, as it balances against the degree of impairment of the private property right if access should be granted. We view the consideration of the availability of reasonably effective alternative means as especially significant in this balancing process. In the final analysis however, there is no simple formula that will immediately determine the result in every case. [Id. at 14.]

I turn now to assess each of the categories which comprise the *Jean Country* three-part access test to the instant case, considering first, the nature and strength of Respondent Target's property rights at J-town. As noted previously, Target operates its J-town store as a lessee; the lessor or owner of the mall is the New Plan Realty Company. The mall or shopping center is also occupied by a grocery store, drugstore, bowling alley, movie theaters, and several other shops. The sidewalks and parking areas are for common use although, under the lease, the lessor retains possession and control. There are no signs or written notices conveying any restric-

<sup>8</sup> The Board also made it clear that there are certain threshold obligations each party must meet. Thus, the Board held that "there is an initial burden on the party claiming the property right to show, through testimonial or documentary evidence, that it has an interest in the property and what its interest in the party is. A party has no right to object on the basis of the other persons' property interests." *Jean Country*, supra at 13 fn.7. Similarly, the Board relying on *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956) held that the General Counsel bears the initial burden on the alternative means factor to make "a clear showing, based on objective considerations, rather than subjective impressions, that reasonably effective alternative means were unavailable in the circumstances." *Jean Country*, id. at 13. In this latter regard, the Board noted that "generally, it will be the exceptional case where the use of newspapers, radio and television will be feasible alternatives to direct contact." (Id.)

tion on who may enter the shopping center or use its sidewalks or parking area. The operative lease provision states as follows:

*Lessor shall have and it hereby retains such possession and control of the sidewalks, driveways, and parking area in the center as will authorize lessor to exclude therefrom all persons who are not tenants in the center and their customers and patrons; and, in particular, as will authorize lessor to maintain an action in trespass against such persons who are not such tenants, customers and patrons and who are or may be trespassing or picketing thereon. Nothing herein contained shall be construed to mean or imply that any portion of the sidewalks, driveways and parking area are leased to the lessee, but it is agreed that lessor will continue said established sidewalks, driveways and parking area for the use of said tenants, customers, and patrons. [Emphasis added.] [R.T. Exh. 10, p. 5.]*

Here, the handbilling was on the sidewalk immediately in front of the Target store. The lessor does not maintain a no-solicitation, no-distribution policy. In these circumstances, without more, it would appear that outside of the physical confines of the store that, Respondent Target, is devoid of any property interest within the meaning of *Jean Country*. See *Polly Drummond Thriftway*, 292 NLRB 331 (1989), relying on *Barkus Bakery*, 282 NLRB 351 (1986), enf. mem. sub nom. *NLRB v. Caress Bake Shop*, 833 F.2d 306 (3d Cir. 1987). However, the record disclosed some factors, as noted below, which tend to establish, and I find, that Respondent Target, in the use and enjoyment of its leasehold, has a legitimate property interest in the handbilling area, albeit near the bottom rung of the spectrum of property rights.

Thus, the record disclosed, inter alia, that Target maintains and enforces its own no-solicitation, no-distribution policy. Store Manager Patrick Osborne testified that during the past year, he denied storefront access to the Girl Scouts on six to eight occasions and similarly denied such access to local schools attempting to sell cookies. According to Osborne, at least during his two years as manager of the J-town store, there has not been one occasion where someone was attempting to solicit on the sidewalk in front of the store where they were not asked to leave. With regard to the instant handbilling, Osborne testified that the lessor's manager applauded his action in having the handbillers removed. Target generally cleans and polices the storefront area and paints the sidewalk curb. It also maintains approximately 325 shopping carts bearing the Target logo that are stored in front of the store for use by Target patrons.

Having found that Respondent Target met its threshold obligation vis- a-vis its property interest, I turn now to consider whether the Union's handbilling activity is a Section 7 right covered by the proviso to Section 8(b)(4) and if so, the relative strength of that Section 7 right.<sup>9</sup>

<sup>9</sup>Under Sec. 8(b)(4) it is an unfair labor practice for a union or its agents: (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce where . . . an object thereof is—

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, . . .

