

**Snyder's of Hanover, Inc. and United Food & Commercial Workers International Union, Local 1776, AFL-CIO, CLC. Case 5-CA-28033**

May 30, 2001

**DECISION AND ORDER**

**BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH**

On August 4, 2000, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief, and the Respondent filed a reply brief.

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

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

The judge found that the Respondent violated Section 8(a)(1) of the Act by: (1) prohibiting union representatives from distributing pronoun literature to employees in the public right-of-way adjacent to the Respondent's facility;<sup>2</sup> (2) attempting to remove the union representatives from the public right-of-way; and (3) engaging in surveillance of its employees receiving union literature from the union organizers. For the reasons set forth below, as well as those set forth by the judge, we find, in agreement with the judge, that the Respondent unlawfully interfered with the employees' Section 7 rights to receive literature from the Union.

The Respondent's facility is located in Hanover, Pennsylvania. The public right-of-way that is adjacent to the Respondent's plant extends 16 feet from the centerline of State Route 116 (also referred to as York Street) to the Respondent's property line.

The Respondent argues that under Pennsylvania law "an owner whose property abuts a public street or road owns to the center of the road . . . subject only to a public easement of passage, or right-of-way, for transit only." The Respondent further contends that under State law a property owner may "preclude activities upon a right-of-way that exceed the intended purpose of the right-of-way." The Respondent maintains that the Union's leaf-

leting was not consistent with the purpose of the right-of-way for two reasons: (1) "the leafleting was purely for a private benefit (to garner interest in the Union and gain new members), not a public benefit"; (2) "the actions of the leafleters caused substantial interference in ingress and egress from [the Respondent's] property." Therefore, the Respondent argues that as property owner it had the right to prevent the Union's impermissible use of the public easement.<sup>3</sup>

In *Indio Grocery Outlet*, 323 NLRB 1138, 1141 (1997), enf. sub nom. *NLRB v. Calkins*, 187 F.3d 1080 (9th Cir. 1999), cert. denied 529 U.S. 1098 (2000), the Board reaffirmed precedent holding that "in cases in which the exercise of Section 7 rights by nonemployee union representatives is assertedly in conflict with a respondent's private property rights, there is a threshold burden on the respondent to establish that it had, at the time it expelled the union representatives, an interest which *entitled* it to exclude individuals from the property." (Emphasis in original.) The Board also stated that in determining whether an adequate property interest has been shown, it would look to "the law that created and defined the Respondent's property interest, which is state, rather than Federal, law." *Id.*

To meet its threshold burden under *Indio Grocery*, the Respondent must show that it had a property interest in the area where the handbilling occurred (in this case a public right-of-way), and that the handbilling was outside the scope of the public easement, such that the Respondent was entitled to exercise its property interest and expel the handbillers. To establish that the handbilling was outside the scope of the public easement, the Respondent must first establish the scope of that easement. For the following reasons, we find that the Respondent has not met its burden of establishing that it had the requisite property interest under Pennsylvania law to exclude the union handbillers from the public right-of-way adjacent to its facility.

Even assuming, as contended by the Respondent, that under Pennsylvania law the Respondent retained a property interest in the public right-of-way adjacent to its facility, the Respondent's property right was not exclusive since it was subject to a public easement as authorized by the municipality where the Respondent's facility is located.<sup>4</sup> Although the Respondent argues that the

<sup>1</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. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> The literature encouraged employees to select the Union as their representative for purposes of collective bargaining.

<sup>3</sup> In fn. 8 of his decision, the judge characterized the Respondent's property argument as "belated." We do not rely on the judge's characterization.

<sup>4</sup> Pennsylvania courts "consider the fee of a private owner to extend to the middle of the street abutting his building, subject only to an easement of public use." *City of Philadelphia v. Street*, 63 Pa. D. & C.2d 709 (1974), citing *Scranton v. Peoples Coal Co.*, 256 Pa. 332, 100 A. 818 (1917). In defining the scope of the public easement, Pennsyl-

easement is limited to public transit and passage, the Respondent failed to produce any evidence that so circumscribed the scope of the public right-of-way. Nor did the Respondent produce evidence that peaceful handbilling activity was outside the scope of the public right-of-way. To the contrary, under Pennsylvania law, handbilling on a public right-of-way is permissible if it is not coercive, intimidating or violent.<sup>5</sup> Furthermore, Police Officer Hettinger, who was fully credited by the judge, testified that York County Assistant District Attorney Tom Kelly informed him that the handbilling activity engaged in by the union representatives was not prohibited as long as it did not pose a threat or danger to the union representatives or others, and did not impede the flow of traffic. Here, the credited testimony established, contrary to the Respondent's contention, that the Union's handbilling did not pose a threat or danger to anyone and did not impede traffic near the Respondent's facility. Further, the Respondent has not shown by credible testimony that the handbilling was in any way coercive, intimidating, or violent.

