

**Dealers Manufacturing Company and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO.** Cases 30-CA-12542, 30-CA-12542-2, 30-CA-12587, 30-CA-12639, and 30-RC-5569

March 18, 1996

**DECISION AND DIRECTION OF SECOND ELECTION**

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

This case presents questions whether the judge correctly found that the Respondent violated Section 8(a)(1) and interfered with a Board representation election by interrogating an employee about union activities and by making changes in the unit employees' 401(k) savings plan, and that the Respondent further violated Section 8(a)(3) and (1) of the Act by granting unit employees a wage increase after the election.<sup>1</sup>

The Board has reviewed the record in light of the exceptions<sup>2</sup> and briefs and has decided to affirm the judge's rulings, findings,<sup>3</sup> and conclusions,<sup>4</sup> 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, Dealers Manufacturing Company, Portage, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the proceeding in Case 30-RC-5569 is severed and remanded to the Regional

<sup>1</sup> On September 25, 1995, Administrative Law Judge Irwin H. Socoloff issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

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

<sup>2</sup> There are no exceptions to the judge's recommendation to dismiss several 8(a)(3) allegations with respect to the discharge of Terry Bradley and the imposition of discipline on Barbara Koch.

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

<sup>4</sup> We agree with the judge that the Respondent's changes to its 401(k) plan, which were first announced and implemented on April 25, 1994, were motivated by antiunion considerations. Even if the changes were decided on in the fall of 1993, that decision was made after the Respondent had knowledge of the Union's campaign. Further, the changes were announced and implemented 17 days before the scheduled election. Since the changes were unlawfully motivated, the announcement and implementation of them were unlawful and objectionable.

Director for Region 30 for further processing consistent with the following.

[Direction of Second Election omitted from publication.]

*Paul Bosanac, Esq.*, for the General Counsel.

*Steven C. Miller, Esq.*, of Minneapolis, Minnesota, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

IRWIN H. SOCOLOFF, Administrative Law Judge. Upon charges filed on May 16 and 17, June 30, and August 18, 1994, by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO (the Union or UAW), against Dealers Manufacturing Company (the Respondent), the General Counsel of the National Labor Relations Board (the Board), by the Regional Director for Region 30, issued a consolidated complaint dated September 30, 1994, alleging violations by Respondent of Section 8(a)(3) and (1) and Section 2(6) and (7) of the National Labor Relations Act (the Act). Respondent, by its answer, denied the commission of any unfair labor practices. Also on September 30, the Regional Director issued an order consolidating Case 30-RC-5569 with the unfair labor practice cases for purposes of hearing, ruling, and decision with respect to the representation case issues raised by certain postelection objections filed by the Union.

Pursuant to notice, trial was held before me in Portage, Wisconsin, on January 30 and 31, 1995, at which the General Counsel and the Respondent were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the parties filed briefs which have been duly considered.

On the entire record in these cases, and from my observations of the witnesses, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent, a corporation, with an office and place of business in Portage, Wisconsin, is engaged in the business of manufacturing automobile engines and other automotive parts. During the calendar year ending December 31, 1993, a representative period, Respondent, in the course and conduct of its business operations, purchased and received, at the Portage facility, products, goods, and materials valued in excess of \$50,000, which were sent directly from points located outside the State of Wisconsin. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. LABOR ORGANIZATION**

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

### III. THE UNFAIR LABOR PRACTICES

#### A. Background

Respondent operates manufacturing facilities in Minneapolis, Minnesota, and Portage, Wisconsin. Some 120 individuals are employed at the Portage plant, the facility involved in this case, and an equal or slightly greater number work in Minneapolis, where corporate headquarters are located.

Union activities among the Portage facility employees started in July 1993. On March 9, 1994, the Union filed a petition seeking a representation election among the production and maintenance employees working at that plant. On April 12, the Regional Director issued his Decision and Direction of Election, directing that an election in the unit be held on May 12, 1994. The Union lost the ensuing election, 53 to 40, and, thereafter, filed timely objections.