The handbill distributed by the Union on February 14, clearly manifests area standard activity. Thus, the handbill truthfully advises the public, inter alia, that "Target's out-of-state contractors don't pay wages and benefits equal to our area standards." (The handbill in its entirety is set forth supra at fn. 4.) In this regard the record disclosed that the Union learned back in December 1989, that Target's general contractor, Robinson, of Brentwood, Tennessee, hired non-union carpenters at \$7 to \$8 per hour, wage rates below area standards. Further, the Union sent copies of the disputed handbill to Target on two separate occasions in order to confirm that their contents were accurate asking Target to point out in writing any errors. This, Target admittedly refused to do, although, it telephoned its objection. Union representative Michael Ginn credibly testified that Target official, Robert Sykes, merely protested that the handbill was unfair but did not point out anything that was untrue.

Respondent Target argues that the handbill is defective because it also fails to identify the primary employer, Robinson, with whom the Union had its primary dispute, relying on *Boxhorn's Big Muskego Gun Club v. Electrical Workers Local 494*, 798 F.2d 1016, 1019 (7th Cir. 1986). Contrary to Respondent Target, I find its reliance on Boxhorn misplaced as distinguishable on its facts. There, unlike the instant case, the handbill was deceptive, by intimating that the nonunion construction workers were employees of the secondary employer and not the contractor. Here, there is no such confusion or ambiguity contained in the handbill.<sup>10</sup> Thus, as the Union engaged in essentially truthful area standard activity, it is clearly a protected exercise of Section 7 rights. See *Federated Department Stores*, 294 NLRB 650, 652 (1989), reaffirming *Giant Food Markets*, 241 NLRB 727, 728 (1979), enf. denied on other grounds 633 F.2d 18 (6th Cir. 1980). However, here, the strength of such Section 7 rights is largely diluted by a number of factors.

First, the Board has consistently observed that area standards handbilling is not at the strong end of the spectrum of Section 7 rights. *Target Stores*, 292 NLRB 933, 935 (1989); *Hardee's Food Systems*, 294 NLRB 642, 643 (1989); *Federated*, supra at 652. Those rights are further discounted when, as here, the situs of the handbilling activity is 70 miles away from where Robinson, the general contractor and primary employer is performing the below "area standards" work. See *Federated*, supra at 652; *Hardee's*, supra at 643. Compare, *Target Stores*, supra at 935 (where the location of the area standards handbilling in issue was at the store of the primary employer at a time when the employees whose wages and benefit standards were the subject of the primary dispute were working); see also *Best Co.*, 293 NLRB 845, 847 (1989). (The handbilling was conducted at a time when

Provided further, That for the purpose of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any other person other than the primary employer [to cease work].

<sup>10</sup>Respondent Target takes issue with the statement that its use of nonunion out of state contractors shows its lack of concern for the community. I view this statement as a clearly partisan subjective union claim which the public is likely to discern as such rather than as fact.

the primary employer's employees were working on the Respondent's premises.) Here, where Target's employees do not appear to be beneficiaries, directly or indirectly, the weight assigned the area standard handbilling is reduced further. *Federated*, supra at 652. While these factors undercut the strength of the Union's Section 7 position, I find consistent with *Jean Country* principles, that it still remains worthy of accommodation against substantial impairment. See also *Best Co.*, supra; *Target Stores*, supra at 935.

Having found that the parties have met their respective threshold burdens as to property interests and Section 7 rights, I turn now to assess the availability of "alternative means" of communication, as required by *Jean Country* and its progeny under the three-part accommodation balancing test. In *Jean Country*, the Board noted a partial list of factors that may be relevant to an alternative means determination. These factors included:

[t]he desirability of avoiding the enmeshment of neutrals in labor disputes, the safety of attempting communications at alternative public sites, the burden and expense of nontrespassory communication alternatives, and most significantly, the extent to which use of the nontrespassory alternatives would dilute the effectiveness of the message. [Id. at 13.] [Footnote omitted.]

In the instant case, the Union by handbilling on the sidewalk directly in front of the Target store with handbills identifying that company alone, there was virtually no chance to confuse the public as to the targeted employer or otherwise enmeshing neutrals or other companies into the dispute. In this connection, it is noted, that Target shares the parking lot and other common areas with numerous other businesses. As for the entrances into the shopping center which are accessed only from Taylorsville Road, the record disclosed, inter alia, that said Taylorsville Road is a four-lane main artery—two lanes in both directions with a 35-mile-per-hour speed limit. While traffic may slow down to 20 to 25 miles per hour for vehicles making turns into the lot, there are no delineated deceleration lanes or sidewalks at those entrances. Hujo, who organized the handbilling activity, credibly testified that he had visited the Target sites earlier to assess, inter alia, safety conditions, as well as to determine the area not likely to enmesh other businesses.

