

Darphin Beute France d/b/a Darphin USA, Inc. and Diane Stevens. Case 2–CA–30117

September 29, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

On March 13, 1998, Administrative Law Judge Raymond P. Green issued the attached decision. The General Counsel filed exceptions and a supporting brief.

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

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

We agree with the judge that Laura Kagel resigned almost simultaneously with her termination. Our dissenting colleague disagrees. She asserts that Kagel engaged in a strike, i.e., that she "was withholding her services until the issue of her backpay was resolved." There is no evidence to support this conjecture, and the judge found directly to the contrary. More particularly, the judge found that Kagel, on January 28, was seriously contemplating **resignation** because of the Respondent's failure to pay the back wages. And, consistent with this, the judge found that Kagel intended to **resign** on January 30 because of such failure. The resignation was preempted only by the Respondent's discharge of Kagel. There is nothing that Kagel said or did that is inconsistent with the judge's finding that Kagel intended **resignation**. Nor is there anything to indicate that Kagel was striking. That is, Kagel did not say or indicate that she would withhold her services until she received her back wages, and that she would return upon such receipt. Nor did she say or indicate that she was withholding her services as a means of placing economic pressure on the Respondent.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Darphin Beute France d/b/a Darphin USA, Inc., Rye, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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

The judge found, and we agree, that employee Joanna Olt resigned from her employment. In rejecting the General Counsel's contention that Olt was unlawfully discharged, we note that Janet Indorf, a manager and account executive, credibly testified that in her conversation with Olt on February 3, 1997, they did not discuss Olt's discharge. The judge credited Indorf's testimony that she called Olt at home on her day off to ask her to come into work.

MEMBER FOX, dissenting in part.

Although I agree with my colleagues as to their adoption of the administrative law judge's findings that Diane Stephens and Laura Kagel were unlawfully discharged, and the dismissal of the allegation concerning Joanna Olt's discharge, I disagree with their decision to deny Kagel backpay and reinstatement as a remedy for her unlawful discharge.

The judge found that on January 30, 1997, Kagel returned a phone call from Supervisor Janet Indorf, and told Indorf that she, Kagel, could not go back to work unless she got paid her back wages. The judge further found that Indorf responded that it did not matter because Kagel was being fired anyway. From this exchange, the judge concluded that Kagel had announced her intention to resign simultaneously with being told of her termination, and that therefore a backpay and reinstatement remedy would not be appropriate.

I disagree. Contrary to the judge, I would find that Kagel did not resign, but rather expressed an intention to withhold her services, i.e., strike, over the Respondent's failure to pay her for past services. Her statement to the Respondent indicated only that she could not return to work unless she received the money owed her. This statement was conditional, and did not communicate a clear intention to terminate her employment relationship with the Respondent regardless of what happened. Rather, it indicated that she was withholding her services until the issue of her backpay was resolved.¹ In this, Kagel's actions were that of a striking employee, not an employee terminating her employment.

Although the Respondent would have been privileged to replace her for withholding her services, it did not do so. Rather, as the judge found, the Respondent had previously determined that it would terminate Kagel for her concerted, protected activity of discussing her terms and conditions of employment with a third party in order to solicit support for her position. As an unlawfully terminated employee, Kagel is entitled to backpay and reinstatement. The fact that during the conversation in which Kagel was told of her termination, Kagel simultaneously announced that she intended to withhold her services until her labor dispute with the Respondent was resolved does not negate the appropriateness of this remedy. Accordingly, I dissent from the majority's adoption of the judge's resolution of this issue and would find that Kagel is entitled to reinstatement and backpay.

¹ *Bevaco Food Service*, 321 NLRB 1313 (1996), relied on by the judge, is distinguishable. There, an employee who was unlawfully terminated was not granted backpay because he had "clearly, repeatedly and unequivocally" informed the respondent that if his employment proposal was not accepted by a certain date, he would resign, and then he did so.