In the instant unfair labor practice cases, the General Counsel contends that, prior to the election, on April 25, 1994, Respondent made changes to its 401(k) plan in order to influence the vote and, on June 16, 1994, after election objections had been filed, granted its employees a wage increase in order to undermine support for the Union, in violation of the Act. Respondent asserts that its actions in these regards were motivated by lawful considerations. Also at issue is whether the March 2, 1994 termination of employee Terry Bradley, and the imposition of discipline on employee Barbara Koch in April and, again, in June 1994, were violative of Section 8(a)(3) of the statute. Finally, the General Counsel contends, and Respondent denies, that during the course of an employment interview conducted by the Portage plant manager, in March 1994, the Company unlawfully interrogated an employee about his union sympathies, in violation of Section 8(a)(1) of the Act.

#### B. Facts<sup>1</sup> and Conclusions

##### 1. The alleged interrogation

Randy Swalheim was hired by Respondent as a temporary employee in February 1994. In mid to late March, he sought a permanent position and, in that connection, he was interviewed by the Portage plant manager, Jeanenne Marhevko, in her office. Swalheim testified that, during the course of the interview, Marhevko asked him, "how I felt about union activities there." Swalheim, who did not, until a much later point in time, wear indicia of support for the Union, told the plant manager that he did not think that a union was needed. Thereafter, the employee testified, he told other employees about this occurrence. Marhevko, in her testimony, denied that she questioned Swalheim about his union sympathies.

Swalheim impressed me as an honest and forthright witness, in possession of a clear recollection of the event in question. While I generally found Marhevko to be a credible witness, and, *infra*, I have relied on her testimony concerning critical matters, I found her testimony about this incident so vague as to be unworthy of credence. Accordingly, based on Swalheim's credited testimony, I find that Respondent, through Marhevko, by its March 1994 interrogation of

Swalheim, violated Section 8(a)(1) of the Act. The questioning, by a high-level company official, was without legitimate purpose, occurred without assurances against reprisals, took place in the office of the plant manager, and was inherently coercive in nature.

##### 2. The changes to the 401(k) plan

Employee activities looking toward representation by the Union began, at the Portage plant, when employee Laurie Alexander contacted the UAW in July 1993. Soon thereafter, an employee organizing committee was created.

After hearing rumors of the foregoing, Respondent's president, David Goodwin, and its vice president of manufacturing, John Mathiesen, decided to retain a consultant, Ed Brekke, to conduct a "climate survey" of and among the employees. Thereafter, beginning in August, Brekke met with the Portage plant employees, in small groups, and asked them to tell him about their concerns, needs, and feelings toward the Company. In response, the employees expressed to Brekke their dissatisfactions concerning the 401(k) plan, particularly, that Respondent had ceased to make matching contributions and that the administration costs were so high. Brekke reported to Goodwin and Mathiesen that, as Mathiesen testified, "401(k) concerns were some of the top concerns by the employees."

In July or August, Mathiesen also conducted group meetings of the employees. He advised them that he was aware, at least unofficially, that there were union activities going on. Concurrently, Goodwin began to conduct a series of interviews with Dennis Heiken, looking toward the hiring of that individual as vice president of finance and operations. In the course of those meetings, which occurred during the August to November period, when Heiken was hired, effective January 1, 1994, Goodwin and Heiken discussed changes to the 401(k) plan. They decided, Heiken testified, to reinstate the matching contributions, and on a monthly rather than, as theretofore, on an annual basis, and to replace the plan's administrator.

On December 3, 1993, Goodwin announced to the employees that, effective January 1, 1994, Respondent was "re-summing the 401(k) match," discontinued beginning in 1992, on a companywide basis. The announcement did not contain any indication that there would be further changes in the plan. Heiken began work on January 1, with, he testified, a mandate to effectuate the specific changes decided on during his fall 1993 meetings with Goodwin.

As noted, on March 9, the election petition was filed. That month, Heiken held a series of meetings with the Portage employees, seeking input for changes to the 401(k) plan. Nonetheless, Heiken testified, despite the meetings, the plan changes had already been decided on.

On April 25, 1994, 17 days before the election, the Company announced, in writing, that it was instituting, corporatewide, "tremendous improvements" in the 401(k) plan covering the areas suggested by the employees. Included in the announced changes were the conversion to monthly matches, by the Company, and the retention of a new administrator, effective, July 1, 1994.

Mathiesen testified that Respondent operated at a loss in 1989, 1990, 1991, 1992, and for the first quarter of 1993. However, he further testified, by November 1993 the Company's financial statements revealed "sufficient evidence"

<sup>1</sup> The factfindings contained here are based on a composite of the documentary and testimonial evidence introduced at trial. Where necessary to do so, in order to resolve significant testimonial conflict, credibility resolutions have been set forth, *infra*.

showing that the Company had returned to profitability and, thus, could afford reinstatement of the match and improvements to the 401(k) plan. Respondent offered no documentary evidence, in the form of business records or otherwise, to support these assertions.