Clearly, in the circumstances of this case, Hujo's assertion that he did not want the handbillers out on the Taylorsville Road access entrance to the parking lot with the concomitant risk or potential of an accident is not unreasonable. Similarly, it is not unreasonable for the Union to assign its handbillers to an area least likely to cause traffic congestion. Hojo testified that the weather was cold and that anyone driving into the shopping area from the access road to receive a handbill would have to decelerate or come to a stop and roll down the window. The Board has noted that such factors also tend to reduce the effectiveness of the handbilling. See *Best Co.*, supra at 847; *Target Stores*, supra at 935; see also *Emery Realty, v. NLRB*, 863 F.2d 1259, 1265 (6th Cir. 1988). (The Act does require that the union show that it actually tried all possible alternative means.)

While the Union back in December 1988 or January 1989, engaged in handbilling activity at the primary site in Lexington, Kentucky, the record disclosed that the handbilling

was ineffective. The contractor was then engaged in the remodeling work of the Target store; however, the opening of that store was still months away. As the Union hoped to reach Target's customers, that objective could not then be met. The same conditions existed in February 1989, but then the Union handbilled only at open Target stores. Compare, *Hardee's*, supra at 643 (where the Board noted that the remodeled store remained open for business and that the union could have conveyed its message to Hardee's customers there, instead of handbilling at Hardee's restaurants, 15 miles away.) While it is noted that under *Jean Country*, the union's definition of the audience it seeks to reach is not necessarily controlling, it is also noted, as discussed previously, that the kind of secondary handbilling involved herein is protected by the proviso to Section 8(b)(4).

I also find that *Federated*, supra, relied on by Respondent Target, is distinguishable on its facts. There, the union handbilled the secondary (Richway), after that company's relationship with the primary contractor had ceased. The Board noted, inter alia, that the General Counsel, failed to demonstrate that the union could not have effectively engaged in primary activity at the premises of other secondary employers that have "a current connection with the primary employer." (Id. at 652.) Here, unlike the situation in *Federated*, after Target caused the handbillers to be removed from its J-town store in Louisville, Robinson (the primary nonunion contractor), continued an ongoing relationship with Target for several months vis-a-vis the remodeling work on the Lexington store, the primary location. It appears from uncontradicted record testimony, that Robinson, a Tennessee company, was not engaged in work elsewhere in Kentucky. The Target Lexington store did not open for business until late April 1989. Thus, back in February, when the handbilling occurred, the only Target stores open in Kentucky were in Louisville—some 70 miles away, the only location where Target customers could effectively be reached.

Having found that there is no safe, or reasonable alternative means available to the Union to communicate its Section 7 message, and having evaluated the relative strength of the other major categories, property interests, and Section 7 rights, as required by *Jean Country* and its progeny, noting also that the handbilling was limited—two handbillers at each location—that their activity was peaceful with virtually no interference to Respondent Target's business and free of enmeshing other businesses, I further find that the Union's Section 7 right would be severely impaired, if access were denied; whereas, if access were granted, the damage to Respondent Target's property interest would be comparatively less. Accordingly, I find that Respondent Target's conduct in removing the handbillers from its J-town storefront, violated Section 8(a)(1), as alleged.

Turning to Target's Westport store, I find that the *Jean Country* categories at that location largely mirror the conditions as they existed at the J-town store. While at the Westport store, Target's leasehold interest is broader, it still falls short of reaching the stronger end of the property rights spectrum. In support of Target's property interest, the lease provides, inter alia, that Target "shall have the exclusive right to use the Common Area." Further, the lease charges the "Tenant" (Target) with the "sole responsibility" for cleaning, maintenance, and repair of the common area. (R.T. Exh. 8, pp. 11–12) The lease defines common area as "[t]hat part

of the Real Estate containing the parking area, roads, ways of access, [and] sidewalks.” (Id., p. 3.) On the other hand, the record disclosed, that Target subleases a portion of the property to Kroger Stores (Kroger) and that the adjacent Kroger store shares the same parking lot and sidewalks. Kroger also shares with Target the cost of maintenance expenses. Thus, Target shares its property interest with its neighbor, Kroger. The lease also contains certain limitations on Target’s use of the premises. One such provision states as follows:

(E) Lessee [Target] shall not place or erect signs or displays which in any way interfere with the flow of vehicular or pedestrian traffic in the center; and shall not paint or erect signs or displays on the exterior of the premises, without lessor’s written consent. [Id., p. 2]

The record disclosed that the shopping center is open to anyone who wants to enter and in fact the public is so invited. Target does not prohibit pedestrians from cutting across its property (Tr. 444–445). While Target maintains and enforces a no-solicitation, no-distribution rule, a factor strengthening its property interest, the strength of that interest becomes less compelling when noting otherwise the open and public nature of that business property. In a previous case involving Target, the Board addressed this point stating: “The maintenance of a nondiscriminatory rule makes the respondent’s property interest more substantial than that of similar retail enterprises without any restriction at all; but the property interest here is still less substantial than in more private nonretail settings.” *Target Stores*, supra at 935.