Nor do we agree with the Respondent that the Union's handbilling was a "private use of the right-of-way with no reasonable benefit to the public." Rather, we agree with the General Counsel that "there is a substantial public benefit involved in the leafleting activity in question." Section 1 of the National Labor Relations Act states that it is the policy of the United States to safeguard commerce from injury by "protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment . . . ." Section 7 implements the public policy objectives of the Act by guaranteeing employees the "right to self-organization," and the Supreme Court

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vania courts have held that the rights of the public are regarded as being in the exclusive possession of the municipality, which may authorize the use of a public sidewalk for any "public service," but such a use must be specifically authorized by the municipality "by legislative grant in clear words or by unavoidable implication." *Philadelphia v. Street*, supra, citing 46 S. 52d St. Corp. v. Manlin, 398 Pa. 304, 312, 317, 157 A.2d 381 (1960). See also *RKO-Stanley Warner Theatres, Inc. v. Mellon National Bank & Trust Co.*, 436 F.2d 1297, 1303 (3d Cir. 1970).

<sup>5</sup> The Respondent states in its brief that "Pennsylvania courts have found that the private use of the right-of-way with no reasonable benefit to the public is an unauthorized use and is not permissible." However, Pennsylvania courts have also recognized that peaceful protests on a public right-of-way are permissible when free from coercion, intimidation, and violence. See *Indiana Cobra, Inc. v. Food & Commercial Workers Local 23*, 406 Pa. Sup.Ct. 342, 594 A.2d 368 (Pa. Sup.Ct. 1991), end mem. appeal denied 608 A.2d 30 (Pa. 1992); *Frankel-Warwick Limited Partnership v. Hotel, Bartenders & Restaurant Employees Union*, 334 Pa. Super. 47, 482 A.2d 1073, 1075 (Pa. Sup.Ct. 1984).

has squarely held that that right "depends in some measure on the ability of employees to learn the advantages of self-organization from others." *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 113 (1956). Therefore, we conclude that the Union was asserting a public right, and acting in accordance with public policy, when it distributed organizational handbills to employees from the public right-of-way.

In sum, because the Respondent produced no evidence as to the scope of the public easement, it was unable to establish that the Union's handbilling was outside the scope of that easement and that therefore the Respondent was entitled to exclude the union representatives from the public right-of-way. Accordingly, we find that the Respondent has not met its threshold burden under *Indio Grocery* of establishing that it had, at the time it attempted to expel the union representatives, an interest in the property which entitled it to exclude the handbillers from the property. For these reasons, we agree with the judge that the Respondent's actions violated Section 8(a)(1) of the Act.

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Snyder's of Hanover, Inc., Hanover, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*Gabriel A. Terrasa, Esq.*, for the General Counsel.  
*Paul M. Lusky, Esq. (Kruchko & Fries)*, of Baltimore, Maryland, for the Employer.

#### DECISION

##### STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Hanover, Pennsylvania, on October 26, 1999. The charge was filed on November 4, 1998, and the complaint was issued March 31, 1999.<sup>1</sup> The complaint alleges that the Company, Snyder's of Hanover, Inc., violated Section 8(a)(1) of the National Labor Relations Act (the Act) by:

1. Instructing representatives of the Union, United Food & Commercial Workers International Union, Local 1776, AFL-CIO, CLC, to cease distribution of union literature and leave the public property adjacent to the Company's facility.
2. Calling the Hanover, Pennsylvania police to the facility in an effort to remove union organizers from public property; and
3. Engaging in surveillance of employees' receipt of union literature from the union organizers.

The Company, by its timely answer, denied committing the alleged unfair labor practices.

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<sup>1</sup> All dates are in 1998, unless otherwise indicated.