Ruth Wienreb Esq., for the General Counsel.
Denise P. Ward Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in New York, New York, on November 17 and 18, 1997, and January 8, 1998. The charge in this proceeding was filed on February 18, 1997, and the complaint was issued on July 11, 1997. In substance, the complaint alleged that on or about January 31, 1997, the Respondent discharged its employees Diane Stevens, Laura Kagel, and Joanna Olt because of their protected concerted activity, namely their protest over their failure to get paid for the months of November and December 1996 and a part of January 1997.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Darphin Beute France d/b/a Darphin USA, Inc., a Delaware corporation, having an office in Rye, New York, where it currently is engaged in the distribution and sale, at wholesale, of beauty supplies to various retail establishments such as Bergdorf Goodman and Neiman Marcus. Annually, the Respondent derives gross revenue in excess of \$500,000 and sells products valued in excess of \$50,000 to points directly located outside the State of New York. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE UNFAIR LABOR PRACTICE ALLEGATION

Darphin is a French company with its principle place of business in Paris, France. It manufactures various skin products which are sold worldwide. Darphin USA is a United States subsidiary of Darphin which was formed in 1992 and is located in Rye, New York. For a period of time until about 1995, Darphin USA operated a small store in Larchmont, New York, which sold the products manufactured by Darphin. In 1995, that store was sold and Darphin USA became nonoperative until it was revived in January 1997 when it became the employer of the people involved in the present case.

In 1994, Darphin entered into a 5-year contract with an entity known as the Jen Group International for the sale and distribution of Darphin's products in the United States. David Jen was the president and apparent owner of Jen Group, which is located in Beverly Hills, California. Pursuant to this contract, Jen Group agreed to purchase products from Darphin and to make arrangements with stores to distribute these products. In this regard, Jen Group was successful in making arrangements with Bergdorf Goodman to place these products in its Manhattan store and with Neiman Marcus to place the products in its stores throughout the United States. The products were also placed in various upscale boutique stores.

As part of the arrangement with the department stores, a counter space was provided where the products would be displayed and sold.¹ To do this, Jen Group hired several managers

including Janet Indorf who was in charge of the Northeast. She, in turn, hired a group of women who would be located at the store counters. Except for Bergdorf Goodman which had two women, each of the other stores had one Jen Group employee who was responsible for selling at the counter, usually for about 35 to 40 hours per week. (During slow hours, the stores had their own employees cover the counter.) According to the credited testimony of Indorf, she was employed by Jen Group and she, in turn, hired, trained, and supervised these people who were paid by Jen Group.

Joanna Olt was hired by Indorf in July 1996 to work at Bergdorf Goodman's Manhattan store. Diane Stevens was hired by Indorf in August 1996 and was assigned to work at the Neiman Marcus store in White Plains, New York. Laura Kagel was hired by Indorf in October 1996 to work at the Neiman Marcus store in Paramus, New Jersey.

Although Indorf told the people that they were considered independent contractors, there is no doubt in my mind that they were in fact employees of Jen Group at least up to and including January 14, 1997. As these people were neither hired by, paid by or supervised by Darphin, it is equally clear to me that they were not Darphin's employees, at least up until January 15, 1997.

Due to financial difficulties, problems in payments to employees of Jen Group began to emerge in November 1996. At that time, a check from Jen Group was late in arriving to Olt and she complained to Indorf. However, starting in December 1996, Jen Group began to default in its payments to all of its employees and complaints were more frequently made to Indorf. Indorf herself was not paid and she pressed David Jen for the moneys which he assured her were "in the mail." At the same time, Jen Group was not making payments to Darphin and ultimately this resulted on January 14, 1997, in the cancellation of the contract between Darphin and Jen Group.

During December 1996 and January 1997, the women continued to work, but were not paid. Apparently, they initially relied on Indorf's assurances that David Jen was going to make good on their wages. In late December 1996 and early January 1997, Indorf spoke directly with Andre Benet from Darphin who assured her that the sales women would continue to be employed either directly by Darphin or through another distributor. Based on these conversation and Indorf's reports to the sales people, they assumed that they would continue to be employed and would ultimately be paid for their work. Also, based on the credited testimony of Indorf, I find that Darphin never promised to assume the debts that were owed to these people by Jen Group.