When Respondent instituted "tremendous improvements" to its 401(k) plan, on April 25, 1994, after the representation petition had been filed and 17 days before the scheduled election, it acted in an area, 401(k), which its climate survey had revealed in 1993, was at the top of the list of employee concerns. The climate survey was, itself, conducted only after Respondent learned that the Portage plant employees were engaged in union activities. While Respondent has set forth a partial economic explanation for the timing of its actions, it was unsupported by financial statements or other business records.

In light of the timing of the changes to the plan, Respondent's knowledge of its employees' union activities and the apparent cause and effect relationship between that knowledge and its actions regarding the 401(k) plan, both in 1993 and in 1994, the inference is amply warranted that the changes to the plan, instituted in April 1994, were for the purpose of interfering with employee free choice. Respondent has failed to establish that there was a legitimate reason for the timing of its action. Accordingly, I conclude that the institution of improvements to the 401(k) plan, as announced in April 1994, was violative of Section 8(a)(1) of the Act.

### 3. The wage increase

Respondent granted pay increases to its employees, on a corporatewide basis, in June 1990 and again in January 1991. Thereafter, Mathiesen testified, in 1992, the Company decided on June, increases and a wage adjustment was made at that time. However, in May 1993, Mathiesen further testified, he met with the employees and told them that there would not be a wage increase then, and, further, that there would not be an increase until Respondent had achieved 3 profitable months and could forecast profitability for the 3 months after that.<sup>2</sup>

As noted, after the onset of union activities in Portage, in July, and after the retention of Brekke to conduct a climate survey, Mathiesen met with the Portage employees, in small groups, and revealed his knowledge of their actions concerning a union. Soon thereafter, on August 16, President Goodwin delivered a speech to the employees and announced a wage increase, effective in September, predicated on the Company's profitability in July, and the fact that the inventory count, at the end of that month, did not result in significant writedowns. Acknowledging in the speech that, theretofore, Respondent had stated that, for an increase to occur, the Company would have to earn "a profit for three consecutive months" and enjoy a "favorable outlook for the next three months," Goodwin did not explain why he was abandoning that standard and acting on the basis of profitability for 1 month. Mathiesen testified, in vague fashion, that he believes that May and June were also profitable. At another point in his testimony, he indicated that it was not until November that the Company knew that it had achieved profitability.

<sup>2</sup>At the time that Mathiesen addressed the employees, he knew that Respondent had lost approximately \$100,000 for the quarter ending March 31, 1993.

Neither financial statements, nor other business records, were offered into evidence.

Against this background, in June 1994, after the representation election, but while the Union's objections were pending and the possibility of a rerun election existed, Respondent, again on a corporatewide basis, granted its employees a wage increase. At trial, the Company offered no documentary evidence to suggest that its operation was profitable at that point in 1994, despite Mathiesen's testimony that profitability was one of the essential factors necessary to support such an increase. Respondent defends the granting of the wage increase by reliance on its claim that, in 1992, it established the practice of effectuating wage increases in June.

Although the wage increase granted in September 1993 cannot be the subject of an unfair labor practice finding, as it occurred outside the Act's 10(b) limitations period, the evidence bearing on the circumstances surrounding that wage action sheds light on Respondent's motives in granting an increase in June 1994. In 1993, the Company instituted a hurried wage increase at a time when it knew that the employees had begun an organizational campaign. Respondent advised the workers that it was in possession of that knowledge and, then, proceeded to grant the increase in clear contravention of the standards it had established as necessary to trigger such an action.

The 1994 postelection increase was also instituted during the course of the union organizing campaign.<sup>3</sup> An inference of improper motivation and interference with employee free choice may be drawn from a review of Respondent's action in granting a similar increase in September 1993 and its failure to establish a legitimate reason for the timing of the wage increase in 1994. In this latter connection, I note the failure of Respondent to show that when it granted the 1994, increase, the Company was profitable. Further, I reject the argument that Respondent acted in accordance with past practice in announcing an increase in the month of June, when only the 1992 increase (and not the increase in 1993) may be cited to support such a claim.