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

## FINDINGS OF FACT

### I. JURISDICTION

The Company, a Pennsylvania corporation, manufactures and distributes snack foods at its facility in Hanover, Pennsylvania, where, during the past 12 months, a representative period, it sold and shipped products and goods valued in excess of \$50,000 directly to point located outside the State of Pennsylvania. During the same period, the Company purchased and received at its Hanover, Pennsylvania facility products, goods, and materials valued in excess of \$5000 directly from points located outside the State of Pennsylvania. The Company 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. The Company and the General Counsel have stipulated that, for this proceeding, the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Facts*

At 2:30 p.m. on the afternoon of October 1, five union representatives arrived at the entrance to the Company's facilities, on State Route 116 (York Street or SR 116) to distribute union handbills to employees, as they entered or exited during a shift change. The five were Patricia Berger, Nicole Mitten, Ken Sudo, Dave Hurlbert, and Pierre Joanis. The Company's plant lies a little more than 225 feet off of SR 116. A paved two-lane tree-lined driveway, 34.5 feet wide, connects the plant to the highway. The Company's employees use this driveway going to and from their work at its plant. There is no traffic light at the intersection of the driveway and SR 116.

Before arriving at the Company's driveway, the five union representatives learned from PennDOT and the local township that a public right-of-way extended 16 feet from the centerline of SR 116 to the Company's property line. The same authorities advised the union representatives that they could conduct their activity so long as they remained on the road side of the utility poles bordering the Company's property. I find from the parties' stipulation and testimony of the Company's plant engineer, Dennis Tavares, that on October 1, there was a right-of-way, running from the middle of SR 116 to a line running tangent to one utility pole near the driveway and a short distance behind the other utility poles located near the edge of the road.

The five union representatives arrived in the vicinity of the Company's driveway in an automobile, which they parked on the shoulder of SR 116, adjacent to the neighboring property of Hanover Foods. They prepared to distribute handbills to company employees as they entered or exited the driveway at 3 p.m. The handbill encouraged company employees to select the Union as their representative for purposes of collective bargaining. Berger and Joanis took up positions on the southwest side of the driveway entrance, also referred to as the left side of the driveway. Their three colleagues stationed them-

selves on the opposite side of the entrance, the right side, as one enters the driveway.<sup>2</sup>

According to Berger's testimony, the five union representatives did not venture inside the utility poles, but remained in the right-of-way. I find from her uncontradicted and credible testimony that the five began handing out union leaflets to incoming and exiting autos, at the top of the driveway.

At about 2:45 p.m. Company Vice Presidents John Bartman and Pat McInerney received word, while at a meeting at the plant, that there were people trespassing on company property and handing out leaflets. The receptionist, who reported the trespass, showed the Union leaflet to Bartman and McInerney. The two company officials left the meeting to observe the asserted trespassing. They walked up the left side of the driveway, toward Union Representatives Berger and Joanis.<sup>3</sup>

Bartman testified that, as he and McInerney walked toward SR 116, he saw five union representatives in the driveway. Bartman further testified that four were between a factory store sign and the road, inside the Company's property line and a fifth was standing about one-third of the way down the driveway toward the plant. According to Bartman, as he and McInerney approached them, the union representatives moved toward SR 116. They all stood in the driveway between the road and the factory store sign, on company property. Bartman testified that the union representatives remained in these positions for the remainder of their stay.

McInerney testified that as he and Bartman approached the front driveway entrance, he saw five people near the entrance. Further, according to McInerney, he saw one of the five very close to the road, three people 25 to 30 feet from SR 116 and one person approximately 70 feet down the drive. McInerney also testified that as he and Bartman moved toward them, the union representatives all moved to within 25 feet of SR 116, and remained there until a police officer arrived and pulled them aside.

According to his testimony, the Company's plant engineer, Dennis Tavares, came out of the factory store at between 2:45 and 3 p.m. and saw about a half dozen union agents in the plant driveway. Tavares also testified that he saw two union agents standing just below the factory store sign, one holding literature and the other handing literature to the driver of a passing vehicle. He also testified that when he first surveyed the scene, traffic was "backed up" at the edge of the driveway and on York Street

Bartman and McInerney approached Berger and Pierre Joanis and came within at most 25 feet of them.<sup>4</sup> McInerney

<sup>2</sup> My findings regarding the union representatives' deployment and arrival at the Company's driveway are based on Berger's testimony which she gave in a candid manner.

