

**Albertson's, Inc., d/b/a Grocery Warehouse and
United Food and Commercial Workers Union
Local No. 7.** Case 27-CA-12333

September 24, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On January 12, 1993, Administrative Law Judge Joan Wieder issued the attached decision. The Respondent filed exceptions and the General Counsel filed a brief in answer to the Respondent's exceptions.

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

We agree with the judge, for the reasons she states, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to assist in the reduction to writing of the November 27, 1991 agreement and to sign the final collective-bargaining agreements. The Union reduced the November 27, 1991 agreement to writing on or about April 2, 1992. The Respondent subsequently mailed corrections to the Union on January 4 and 11, 1993, and the Union did not object to these corrections. The judge failed to include all of these documents in her description of the collective-bargaining agreements to be signed by the Respondent. In order to effectuate the policies of the Act, we find that the Respondent must be required to sign the agreements the Union forwarded to the Respondent on or about April 2, 1992, as modified by the Respondent's corrections of January 4 and 11, 1993, that are not disputed by the Union. We modify the judge's conclusions of law, Order, and notice accordingly.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 5.

"5. By failing and refusing to assist in the reduction to writing of the collective-bargaining agreements reached November 27, 1991, and by refusing to execute and sign the collective-bargaining agreements agreed to by the Union and Respondent and provided to the Respondent by the Union on or about April 2, 1992, as modified by the Respondent's corrections of January 4 and 11, 1993, that are not disputed by the Union, Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative Law judge as modified below and orders that the Respondent,

Albertson's, Inc., d/b/a Grocery Warehouse, Clifton, Colorado, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Substitute the following as paragraph 1(a).

"(a) Failing and refusing to assist in the reduction to writing of the collective-bargaining agreements reached November 27, 1991, and failing to bargain in good faith with the United Food and Commercial Workers Union Local No. 7, by refusing to execute the collective-bargaining agreements agreed to by the Union and the Respondent and provided to the Respondent by the Union on or about April 2, 1992, as modified by the Respondent's corrections of January 4 and 11, 1993, that are not disputed by the Union."

2. Substitute the attached notice for that of the administrative law judge.

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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

Accordingly, we give you these assurances:

WE WILL NOT refuse to bargain with respect to wages, hours, and other terms and conditions of employment with United Food and Commercial Workers Union Local No. 7, by failing and refusing to assist in the reduction to writing of the collective-bargaining agreements reached November 27, 1991, and by refusing to execute those collective-bargaining agreements agreed upon and provided to us by the Union about April 2, 1992, as modified by our corrections of January 4 and January 11, 1993, that are not disputed by the Union. The Union is the exclusive bargaining representative of the following described units:

All full- and regular part-time meat department employees, including the assistant meat department manager, employed at the Employer's Clifton, Colorado store; BUT EXCLUDING the meat department manager, all other store employees, guards, and supervisors as defined in the Act.

All employees employed by the Employer at its store located at 3229 I-70, Business Loop, Clifton, Colorado; BUT EXCLUDING all meat department employees, the Store Director, the Assistant Store Director, Third, Fourth, and Fifth Persons, the General Merchandise Manager, the Deli and Bakery Managers, office and clerical employees, guards, and supervisors as defined in the Act, and all other employees.

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

ALBERTSON'S, INC., D/B/A GROCERY
WAREHOUSE

A. E. Ruibal, Esq., for the General Counsel.
John Bowen, Esq., of Denver, Colorado, for the Charging Party.¹

DECISION

STATEMENT OF THE CASE

JOAN WIEDER, Administrative Law Judge. This case was tried on January 12, 1993,² at Denver, Colorado. The charge was filed by the United Food and Commercial Workers Union Local No. 7 (the Charging Party or the Union) on September 17, 1992, against Albertson's, Inc., d/b/a Grocery Warehouse (Respondent or Company). On October 28, 1992, the Regional Director for Region 27 of the National Labor Relations Board issued a complaint and notice of hearing alleging Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).³

Respondent's timely filed answer to the complaint admits certain allegations, denies others, and denies any wrongdoing.