The former employees of Jen Group continued to sell the products of Darphin throughout the Christmas selling season. Darphin therefore received the benefit of their services and these people clearly were not volunteers vis a vis Darphin. They continued to work based on assurances that Indorf had received from Andre Benet and which she transmitted to them. They had, based on those assurances, every reason to believe that Darphin had the intention of employing them, which in fact it did. It is my opinion that Kagel, Olt, Stevens, and the other former Jen Group sales people became employees of Darphin as of January 15, 1997, and this is confirmed by a letter sent to them on February 2, 1997, which stated:

We wish to thank for your dedication to our Brand and products during this transition period.

¹ In return for the space, the retailer would receive a percentage of the gross sales.

Please be advised that as January 15th, Darphin Inc., our US subsidiary has taken position of our US distribution.

Therefore, Darphin Inc. will assume responsibility for payment of your services from that date January 15th.

You must forward us . . . your detailed invoice for the hours and days and dollars as soon as convenient for approval and payment.

To help you during this transition period, Darphin Paris has extended to you a discretionary bonus in appreciation.

Nevertheless, all amounts due to you prior to this date are to be claimed by you to the Jen Group International, your former employee.

On January 24, 1997, Indorf told the New York area people that there would be a meeting with Andre Benet on January 28 at the Peninsular Hotel. On January 28, the meeting was attended by among others, Andre Benet and his son, Jean Marc Benet, Indorf, Kagel, Olt, Stevens, and another sales person, Bea Keller who worked at the Neiman Marcus store in Short Hills, New Jersey. There is very little dispute as to what took place at this meeting and it may be summarized as follows. Andre Benet thanked the sales people for their work at the stores and asked them to continue. He told them that although he was not legally responsible for any moneys owed to them by Jen Group, he felt a moral obligation and would try to pay them via incremental payments over a course of time. Diane Stevens insisted that Benet should pay them immediately for all the money owed by Jen Group and Benet refused. Kagel didn't say much and Olt, quite understandably, started to cry. According to Kagel, after the meeting was over, Indorf asked if she was going to continue to work and she responded that she would have to think about it.

After the meeting described above, Kagel, Olt, Stevens, and Keller went across the street to a coffee shop to discuss what to do next. The upshot that they agreed to present their case to the manager of Bergdorf Goodman in an attempt to try to get Darphin to pay what Jen Group owed them.

On January 29, 1997, Stevens, Kagel, Olt, and another sales employee, Colleen Delia, went to talk to Carl Barbato from Bergdorf Goodman and told him that they hadn't been paid their wages in December 1996 and January 1997. They asked if Bergdorf Goodman could pay them what was owed and in turn bill Darphin for the amounts. Barbato, although sympathetic to their plight, said that he could not pay them these sums because they were not employees of Bergdorf Goodman.

At the same time, Barbato spoke to his cosmetics buyer, Pat Saxby, and asked if she could talk to a Darphin representative about the women's pay problem. It seems that Saxby then got in touch with Indorf and informed Indorf of the meeting that had just taken place with Barbato. Indorf testified that she got upset about this; feeling that the employees had gone behind her back, and thereupon called Andre Benet in Paris. Indorf testified that she told Benet about the employees' meeting with Barbato and he said that he didn't need people like that working for him. Indorf credibly testified that Benet said that she should fire Stevens and Kagel but keep Olt and Delia.

On January 30, Indorf spoke to Stevens by phone. Indorf told Stevens that she was fired because of the meeting with Bergdorf Goodman. On that same day, Kagel returned a message from Indorf and told her that Kagel could not go back to work unless she got paid her back wages. Indorf responded, in

effect, that it did not matter because Kagel was being fired anyway.

Colleen Dahlia continued to work after the meeting with Barbato and the record does not indicate that anything happened to her.²

According to Joanna Olt she worked on January 29, 30, and 31, and February 1 and 2, 1997. (Contrary to the General Counsel's assertion, Olt was not discharged on January 30.)

On February 2, 1997, Olt asked her daughter to write a letter to the Company and this was faxed, on that date, to Andre Benet in Paris. This letter stated.

Forced by the unusual circumstances in which we both find ourselves (but more so myself, being the sole provider of two elderly people: my parents), I am forced to look for employment outside Darphin, on either temporary or permanent basis.

I want to express my deep regrets of having to take this course of action, as well as to thank you for the opportunity to have provided me with, in working for, what I believe, one of the very best cosmetic companies in United States. Once fully compensated for my time with your company, should another position become available, I trust you will remember my interest in working again for Darphin, as well as the quality of work and the results I am capable of delivering.