Having found that Target possesses a sufficient leasehold property interest to satisfy its threshold burden, I further find that the damage to that interest would be comparatively slight, if access were granted, when weighed against the greater damage to the Union’s Section 7 right, if access were denied.<sup>11</sup> As for “alternative means,” the conditions at the Westport store were much the same as existed at J-town. Thus, the Union, at the primary Lexington site, could not effectively reach Target’s customers as that store was still several months away from opening for business. The safety or traffic considerations at the Westport store are such as to foreclose any kind of viable handbilling at entrances to the shopping center and common parking lot. As noted previously, the main entrance is off Westport Road which has a 35-mile-per-hour speed limit. Similarly, Hubbards Lane has a 35-mile-per-hour speed limit and additionally that road leads into a side entrance which is obscured somewhat behind a Volkswagon dealership. The only other entrance is off Thierman Lane, a side street. The traffic on Thierman Lane is in both directions with a 25-mile-per-hour speed limit.

On the other hand, the handbilling on the sidewalk immediately in front of the Target store clearly eliminated the specter of enmeshing a neutral such as Kroger into the dispute and at the same time vastly reduced the potential for traffic congestion and the risk of traffic accidents. I am persuaded, on the state of this record, that there were no other

viable means for the Union to communicate its protected message. In the circumstances of this case, also noting that the handbilling was peaceful and unobtrusive, the Union should not have been denied such trespassory access. In short, I find that Respondent Target by denying access to the Union to handbill its Westport store additionally violated Section 8(a)(1), as alleged.

Still to be determined is the denial of access to the Union handbillers on the sidewalk in front of Target’s store at the Bashford Manor shopping mall. Unlike, J-town and Westport where Target is the sole respondent, here, both the lessor (Bashford Manor Corporation) and the lessee (Target) are respondents.

The record disclosed that Respondent Bashford, as owner and lessor retains substantial control over the shopping center and as such, its property interest is clearly at the stronger end of the spectrum. Thus, Respondent Bashford’s standard lease states, inter alia, that the tenant shall “neither solicit business nor distribute advertising matter in the parking lot or in other common areas.” As noted previously, some 63 tenants, all but anchor tenants Target and Bacon, are covered under the standard lease. As to said anchor tenants, the same provision appears to be incorporated by reference in their respective leases. Thus, their individually negotiated leases provide that the landlord’s rules and regulations for the use of the common area shall be applicable to all tenants. Similarly, Respondent Bashford has restricted the use of its property to certain exhibitors and to the public generally from solicitations and handbilling. For example, the record disclosed that Respondent Bashford sponsors monthly promotional events such as car shows and antique shows to attract customer traffic for its tenants. These exhibitors are given a copy of the landlord’s rules and regulations, one of which (rule number 11) states, as follows:

There will be no soliciting, selling, or petitioning upon mall property. Distribution of advertising materials in any of the all parking lots will not be permitted. [R.B. Exh. 8.]

Further, the record disclosed that Respondent Bashford posts a notice to the “public” at every street entrance to the mall prohibiting “solicitation or distribution of handbills” (R.B. Exh. 6). While the record revealed that Respondent Bashford has, in a few limited instances, permitted exceptions such as the selling of Girl Scout cookies, these exceptions appear to cover special circumstances,<sup>12</sup> and for at least the past 2 years, there has been no departure from the landlord’s no-solicitation, no-distribution policy. To police this policy and to provide overall security and maintenance in the common areas, Respondent Bashford employs approximately 30 employees.

These factors and the record as a whole persuade me that the strength of Respondent Bashford’s property interest warrants accommodation where, as here, comparatively weak Section 7 rights are involved (for reasons noted previously) and the record fails to establish that the Union was without other reasonable means to communicate its message. As for

<sup>11</sup> The record disclosed that the Union’s handbilling activity was virtually the same at all three locations and for reasons noted previously (J-town store discussion), is protected under the proviso to Sec. 8(b)(4) and constitute Sec. 7 rights. I am also mindful, as noted previously, that where, as here, area handbilling is involved, that the Board does not deem such activity to be at the strong end of the spectrum of Sec. 7 rights.