Preliminary Matters

All parties were given full opportunity to appear and introduce evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Respondent's representative, while filing an answer to the complaint and participating in a pretrial conference call, failed to appear at the hearing. Telephone calls to his hotel and home office failed to produce an explanation for his failure to appear.

Counsel for the Union moved to withdraw the charge on the basis "Mr. Schwarzkopf gave specific assurances to my client's representatives last evening at approximately 9:00 or shortly thereafter that the contracts would be executed immediately or in the next few days. I do not have any more information than that." Bowen opined that because Schwarzkopf was aware of the Union's desire to withdraw

the charge "that may be the reason why Mr. Schwarzkopf" did not attend the hearing.

Counsel for the General Counsel opposed the request to withdraw the charge because execution of the collective-bargaining agreements involved in this proceeding would not cure all the alleged unfair labor practices. One allegation in the complaint "pertains to the Respondent's delay and refusal—its obligation under Section 8(d) of the Act to assist in the preparation of those mutually-agreed contracts and reducing them to writing, which we—or the General Counsel is of the position that also is a violation."

I denied the Union's request to withdraw its charge for there has been no settlement. The collective-bargaining agreements in question had not been executed and there was no executed settlement agreement; thus, it would be very difficult if not impossible to enforce any agreement between Respondent and the Charging Party in the event such agreement was breached. Moreover, the 8(d) allegation was not addressed in any agreement reached by Respondent and the Union. Schwarzkopf's absence and Bowen's lack of familiarity with the agreement, if any, reached by Respondent and the Charging Party, resulted in my having an insufficient basis to determine if their agreement, if any, was consistent with the policies of the Act.

Acceptance of the requested withdrawal without any clear statement on the record of the terms, without any written and executed settlement or other understanding and without resolution of all the alleged unfair labor practices, would leave the parties without an enforcement mechanism in the event the alleged violations were not resolved by the agreement between the Union and Respondent. Without a written and executed understanding, there was no basis to determine Respondent and the Union had a meeting of the minds rather than a mutual misunderstanding. There is no basis to determine the reasonableness of any asserted settlement agreement or if the asserted settlement agreement satisfied the Board's standards to find it effectuated the policies of the Act and there is no predicate to find withdrawal of the charge would resolve all the alleged unfair labor practices. I therefore denied Charging Party's motion to withdraw the charge.

Based on the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing brief of the General Counsel,⁴ I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent's answer to the complaint admits, and I find, they meet one of the Board's jurisdictional standards and that the Union is a statutory labor organization.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent is engaged in the retail sale of groceries at its Clifton, Colorado store. Respondent's answer to the complaint admits the Union is, and has been since January 1, 1990, the designated exclusive collective-bargaining representative of the Grocery Warehouse store clerks' unit

¹As discussed in detail below, Michael B. Schwarzkopf, Esq., Boise, Idaho, counsel for Respondent, did not make an appearance at the trial.

²All dates are in 1991 unless otherwise indicated.

³The complaint was amended at hearing to indicate the position occupied by Michael Schwarzkopf is "Regional Director, Labor Relations."

⁴Respondent and the Charging Party did not file briefs.

(clerks' unit) and the Grocery Warehouse store meat unit (meat unit) and that Respondent has recognized the Union as their representative. Respondent also admitted such recognitions have "been embodied in successive collective bargaining agreements, the most recent of which is effective by its terms for the period November 27, 1991 through November 14, 1993." It is further admitted that the Union, pursuant to Section 9(a) of the Act, is the exclusive bargaining representative of the clerks' and meat units.

A Certification of Representative, issued November 17, 1986, by the Regional Director for Region 27, certified the Union as the exclusive collective-bargaining representative of the following appropriate unit:

All full-and regular part-time meat department employees, including the assistant meat department manager, employed at the Employer's Clifton, Colorado store; BUT EXCLUDING the meat department manager, all other store employees, guards and supervisors as defined in the Act.

By Certification of Representative issued by the Regional Director for Region 27 on July 21, 1989, the Union was designated as the exclusive collective-bargaining representative of the following appropriate unit:⁵

All employees employed by the Employer at its store located at 3229 I-70, Business Loop, Clifton, Colorado; BUT EXCLUDING all meat department employees, the Store Director, the Assistant Store Director, Third, Fourth, and Fifth Persons, the General Merchandise Manager, the Deli and Bakery Managers, office and clerical employees, guards, and supervisors as defined in the Act, and all other employees.