On February 3, 1997, Olt was at home on her day off when she received a phone call from Indorf who asked her to come into work. Olt said that she could not come in because she had other things to do. Olt states that Indorf said that she was surprised that Olt was part of the group that went to talk to Barbato, whereupon Olt said that the employees had decided to try to get someone to help them. Olt asserts that at the end of the conversation, Indorf told her that she had been replaced.

III. ANALYSIS

I have already concluded that the sales people who had previously been employed by Jen Group became employees of Darphin on January 15, 1997.³ At that time, they were owed back wages by Jen Group and were hoping to have Darphin not only hire them, but to make them whole for those back wages.

At the meeting with Andre Benet on January 28, 1997, the group of employees were told that although they could keep their employment, Darphin did not consider itself legally bound to pay them for moneys owed to them by Jen Group. In this respect, Benet was probably correct, but he did say that he felt a moral obligation to try to reimburse them for such money over a period of time. This was not particularly acceptable to Stevens, Kagel, and Olt and Stevens expressed her opinion that Darphin should pay them the amounts owed by Jen Group. At the conclusion of the meeting, Kagel told Indorf that she was not sure if she was willing to work for Darphin without getting the back wages.

² In fact, it appears that almost all of the sales people who continued to work for Darphin after it took over the operation from Jen Group, eventually were paid by Darphin, the back wages that had not been paid to them by Jen Group. This was accomplished in a series of installment payments.

³ From a formalistic point of view, one could say that these people were thereafter transferred to Darphin USA in February 1997, when that wholly owned subsidiary corporation was set up again to do business and became the official employer of the sales force.

On that same day, Kagel, Olt, Stevens, and Keller discussed among themselves what steps they might take to obtain their back wages. They decided that a group of them would petition Darphin's customer, Bergdorf Goodman, to help them out. On January 29, 1997, Stevens, Olt, Kagel, and Colleen Delia presented their case to Barbato and as a consequence, Andre Benet told Indorf to fire Stevens and Kagel. He did, however, tell Indorf *not* to fire Olt and Delia.

This case therefore presents a situation where a group of people who were now employees of Darphin, concertedly went to Darphin's customer to present a grievance about not being paid by their prior employer, Jen Group. The action clearly was concerted. The question is, was it protected?

Although I conclude that Darphin had no legal responsibility for paying the wages owed by Jen Group, it was perfectly reasonable for these employees to try to get Darphin to pay them the lost wages as a condition of working for Darphin as their new employer. After all, they had continued to sell, without compensation, Darphin's products through the Christmas season and therefore conferred a direct economic benefit to Darphin. As such, there was, in this context, a legitimate dispute about wages between a group of employees and their new employer. As such, it is my opinion that the dispute fell within the types of concerted protests which are protected from retaliation by Section 7 of the Act.

The fact that the employees presented their grievance to a third party (Bergdorf Goodman), does not make their concerted action any the less protected. In *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990), the Board stated:

Under Section 7 of the act, employees have the right to engage in activities for their "mutual aid or protection," including communicating regarding their terms and conditions of employment. It is well established that employees do not lose the protection of the Act if their communications are related to an ongoing labor dispute and are not so disloyal, reckless, or maliciously untrue as to constitute, for example, "a disparagement or vilification of the employer's product or reputation." For example, the Board has found employees' communications about their working conditions to be protected when directed to other employees, an employer's customers, its advertisers, its parent company, a news reporter, and the public in general. (citations omitted)⁴

Nor can I agree with the Respondent's contention that any actions taken or statements made by the women could be considered as disparaging of the employer or its products as defined in *Jefferson Standard Broadcasting Co.*, 94 NLRB 1507 (1951), *affd. sub nom NLRB v. Electrical Workers Local 1229*, 346 U.S. 464 (1953). In *Allied Aviation Service of New Jersey*, 246 NLRB 229 (1980), the Board rejected the employer's defense that the discharge of a union shop steward was warranted because that employee had sent letters asserting that the employer performed services at the airport in a hazardous and unsafe manner. The Board stated:

In determining whether an employee's communication to a third party constitutes disparagement of the employer or its product, great care must be taken to distinguish between disparagement and the airing of what may be highly

sensitive issues. There is no question Respondent here would be sensitive to its employees regarding safety matters with its airline customers. Yet, we have previously held that, "absent a malicious motive, [an employee's] right to appeal to the public is not dependent on the sensitivity or Respondent to his choice of forum."