As Respondent has not shown a past pattern of June wage increases, and in light of the evidence showing that the June 1994 increase was unlawfully motivated, I conclude that the increase granted at that time, following the election and while objections were pending, was violative of Section 8(a)(3) and (1) of the Act.

### 4. The discharge of Terry Bradley

Terry Bradley was employed by Respondent from April 29, 1991, until he was discharged on March 1, 1994. He worked in one of the small parts departments under the supervision of Team Leader Eugene Mravik. During the course of the union campaign, Bradley, as did many of the Portage plant employees, wore a UAW pin to work. Also, he attended union meetings where he solicited employees to sign authorization cards, and he assisted in the distribution of union literature. Bradley was not a member of the employee organizing committee. Indeed, the record evidence does not suggest that Bradley, in comparison to his fellow employees, was a highly active or avid supporter of the Union, or that he was perceived as such by company officials.

<sup>3</sup>*Holly Farms Corp.*, 311 NLRB 273 (1993).

In April 1993, preceding the advent of the Union, Bradley was given a verbal warning by Mravik for failure to arrive at his work station on time on the morning of April 4. On that day, the disciplinary report states, he did not reach his work station until 7:10 a.m., rather than the 7 a.m. start time. Bradley, who had been late to work on four occasions in 1992, accumulated 10 "tardies" during 1993, including 5 toward the end of the year. On January 4, 1994, Mravik gave Bradley a written warning for arriving late to his work station on December 21, 22, and 23, 1993, and on January 4, 1994, "by at least 3 minutes per occurrence." The warning notes, under the category "goals and time frame for improvement," that Bradley must "report to work station on time." After conferring with Bradley about the matter, Chris Blalock, Respondent's production manager for small parts, agreed, in writing, to remove the written warning from the employee's file if there were no further instances of lateness for 90 days.

Blalock issued another written warning notice to Bradley on January 31, 1994, for arriving at work one-half hour late on January 27. Regarding that incident, Bradley claimed in his testimony that he was only 20 minutes late that day, as he arrived at the plant at 7:20 a.m., and spent the next 10 minutes drinking coffee and smoking a cigarette, before reporting to his work station at 7:30 a.m. In this connection, Bradley mistakenly believed that, as 7:20 a.m. was after the quarter hour, he would not be paid for worktime commencing before 7:30 a.m.

The next disciplinary notice received by Bradley was on Friday, February 18, for late arrival at his work station. Bradley was suspended, without pay, for 1 day, February 21.

Bradley testified that, on many of the occasions he received discipline, he was not, in fact, late. However, a reading of his testimony makes clear that his claim is premised on the belief that he was not required to be at his work station at 7 a.m. but, merely, to be in the building at that time. In this regard, Bradley testified that, up to and including the time of his discharge, he was never advised, orally or in writing, that company rules required that he be at his work station at 7 a.m. As that requirement was clearly stated on each and every disciplinary notice received by Bradley, and as, in his pretrial affidavit, Bradley conceded that he knew that company policy required that he be at his machine by the 7 a.m. start time, the belated claim, at trial, of lack of knowledge of the rule, rings hollow, and calls into question the alleged discriminatee's entire testimony.<sup>4</sup>

Respondent's concern with on-time arrivals, generally, resulted in synchronization of the plant clocks, and instructions

<sup>4</sup>There is some suggestion in the record evidence, primarily the testimony of employee Linda Bortz, that certain unidentified supervisors did apply the rule to require, only, presence in the building by 7 a.m. It was the same Bortz who first claimed that she observed that Bradley was not late for work on December 21, 22, or 23, 1993, but later allowed that she, Bortz, was not herself at work on 2 of those days. In any event, Bortz conceded that Team Leader Mravik strictly required that departmental employees be at their work stations by 7 a.m. As a result, Bortz testified, most of the employees in Mravik's department arrived there at 6:55 a.m., so as to avoid problems.