There is no basis to question these certifications; thus, I find these are appropriate units within the meaning of Section 9(b) of the Act.

B. *Bargaining for New Agreements*

The meat unit's collective-bargaining agreement expired November 3, 1990, and the clerks' unit's collective-bargaining agreement expired November 4, 1990. Respondent admitted in its answer to the complaint that on or about November 27, 1991, the Respondent and the Union "reached complete agreement on the collective-bargaining contracts" covering both the meat and clerks' units at Respondent's Clifton, Colorado store. The Union and Respondent reduced their agreement to writing in a memorandum of understanding. The memorandum of understanding also included an agreement by Respondent to prepare the final collective-bargaining agreements.⁶ The clerks' and meat unit members had ratified

⁵Respondent denied the appropriateness of these two units in its answer to the complaint, but failed to present any evidence why these duly certified units are not appropriate.

⁶The memorandum of understanding, executed by Michael B. Schwarzkopf for Respondent and Ernest L. Duran Jr. for the Union, provided for both the clerks' and meat agreements to be prepared as follows:

The parties would further agree that Albertson's would have the responsibility of drafting this Contract by January 1, 1992. The parties likewise agree that it would be signed by January 15, 1992.

their respective collective-bargaining agreements prior to November 27, 1991.

John G. Pettenger, who was executive assistant to the president of the Union in late 1991 and part of 1992,⁷ testified that frequent telephone inquiries to Schwarzkopf concerning the preparation of the collective-bargaining agreements brought only the answer that Schwarzkopf was working on the contracts. The Union, in late February or early March 1992, determined to prepare the contracts. Pettenger prepared the final drafts of the collective-bargaining agreements relying on the memorandum of agreement. On or about April 2, 1992, the Union mailed its drafts of the collective-bargaining agreements to Schwarzkopf. After waiting a month without any comment from Respondent, Pettenger telephoned Schwarzkopf who informed Pettenger that he did not have time to review the documents. Pettenger then contacted Schwarzkopf about every 2 weeks to determine if he had reviewed the collective-bargaining agreements. Schwarzkopf's reply was always that he did not have the time to review the collective-bargaining agreements.

Pettenger also testified that in October 1992, Duran tried to review the draft collective-bargaining agreements with Schwarzkopf and was told Schwarzkopf wanted to watch a ball game. There was no review of the collective-bargaining agreement at that time. As of the date of the hearing, the collective-bargaining agreements have not been executed. On January 4, 1993, Respondent sent to the Union some corrections to clerks' collective-bargaining agreement. Corrections to the meat unit's collective-bargaining agreement were received by Pettenger the day of the hearing.⁸ There was no dispute concerning the corrections proposed by Respondent. They apparently had been received by the Union late the preceding day. There was no demonstrated impediment to the execution of the collective-bargaining agreements on or before the day of the hearing in this matter.

Prior to Schwarzkopf's facsimile of January 4, 1993, where he detailed his corrections to the clerks' unit collective-bargaining agreement, the only response Schwarzkopf made to Pettenger's repeated inquiries was "he would be working on them," or he did not have time to review the contracts. Pettenger described the January 4 response as: "In summary it is the response to my letter of April 2, which was what the differences were in the clerks' Grocery Warehouse contract in Clifton, and there is about four items of any concern, but the rest are typos."

Schwarzkopf admits in his January 11, 1993 reply to the Union's April 2, 1992 letter that he had:

just completed the review of the negotiating history which led to the agreement reached between Albertson's and your Local Union over the [meat] unit of employees on or about November 27, 1991. As you know, I did this for the purpose of comparing that bargaining history against the contract draft you sent me last year. I have set out below the changes which need to be made to your draft in order that it conforms to the negotiated intentions of the parties. Please make the

⁷On or about November 1, 1992, Pettenger became a business agent with the Union.

⁸Schwarzkopf sent the corrections to the Union by facsimile at about 4 p.m., January 11, 1993. The union attorney gave Pettenger a copy of Schwarzkopf's missive the morning of the hearing.

following changes and send two signed final drafts for our final proofing and final execution.