<sup>12</sup> Respondent Bashford permitted Girl Scouts to solicit the sale of their cookies on one Saturday afternoon a year to accommodate the request by the president of Bacon’s, its largest tenant. Thus, Respondent Bashford contends that it “had a very substantial business reason or making this exception.”

this latter factor, “alternative means,” it is noted that the General Counsel bears the initial burden through objective considerations, to establish the nonviability thereof. See *Jean Country*, supra at 13–14. Thus, there is virtually no probative evidence to negate the testimony of mall manager, Charles Costabell, who described the grassy area adjacent to the Bashford Manor Lane entrance just outside the private property line in front of the Target store, as a reasonable place for the Union to communicate its message. The record discloses that the grassy area is approximately 35 feet wide and 35 feet in length on the western side of the entrance and extends to approximately 45 feet on the eastern side of the entrance and at curb level.<sup>13</sup> While there is a 40-mile-per-hour speed limit on Bashford Manor Lane, cars must decelerate in the turning lane to make a 90 degree turn. There is also a 15-mile-per-hour speed limit sign posted at or up close to the entrance. Further, pedestrians, mostly from the residential condominiums across the way from the shopping center, frequently pass through the grassy area and mall entrance. In this regard, it is noted that most shoppers who pass through that entrance visit the Target store. In the circumstances of this case, I am unpersuaded that the Union was without a safe and reasonably effective alternative on nontrespasory property to communicate its dispute to the public.

The record disclosed that Respondent Bashford had the police intervene to terminate the handbilling activity on mall property on the sidewalk immediately in front of the Target store. While such denial of trespassory access comported fully with the policy of Respondent Target, said Respondent was not responsible for removing the handbillers at this location. As such, the allegations as they relate to Respondent Target at its Bashford Manor store are not tenable. With regard to Respondent Bashford, given the relative strengths vis-a-vis property interests and Section 7 rights, and noting a failure to establish a lack of “alternative means,” I find that the diminution of such Section 7 rights is comparatively slight, when weighed against the loss to Respondent Bashford’s substantial property interests, if trespassory access were permitted.

In the total circumstances of this case, I find that neither Respondent Bashford nor Respondent Target wrongfully removed the handbillers from Bashford Manor Mall property in violation of Section 8(a)(1), as alleged. Accordingly, I shall recommend that these allegations be dismissed.

#### CONCLUSIONS OF LAW

1. Respondent Target is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent Bashford is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
3. The Union, Kentucky State District Council of Carpenters and Joiners of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
4. By prohibiting handbill distribution by the Union to Respondent Target’s customers on the sidewalk directly outside the entrances to its J-town and Westport stores, said Re-

<sup>13</sup>The grassy area at the Westport store location is only 10 to 15 feet wide and the safety and other traffic considerations there are clearly more manifest.

spondent Target interfered with the exercise of Section 7 rights in violation of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent Target did not interfere with the exercise of the Union’s Section 7 rights in violation of Section 8(a)(1) of the Act, with regard to its Bashford Manor store.

7. Respondent Bashford did not interfere with the exercise of the Union’s Section 7 rights in violation of Section 8(a)(1) of the Act, by prohibiting handbill distribution in the circumstances of this case.

On the foregoing findings of fact and conclusions of law, and on the entire record in this case, I issue the following recommended<sup>14</sup>

#### ORDER

The Respondent, Target Stores, a Division of the Dayton-Hudson Corporation, Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting peaceful, unobstructive, and protected handbill distribution by the Union to its customers on the sidewalk directly outside the entrances to its J-town and Westport stores.

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

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

(a) Post at its J-town and Westport stores, copies of the attached notice marked “Appendix.”<sup>15</sup> Copies of said notice on forms provided by the Regional Director for Region 9, after being signed by Respondent Target’s authorized representative, shall be posted by said Respondent Target 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 Respondent Target 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 consolidated complaint found to be without merit are hereby dismissed.

<sup>14</sup>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.”

<sup>15</sup>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.

## APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations act and has ordered us to post and abide by this notice.

WE WILL NOT prohibit peaceful, unobstructive, and protected handbill distribution by the Kentucky State District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, to our customers on the sidewalk directly outside the entrances to our J-town and Westport stores.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

TARGET STORES, A DIVISION OF THE DAY-  
TON-HUDSON CORPORATION