I note, too, that, for pay purposes, Respondent sometimes allowed employees, Bradley and others, to make up late time at the end of the day.

to Senior Team Leader Lloyd Bratsch to lock the back door at precisely 7 a.m. in order to prevent people from entering the plant late and undetected. Given this policy, an employee arriving late for work would have to enter through the front door. Bratsch, who impressed me as a highly honest witness with a sure memory of the event about which he testified, stated that, on February 25, 1994, just as he was ready to lock the back door, at precisely 7 a.m., employee Arnold Simonson ran through and proceeded to his work station, which was right at the door. When Bratsch and Simonson were some 20 feet away from the door, they heard pounding on it. Bratsch turned around, walked back to the door, opened it and found that it was Bradley who was trying to come in. Letting him enter, Bratsch testified that he told Bradley, "[Y]ou are a little late, Terry." Bradley then proceeded to the other end of the building, where his work station was located. Simonson, in his testimony, corroborated Bratsch's version of the event. Simonson also stated that he, Simonson, did not arrive at his work station, by the back door, until 7 a.m.

Team Leaders Mravik and Dan Maahs testified that they were together in Bradley's work area on the morning of February 25, and that Bradley was not there on time. They approached Bradley, after his arrival, a few minutes after 7 a.m., and accused him of lateness. Bradley claimed that he was there on time, and he referred to Mravik as a "butthead." The supervisors testified that they reported the matter, and their observations, to Blalock, who conducted an investigation.

Bradley testified that, on the morning in question, he arrived at his work station, located some 50 feet from the back door through which he entered, "just before" 7 a.m. Fellow departmental employees Bortz and Kehoe testified that Bradley arrived some 1 to 3 minutes before the hour. Each of these individuals reported their observations to Blalock.

Blalock testified that, at the conclusion of his investigation, he formed the belief that the February 25, event, occurred as reported by Supervisors Bratsch, Mravik, and Maahs, noting that, in offering contrary versions, Bradley, on the one hand, and Bortz and Kehoe on the other hand, did not entirely agree with each other. Stating that he "gave credence where credence was due," Blalock further testified that, on March 1, 1994, he discharged Bradley for dishonesty (in denying he had been late on February 25) and repeated tardiness.

The record evidence amply demonstrates that Bradley was a union supporter and Respondent knew it. However, as noted, he did not, in that regard, "stick out" from fellow employees and he was not a member of the employee organizing committee. Respondent has shown that Bradley would have been discharged, even in the absence of his protected conduct. He had a chronic tardiness problem which was the subject of discipline meted out to him, under a progressive system, starting before the advent of the Union. There is no showing whatsoever that he was treated in a disparate manner. After the incident of February 25, Blalock investigated the matter and he reasonably concluded, from the evidence before him, that Bradley had been untruthful about his reporting time on that day and that, again, he had arrived late to his work station. On the basis of credibility determinations, and considering the great likelihood that the version of events on which Blalock claimed to act was the true one, I

accept Respondent's defense, and conclude that the March 1 discharge of Bradley was not in violation of the Act.

#### 5. The imposition of discipline on Barbara Koch

Barbara Koch has been employed by Respondent since 1985. At all times relevant to this case, she worked in the valve department under the supervision of Team Leader Brian Kelly and, then, Team Leader Donna Gabbei. Primarily, Koch operated the centerless grinder machine, and she kept track of the inventory of valves in a book she maintained for the Company. During the course of the union campaign, Koch signed an authorization card, solicited others, away from the plant, to sign cards, and wore a union pin to work. In the weeks preceding the election, she began to wear, also, a union hat and a union shirt at her work station. It is not disputed that Respondent's officials were aware of her support for the Union. Like Bradley, she did not serve on the employee organizing committee and there is a lack of record evidence indicating that she was a leader in the organizational effort, or that Respondent believed that she was. However, Koch testified, on May 13, 1994, the day after the election, Plant Manager Marhevko told her that she, Marhevko, knew that Koch was having "a real rough day today."

On November 15, 1993, Supervisor Kelley issued to Koch two written warnings, for refusal to follow work instructions and failure to participate with her coworkers in cleaning up the department. Marhevko credibly testified that, soon thereafter, she received complaints from department employees Robert Deshaw and John Gabbei concerning Koch's behavior toward fellow workers, which included berating and belittling a handicapped employee. Marhevko had Koch prepare a corrective action plan with regard to her behavior. Sometime prior to March 1994, Donna Gabbei replaced Kelley as team leader in the valve department.