Most of the changes to the meat unit's collective-bargaining agreement were also typographical errors. There is no claim there is any dispute as to the terms and conditions of the agreements reached on or about November 27, 1991. The first time the Union was informed there was a need for editorial or any other changes to the draft collective-bargaining agreements was when Schwarzkopf sent his revisions to the clerks' contact January 4, 1993. Respondent never presented any business reasons, substantial or otherwise, for its failure to prepare the draft collective-bargaining agreements, as provided in the memorandum of understanding, or its failure, prior to 1993, to review the draft collective-bargaining agreements prepared by the Union. There is no evidence demonstrating the Respondent was acting in good faith and was warranted by any circumstances in this case to act in such a dilatory manner.

Analysis and Conclusions

Section 8(d) defines the duty to bargain as follows:

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession⁹

The issue in this proceeding is whether Respondent violated the mandates of this section of the Act as well as Section 8(a)(5) and (1) of the Act which makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)." It is undisputed that the Union is the designated collective-bargaining representative of the clerks' and meat units described above.

The Board held in *Kennebec Beverage Co.*, 248 NLRB 1298 (1980):

Section 8(d) of the National Labor Relations Act, as amended, imposes upon either party to a collective-bargaining agreement the duty to execute a written contract incorporating such agreement if so requested by

⁹Prior to the enactment of Sec. 8(d), the Supreme Court found the refusal to execute a written collective-bargaining agreement to be a violation of Sec. 8(a)(5) of the Act. In *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1947), the Court stated:

A business man who entered into negotiations with another for an agreement having numerous provisions, with reservation that he would not reduce it to writing or sign it, could hardly be thought to have bargained in good faith. This is even more so in the case of an employer who, by his refusal to honor, with his signature, the agreement which he has made with a labor organization, discredits the organization, impairs the bargaining process and tends to frustrate the aim of the statute to secure industrial peace through collective bargaining.

the other party. Part of this duty is the obligation to assist in reducing the agreement reached to writing. See generally *Amalgamated Clothing Workers of America [Henry I. Siegel Co.] v. NLRB*, 324 F.2d 228 (2nd Cir. 1963).

The memorandum of understanding clearly demonstrates the Union and Respondent had a complete meeting of the minds on all substantive terms of the collective-bargaining agreements on November 27, 1991. Thus Respondent was clearly obligated to assist in reducing the collective-bargaining agreements to writing and then execute the agreements. Respondent agreed in the memorandum of understanding to meet this obligation by preparing the collective-bargaining agreements by January 1, 1992, and agreeing to sign them by January 15, 1992. Respondent unquestionably failed to meet this duty in violation of Section 8(d) of the Act. There was no excuse proffered for Respondent's failure to prepare the collective-bargaining agreements or take action prior to January 1993 on the collective-bargaining agreements prepared by the Union in April. Respondent clearly failed to even review the collective-bargaining agreements prepared by the Union for about 8 months. See also *Ebon Services*, 298 NLRB 219 (1990).

Although the collective-bargaining agreements contained some minor deviations from the memorandum of understanding and also contained some typographical errors, these deficiencies do not constitute a lack of agreement and do not exculpate Respondent from its obligation to execute the agreements. As the Board held in *Georgia Kraft Co.*, 258 NLRB 908, 912 (1981):

A review of this document reflects some minor deviation from the proposals submitted by Respondent, and agreed to by the Union. . . . We nonetheless conclude that any deviation is not indicative of lack of agreement between the parties, but is rather the refusal of Respondent's own refusal to acknowledge the existence of an agreement, as well as its refusal to assist the Union in reducing the agreement to writing, and it is this conduct, to wit: Respondent's obstruction and frustration of the bargaining process after agreement was reached, that we find to be unlawful.

Citing *Trojan Steel Corp.*, 222 NLRB 478 (1976), enfd. 551 F.2d 308 (4th Cir. 1977).