<sup>3</sup> My findings regarding how Bartman and McInerney learned of the handbilling are based on their uncontradicted and credible testimony.

<sup>4</sup> According to Berger, McInerney came within 1 foot of her and Bartman stood only 2 feet from her. Bartman testified that he and McInerney were 25 feet from Berger. McInerney denied that he was ever 1 or 2 feet away from any of the female union representatives. Joanis testified that the taller of the two company officials stood 1 or 2 feet from Berger and Joanis. The taller of the two was McInerney. I find it unnecessary to resolve this conflict in testimony.

asked the union representatives if there were any company employees with them. The union representatives said no. McNerney said that the union representatives were trespassing and directed them to leave. During this exchange, the remaining three union representatives were handbilling on the other side of the driveway entrance. The company vice presidents insisted that the union handbillers were trespassing on company property and should leave. The union representatives remained adamant in their refusal to leave and insisted that they were not trespassing. Joanis warned McNerney that he and Bartman were engaging in surveillance.<sup>5</sup>

Bartman announced that he would call the police. Berger said she would wait until the police told her to leave. Bartman walked back to the company building to call the police. McNerney remained in the vicinity of Berger and Joanis arguing with them. The union representatives claimed that they were standing in the right-of-way and accused McNerney of surveillance. At this time, cars were leaving the plant. I find from Berger's testimony that she warned that the Union would file an unfair labor practice charge and that McNerney replied that she might as well be talking to herself.

McNerney retreated down the driveway as Berger was handing union literature to departing cars during the shift change. He stood, looking into car windows and greeting people in the cars by name. In a few minutes, Bartman joined McNerney along the side of the driveway. The two moved a bit further down the driveway and continued to wave at the passing cars as the shifts changed. They also called out to the people in the cars by name.<sup>6</sup> At the same time, Berger was handing to the passing employees the Union's handbills. Tavares also stood along the side of the driveway, waving at passing cars and addressing their occupants by name.<sup>7</sup>

The Penn Township Police Department dispatched Patrolman Guy Hettinger in quick response to Bartman's call. Hettinger's patrol report asserts that he arrived at the entrance to the Company's driveway at 2:57 p.m. The patrol report also stated that the complainant, identified as John "Bartrum," but

<sup>5</sup> I have based my findings regarding the confrontation between McNerney and the union representatives on the testimony of the participants, to the extent their accounts do not disagree. Where there is disagreement as to McNerney's exact language, I find it unnecessary to resolve it.

<sup>6</sup> I based my findings regarding Bartman's and McNerney's waving and calling to employees on Berger's testimony and admissions which the Company made in its statement of position addressed to a field attorney on the Regional Director's staff, dated December 21.

<sup>7</sup> Tavares testified that he returned to the plant when Bartman returned to the driveway. However, Berger testified that Tavares remained along the driveway and joined Bartman and McNerney in waving and calling out to the passing cars. One of Berger's colleagues, Pierre Joannis, placed Tavares at the bottom of the driveway after Bartman had returned to the driveway, and also testified that Tavares was waving and calling out names as cars passed on the driveway toward the union representatives. Berger and Joannis testified about Tavares's presence at the driveway in a full and forthright manner. In contrast, Tavares, seemed uncertain about what was going on along the driveway after the police arrived. On considering the demeanor of the three witnesses, I have credited Berger and Joannis regarding Tavares' conduct as he stood along the Company's driveway.

properly identified as "Bartman" in Hettinger's testimony, "felt" that the five people handing out union literature, referred to in the report as subjects, "were trespassing." Hettinger's report also contains the following account of his action when he arrived at the Company's driveway:

Upon arrival I spoke to [complainant] and Patrick McNerney who advised that they asked the subjects to leave but they refused.

The five subjects were from the United Food and Commercial Workers Local 1776 in Norristown PA. The subjects were standing in front of the entrance to Snyders on the SR 116 right-of-way. They were not blocking traffic or stopping vehicles.

I called Tom Kelly of the DA's office regarding the situation. He advised me that the subjects are legally allowed to be there and are not trespassing.