Marhevko testified that, in April 1994, the Company experienced inventory shortages in the department, and found that the inventory book maintained by Koch did not accurately reflect the number of valves on hand. When Respondent would unexpectedly run short of inventory, it would either have to slow down production or incur the expense of purchasing valves from an outside vendor. Marhevko assigned to Gabbei the task of straightening the matter out. Gabbei credibly testified that she attempted to reorganize the system, on April 13 and 14, but was repeatedly told by Koch that there was nothing wrong with it as it stood, and that she, Gabbei, did not know what she was doing. Koch pointed her finger at Gabbei, yelled at her, and stated that Gabbei should leave the inventory book alone. This conduct continued over a 2-day period. Koch refused Gabbei's requests to settle down and or go to the office. After learning of these incidents from the reports of Gabbei, Marhevko investigated the matter by talking to other members of the department. She verified Gabbei's account of the matter, and heard from Koch's fellow employees that Koch continually failed to get along with her supervisor and the other people in the department. On April 18, Marhevko and Gabbei issued to Koch a disciplinary report, including a 3-day suspension. Koch in her testimony stated that she denied to Marhevko that she had argued with or hollared at Gabbei.

In mid-June, Gabbei testified, Koch refused repeatedly Gabbei's requests that she, Koch, work on a particular Satur-

day to make up inventory shortages. Koch told Gabbei that she did not care if the inventory ran out, and she accused Gabbei of lying about other matters. The next week, Gabbei further testified, Koch walked out of a departmental meeting dealing with inventory. Gabbei reported the incidents to Marhevko. On June 27, Marhevko and Gabbei issued to Koch a "final warning," for repeated refusals to follow the work directions of her supervisor, and for "belittling, overbearing and confrontational behaviors."

As in the case of Bradley, Koch was a union supporter and Respondent knew it when it meted out discipline. However, she was not on the employee organizing committee and, apparently, she did not occupy a leadership position in the organizational effort. Through the credited and largely uncontradicted testimony of Marhevko and Gabbei, Respondent has shown that it would have disciplined Koch, even in the absence of her protected conduct, for insubordinate, loud, uncooperative, and confrontational behavior that few employers would tolerate. In light of the defense, I find and conclude that, by disciplining Koch in April and June 1994, Respondent did not violate Section 8(a)(3) of the Act.

#### 6. The representation case

The tally of ballots following the election conducted on May 12, 1994, showed that 40 votes were cast for the Union and 53 votes were cast against representation. There was one void ballot and nine challenged ballots which were insufficient in number to affect the election results.

The objections to conduct affecting the results of the election, filed by the Union on May 17, generally track the complaint allegations with respect to conduct occurring between the time the petition was filed on March 9, 1994, and the time the election was held on May 12. In light of my earlier findings, that Respondent, during the critical period, made changes to its 401(k) plan in order to influence the outcome of the election, and engaged in coercive interrogation, I conclude that the corresponding objections should be sustained and the election set aside.

### IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE REMEDY

Having found that Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(a)(3) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

#### CONCLUSIONS OF LAW

1. Dealers Manufacturing Company is an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO is a

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

3. By interrogating an employee concerning his union sympathies, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

4. By implementing changes to its 401(k) plan in response to its employees' union activities, and in order to influence the outcome of a scheduled NLRB-conducted election, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

5. By granting its employees a wage increase in response to their union activities, and while objections to conduct affecting the results of an NLRB-conducted election were pending, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(3) of the Act.

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

7. Respondent has not otherwise violated the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>5</sup>

ORDER

The Respondent, Dealers Manufacturing Company, Portage, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their union sympathies.

(b) Implementing changes to its benefit plans in response to employees' union activities, and in order to influence the outcome of a scheduled representation election.

(c) Granting its employees a wage increase in response to their union activities, and while objections to conduct affecting the results of a representation election are pending.

(d) 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) Post at its Portage, Wisconsin facility, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on

<sup>5</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.

<sup>6</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

forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

Nothing here shall be construed as requiring Respondent to vary or abandon conferred benefits.

IT IS FURTHER ORDERED that Case 30-RC-5569 is severed and remanded to the Regional Director for the purpose of setting aside the election and conducting a new election at the earliest appropriate time.

National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

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 interrogate employees concerning their union sympathies.

WE WILL NOT implement changes to our benefit plans in response to employees' union activities, and in order to influence the outcome of a representation election.

WE WILL NOT grant employees a wage increase in response to their union activities, and while objections to conduct affecting the results of an NLRB-conducted election are pending.

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

Nothing here shall be construed as requiring us to vary or abandon conferred benefits.

DEALERS MANUFACTURING COMPANY