Here, a review of the documents similarly reveals minor deviations from the parties' agreement. Once Respondent notified the Union of these minor deviations, there was no question they would and could be corrected without delay. Respondent's failure to meet its duty to prepare the collective-bargaining agreements followed by its failure to even review and discuss them with the Union for about 8 months clearly "obstructed and frustrated the bargaining process after agreement was reached." Id. Accordingly, I conclude agreements were reached in November 1990 and Respondent violated Section 8(a)(5) and (1) of the Act when it failed and refused to execute the agreements since April 1992, when it received the Union-prepared collective-bargaining agreements, and by failing and refusing to assist in the reduction to writing of these agreements until January 1990.

CONCLUSIONS OF LAW

1. Respondent, Albertson's, Inc., d/b/a Grocery Warehouse, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers Union Local No. 7 is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

(1) All full an regular part-time meat department employees, including the assistant meat department manager, employed at the Employer's Clifton, Colorado store; BUT EXCLUDING the meat department manager, all other store employees, guards and supervisors as defined in the Act.

(2) All employees employed by the Employer at its store located at 3229 I-70, Business Loop, Clifton, Colorado; BUT EXCLUDING all meat department employees, the Store Director, the Assistant Store Director, Third, Fourth, and Fifth Persons, the General Merchandise Manager, the Deli and Bakery Managers, office and clerical employees, guards, and supervisors as defined in the Act, and all other employees.

4. At all times material, the Union has been the exclusive collective-bargaining representative of all the employees in the units found appropriate in Conclusion of Law 3 for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing to assist in the reduction to writing of the collective-bargaining agreements reached November 27, 1991, and by refusing to execute and sign the collective-bargaining agreements agreed to by the Union and Respondent and provided by the Union on or about April 2, 1992, Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(5) and (1) and Section 8(d) of the Act.

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

THE REMEDY

Having found that Respondent Employer has engaged in unfair labor practices proscribed by Section 8(a)(1) and (5) and Section 8(d) of the Act, I recommend that it cease and desist therefrom and that it take certain affirmative action designed to remedy the unfair labor practices and to effectuate the policies of the Act. Specifically, I shall recommend that Respondent forthwith sign the collective-bargaining agreements embodying the terms of the agreements between Respondent and the Union, as found here; that it give effect to such agreements retroactively to November 27, 1991, when agreement was reached; and that it make whole its employees for losses, if any, which they may have suffered as a result of Respondent's failure to assist in the preparation of the collective-bargaining agreements and to sign or to honor the agreements, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest thereon as set forth

in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹⁰

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The Respondent, Albertson's, Inc., d/b/a Grocery Warehouse, Clifton, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to assist in the reduction to writing of the collective-bargaining agreements reached November 27, 1991, and failing to bargain in good faith with United Food and Commercial Workers Union Local No. 7 by refusing to execute these collective-bargaining agreements agreed on with the Union and forwarded to Respondent on or about April 2, 1992.

(b) The Union is the exclusive collective-bargaining representative of all employees in the following units:

All full an regular part-time meat department employees, including the assistant meat department manager, employed at the Employer's Clifton, Colorado store; BUT EXCLUDING the meat department manager, all other store employees, guards and supervisors as defined in the Act.

All employees employed by the Employer at its store located at 3229 I-70, Business Loop, Clifton, Colorado; BUT EXCLUDING all meat department employees, the Store Director, the Assistant Store Director, Third, Fourth, and Fifth Persons, the General Merchandise Manager, the Deli and Bakery Managers, office and clerical employees, guards, and supervisors as defined in the Act, and all other employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Forthwith sign the collective-bargaining agreements described in paragraph 1(a) of this Order.

¹⁰ Because the provisions of the employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition at a fixed rate of interest on unlawfully withheld payments to the Union's funds, if any. I shall recommend leaving to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy the "make whole" remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue, and, when there are no governing provisions, to evidence of any loss directly attributable to the unlawful actions of Respondent, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

¹¹ 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.

(b) On the execution of the agreements give retroactive effect to the provisions thereof and make its employees whole for any losses they any have suffered by reason of Respondent's failure to assist in the reduction to writing of the collective-bargaining agreements and failure to sign the agreements, as set forth in the in the remedy section of the decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility and place of business, in Clifton, Colorado, copies of the attached notice marked "Appen-

dix."¹² Copies of the notice, on forms provided by the Regional Director for Region 27, after being duly signed by the authorized representative, shall be posted immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

¹² 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."