I advised [complainant] of the information and suggested he contact his attorney for further assistance.

Officer Hettinger's testimony added to, and was consistent with, his official report. He testified that when he arrived at Snyders, he observed the five union representatives standing at the entrance to Snyder's driveway, where the pavement of SR 116 and the driveway meet. He also testified that Bartman and McNerney were standing halfway down the length of the driveway and that there was no traffic in the driveway. According to Hettinger's testimony, the two company officials complained that the five union people were trespassing on the Company's property and Bartman and McNerney also requested that the officer ask the five to leave. Officer Hettinger testified that on hearing this complaint, he went to a corner of the driveway to talk to the five union people.

The police officer testified that he told Patricia Berger and her colleagues of the Company's complaint that they were trespassing and also asked the nature of their activity. Hettinger testified that the union representatives told him that they were handing out union literature. He also testified that one of them asserted that they had a right to be in the right-of-way of SR 116, which extended 16 feet from the yellow line in the middle of the road. Hettinger testified that he took their names, birthdates, social security numbers, and cards from two of the five. He also testified that he told the union representatives that he did not know what a full right-of-way was in that area and that he would have to check on it.

Officer Hettinger testified that he went to his police cruiser and contacted York County's assistant district attorney, Tom Kelley, on a cell phone. According to Hettinger's testimony, he told Kelly about the Company's complaint and reported his observations of the five union representatives' conduct and where they were located with regard to SR 116. Hettinger testified that Kelley advised him that:

[I]f the union representatives were out along side the roadway in what was considered the right-of-way, they were allowed to be there as long as they didn't—did not pose a threat to anyone or not a danger to themselves or anybody else and did not impede the flow of traffic.

According to Hettinger's testimony, he returned to Bartman and McNerney and told them of Kelley's remarks. In his testimony, on direct examination by company counsel, Bartman admitted that Hettinger returned from speaking to "a local district attorney" and asserted that the five union representatives had "a 16-foot right-of-way." On direct examination by company counsel, Vice President McNerney made essentially the same admission. Having offered as evidence, Bartman's and McNerney's testimony containing Hettinger's assertion of his conversation with Kelley, I conclude that the Company has waived its earlier hearsay objection to Hettinger's testimony and his official report regarding the same conversation. *Trouser Corp. of America*, 153 F.2d 284, 287-288 (3d Cir. 1946). Accordingly, I have credited Officer Hettinger's testimony and his report regarding his conversation with Attorney Kelley.

According to Hettinger, he reported his conversation to the five union representatives. His report shows that he departed from the site of their handbilling at 3:16 p.m. I find from Patricia Berger's and Pierre Joannis's testimony that the union representatives left the site at about 3:30 p.m.

In assessing credibility in this case, I have noted that Officer Hettinger was a neutral observer and that his attitude while testifying before me was consistent with that role. He testified in an open and candid manner. I also noted that the testimony of McNerney, Bartman, and Tavares varied regarding where the union representatives stood. I also observed that the three seemed anxious to show that the handbilling caused a traffic backup. Thus, the three did not impress me as reliable witnesses, when compared to Hettinger. Accordingly, I have credited the police officer and have based my findings of fact on his testimony, where it differed from that of Bartman, McNerney, or Tavares. Further, as Hettinger's credited testimony shows that he observed that the five union representatives did not go beyond the top of the Company's driveway, where it meets SR 116, I have credited Patricia Berger's testimony that she and her colleagues did not trespass on the Company's property.

#### B. Analysis and Conclusions

The Board has recognized that an employer's unlawful attempt to interfere with its employees' right under Section 7 of the Act to receive union literature violates Section 8(a)(1) of the Act. *Romar Refuse Removal, Inc.*, 314 NLRB 658 (1994); *Pioneer Press*, 297 NLRB 972 (1990). The Board has also held that an employer violates Section 8(a)(1) of the Act by attempting to thwart nonemployee union representatives in their efforts to communicate with employees from public property adjacent to the workplace. *Lechmere, Inc.*, 308 NLRB 1074 (1992).<sup>8</sup>

<sup>8</sup> In its posthearing brief, the Company, for the first time in this proceeding contends that its property rights extend to the middle of SR 116 and that under State law it could properly prohibit the union representatives from handbilling on October 1. In an effort to support its position, the Company cites State court decisions regarding such property interests. However, none of those decisions discuss peaceful handbilling. Indeed, holdings of Pennsylvania's Supreme Court do not support the Company's position. Instead, the court has recognized that the public retains the right of peaceful protest on the public right-of-way. E.g., *Pennsylvania Labor Board v. Chester & Delaware Counties Bartenders, Hotel & Restaurant Employees Union*, 64 A.2d 834, 837-839 (Pa.