Other cases dealing with this issue are *Montauk Bus*, 324 NLRB 1131 (1997); *Emarco, Inc.*, 284 NLRB 832 (1987) (disparaging statements about company officials made by employees who were discharged); *Blue Circle Cement Co.*, 311 NLRB 623, 634-635 (1993), *enfd.* 41 F.3d 203, 211 (5th Cir. 1994) (statement by discharged employee which accused employer of burning hazardous waste and endangering public safety); *Sacramento Bee*, 291 NLRB 540, 545 (1988), *enfd.* 889 F.2d 210, 218-2119 (9th Cir. 1989); and *Richboro Community Mental Health Council, Inc.*, 242 NLRB 1267, 1268 (1979).

In the case of Diane Stevens the facts show that she was discharged because of her participation in the group protest made to Bergdorf Goodman. Accordingly, I conclude that her discharge violated Section 8(a)(1) of the Act.

The case of Joanna Olt is different. Although she also participated in the concerted activity, the credited testimony of Indorf is that Andre Benet decided not to discharge either Olt or Colleen Delia. In fact, Olt continued to work after January 30, when Stevens and Kagel were fired. On February 2, 1997, she had her daughter compose and send a fax to the company, which in my opinion, constituted a resignation. Accordingly, I conclude that Olt was not discharged but rather quit her employment at Darphin. To this extent, I find that the Respondent did not violate the Act.

Kagel's case presents what to me, is an unusual situation. By the end of the meeting with Andre Benet on January 28, Kagel was seriously contemplating resigning because of Darphin's refusal to assume the debt of Jen Group. After the group went to talk to Barbato of Bergdorf Goodman, Andre Benet, in his conversation with Indorf, had decided to discharge Kagel because of her participation in the group. On January 30, Kagel called Indorf to tell her she was resigning and Indorf responded, by telling her, in effect, "you can't quit, you're fired."

Darphin made its decision to discharge Kagel before Kagel announced her decision to quit, even though she announced her decision a second before being told of her firing. To this extent, I think that the Company, having earlier made its decision to discharge Kagel, and having communicated that decision to her, it can not rely on her resignation announcement as a defense to the 8(a)(1) allegation.

Accordingly, based on the above, I conclude that the Respondent discharged Kagel on January 30, 1997, and did so because of her participation in concerted protected activity.

CONCLUSIONS OF LAW

1. By discharging Diane Stevens and Laura Kagel because of their protected concerted activity, the Respondent has violated Section 8(a)(1) of the Act.

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

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

⁴ See also *Communication Workers Local 9509*, 303 NLRB 264, 272 (1991).

The Respondent having discriminatorily discharged Diane Stevens, it must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of her reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In the case of Laura Kagel, we have a somewhat anomalous situation where the discharged employee announced, *virtually simultaneously*, with being told of her termination, her intention to quit unless she got paid the moneys owed to her by Jen Group. Since the evidence indicates that she announced her intention to resign, a backpay and reinstatement remedy, would not be appropriate. See *Bevaco Food Service*, 321 NLRB 1313 (1996).

ORDER

The Respondent, Darphin Beute France d/b/a Darphin USA., Inc., Rye, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because of their concerted activity protected by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed to them under Section 7 of the National Labor Relations Act.

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

(a) Within 14 days from the date of this Order, offer Diane Stevens, full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Diane Stevens whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

(c) Remove from its files any reference to the unlawful discharges of Diana Stevens and Laura Kagel and notify them in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a 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.

(e) Within 14 days after service by the Region, post at its facility in New York copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Re-

gional Director for Region 2 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. In the event that, during the tendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 30, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in union or other protected concerted activities.

WE WILL, within 14 days from the date of the Board's Order, offer Diane Stevens full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Diane Stevens whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Diane Stevens and Laura Kagel, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

DARPHIN BEUTE FRANCE D/B/A DARPHIN USA, INC.

⁵ If this Order is enforced by a Judgment of the 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."