Here, the Company attempted to remove the Union's five non-employee representatives from the public right-of-way as they were distributing a handbill designed to encourage the Company's employees to select the Union as their collective-bargaining representative. The Company sought to remove the union representatives by insisting that they were trespassing and ordering them to leave the public right-of-way, where they were engaging in distribution of the Union's literature to company employees. When the union representatives refused to leave, the Company called on the Penn Township police to interfere with the Union's handbilling. The Company asked the police to remove the Union's representatives, who were attempting to communicate with employees from public property adjacent to the workplace. I find that by these efforts the Company violated Section 8(a)(1) of the Act. *Lechmere, Inc.*, supra.

I also find that the Company engaged in unlawful surveillance of the Union and of the employees' protected activities, when Bartman, McNerney, and Tavares remained along the Company's driveway waving at passing cars and calling out the names of employees in those cars, as the union representatives attempted to hand out literature. I find that the Company's conduct in this regard was likely to discourage its employees from taking the Union's literature. I find, therefore, that by this conduct, the Company violated Section 8(a)(1) of the Act. *Hospital Episcopal San Lucas*, 317 NLRB 54, 59 (1995); *Carter Hawley Hale Stores*, 267 NLRB 385, 402 (1983).

#### CONCLUSIONS OF LAW

1. By instructing union representatives to cease distribution of Union literature and leave the public right-of-way adjacent to the Company's facility, and by calling the Penn Township police in an effort to remove the union representatives from the public right-of-way, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By engaging in surveillance of employees to whom the Union was offering union literature, the Company violated Section 8(a)(1) 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.<sup>9</sup>

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>10</sup>

1949). Accord: *Frankel-Warwick Limited Partnership v. Hotel, Bartenders & Restaurant Employees Union*, 482 A.2d 1073 (Pa. Sup.Ct. 1984). Accordingly, I find no merit in this belated contention.

<sup>9</sup> Contrary to the General Counsel's position, I find that the character and scope of the violations in this case do not warrant a requirement that Respondent's management read the attached notice to employees. Compare *Loray Corp.*, 184 NLRB 557 (1970).

<sup>10</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

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

## ORDER

The Respondent, Snyder's of Hanover, Inc., Hanover, Pennsylvania, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Prohibiting representatives of United Food & Commercial Workers International Union, Local 1776, AFL-CIO, CLC, or any other labor organization, from distributing union literature to employees in the public right-of-way adjacent to its facility.

(b) Attempting to remove representatives of United Food & Commercial Workers International Union, Local 1776, AFL-CIO, CLC, or of any other labor organization, distributing union literature, from the public right-of-way adjacent to its facility.

(c) Engaging in surveillance of its employees receiving union literature from United Food & Commercial Workers International Union, Local 1776, AFL-CIO, CLC, or any other labor organization or participating in any other concerted activity protected by Section 7 of the Act

(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) Within 14 days after service by the Region, post at its facility in Hanover, Pennsylvania, copies of the attached notice marked "Appendix."<sup>11</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, 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 pendency 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 October 1, 1998.

<sup>11</sup> If this Order is enforced by a judgment of the United States court of appeals, the words in the notice "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."

(c) 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 prohibit representatives of United Food & Commercial Workers International Union, Local 1776, AFL-CIO, CLC, or any other labor organization, from distributing union literature to our employees in the public right-of-way adjacent to our facility.

WE WILL NOT attempt to remove representatives of United Food & Commercial Workers International Union, Local 1776, AFL-CIO, CLC, or of any other labor organization, distributing union literature to our employees in the public right-of-way adjacent to our facility.

WE WILL NOT engage in surveillance of our employees receiving union literature from United Food & Commercial Workers International Union, Local 1776, AFL-CIO, CLC, or any other labor organization or participating, in any other concerted activity protected by Section 7 of the Act.

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

SNYDER'S OF HANOVER, INC.