

**Carter's, Inc. and Local 876, United Food and Commercial Workers International Union, AFL-CIO.** Cases 7-CA-43097 and 7-CA-43092

August 21, 2003

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND ACOSTA

On March 28, 2001, Administrative Law Judge Jerry M. Hermele issued the attached decision. The Respondent 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 Respondent's exceptions and brief and affirms the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and adopts the recommended Order as modified herein.<sup>3</sup>

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Carter's, Inc., Petoskey, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(b) and reletter subsequent paragraphs.

"(b) Implementing beneficial changes in wages and handbook policies affecting employees during an election campaign."

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

IT IS FURTHER ORDERED that the rerun election held on May 19, 2000, in Case 7-RC-21554, is set aside and that this case is severed and remanded to the Regional Director for the purpose of conducting a new election.

<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), *enfd.* 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 Respondent excepts only to the judge's conclusions that the Respondent's implementation of wage increases and handbook policy changes violated Sec. 8(a)(3) and (1). We agree with the judge that the timing of the implementation of these changes, shortly before the rerun election, raised an inference of coercion that the Respondent failed to rebut by establishing an explanation other than the election for the timing of its actions. See, e.g., *STAR, Inc.*, 337 NLRB 983 (2002).

<sup>3</sup> We will add Order language addressing the Respondent's unlawful implementation of beneficial changes, and we will substitute a new notice in accordance with *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT prohibit employees from distributing literature in the parking lot.

WE WILL NOT promise employees during an election campaign that we will match employee contributions to the 401(k) plan.

WE WILL NOT impliedly advise employees during an election campaign that beneficial changes are dependent upon employees voting against the Union.

WE WILL NOT implement additional onerous rules during an election campaign.

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

WE WILL rescind the March 2000 changes set forth in the employee handbook regarding employee access and attendance.

WE WILL rescind the oral April 2000 rule prohibiting employees from distributing literature in the parking lot.

CARTER'S INC.

A. Bradley Howell, Esq., for the Acting General Counsel.  
David J. Houston and Claire V. Groen, Esqs. (Foster, Swift, Collins, & Smith, P.C.), of Lansing, Michigan, for the Respondent.

DECISION<sup>1</sup>

I. STATEMENT OF THE CASE

JERRY M. HERMELE, U.S. Administrative Law Judge. The Union, Local 876, United Food and Commercial Workers International Union, AFL-CIO, lost two elections to represent the employees of a Petoskey, Michigan supermarket store owned

<sup>1</sup> Upon any publication of this Decision by the National Labor Relations Board, unauthorized changes may have been made by the Board's Executive Secretary to the original Decision of the Presiding Judge.

by the Respondent, Carter's, Inc.: a June 18, 1999 election and a May 19, 2000 rerun election following objections filed by the Union to the conduct of the first election. On May 25, 2000, the Union filed objections to the rerun election as well and on September 29, 2000, the General Counsel filed a complaint consolidating those objections and alleging several violations of Section 8(a)(1) and (3) of the National Labor Relations Act. In short, it is alleged that the Respondent tainted the rerun election with various illegal benefits bestowed on the employees in early 2000, as well as by imposing more onerous working conditions before the rerun election. In an October 9, 2000 answer, the Respondent denied any violation of the Act.

So, a trial was held in Petoskey, Michigan, on January 17, 2001, during which the General Counsel presented five witnesses and the Respondent presented four witnesses. Both parties then filed briefs on February 27, 2001.<sup>2</sup>

## II. FINDINGS OF FACT

Carter's has 20 supermarket stores in Michigan, including 1 in Petoskey. None of the stores is unionized and prior to 1999 there was only one union organizing drive at a store other than Petoskey. Annually, the Respondent derives gross revenues exceeding \$500,000, and the Petoskey store purchases and receives over \$50,000 annually in interstate goods (GC Exh. 1(e); Tr. 15, 106-107). Overall, Carter's has approximately 1800 employees, including 85 to 90 in Petoskey (Tr. 61).

On April 14, 1999, the Union filed a petition seeking to become the collective-bargaining representative of the Petoskey store employees (GC Exh. 1(a)). But on June 18, 1999, by a vote of 46 to 30, the employees rejected the Union. Then, on February 17, 2000, all parties stipulated to a rerun election, which was held on May 19, 2000. The Union lost this vote as well, 43 to 22 (GC Exh. 1(e)). The Respondent used Ed Ricker as a consultant in its effort to defeat the Union, as he suggested several changes that should be made regarding employee wages, benefits, and access rules on company premises (Tr. 207-209, 226-227, 233).

The Company raised some employee wages in 1987 (R. Exh. 6). And it did so again in 1989 and 1990 (R. Exhs. 7-8). Between 1991 and 1996, another new wage scale was published (R. Exh. 9). And in approximately 1996, Carter's published yet another wage scale for its employees. This 1996 scale contained the starting salaries for 33 categories of employees, the merit increases due after 90 days, 6 months, and each year thereafter, and the top salary for each category. However, raises were not automatic (R. Exh. 1; GC Exh. 4; Tr. 23-24, 30, 71-72, 228-229). Also, this scale was not distributed to employees but was available for any employee to see upon request (Tr. 72-73). When employee Gary Steede asked his supervisor to see the wage scale upon starting work in 1998, however, the supervisor never showed it to him. Before the first election in June 1999 though, Steede saw it during a meeting of employees called by management (Tr. 154-155). Likewise, employee

Norene Bacon, who started in July 1999, was never shown the wage scale until the 2000 election campaign (Tr. 146-148).

Over the years, Carter's has always distributed a handbook to its employees setting forth various company rules and policies. A handbook was created in 1995 but Vice President Glen Minton decided to revise it in late 1998 because of several "vague" matters therein. So, he talked about the changes with the Company's lawyer in January 1999, feeling "a sense of urgency to get it done." According to Minton, the revisions were delayed by the union organizing drive at the Petoskey store and the June 1999 election there (Tr. 91-94, 99, 106). Eventually, the new handbook was drafted in late 1999 and distributed to employees in March 2000 (Tr. 19, 158, 226). There were several new benefits for employees set forth in the new handbook. First, the old handbook merely stated that employees must wear "proper attire" (GC Exh. 2). According to Minton, prospective new employees complained about certain restrictions. So, the new handbook stated that "beards will be allowed," along with "neatly trimmed" sideburns and mustaches. Also, black or blue jeans, "well kept tennis shoes" and "moderate jewelry" were now permitted (GC Exh. 3; Tr. 43, 205-206). Second, bereavement pay was expanded to include grandchildren, daughters-in-law, sons-in-law, brothers-in-law, and sisters-in-law. Also, while the old handbook simply provided for up to 3-days off with pay if the full-time employee attended a funeral, the new handbook specified that the 3-days off would start "with the day of the funeral and working back" (GC Exhs. 2-3; Tr. 58). Third, the threshold for receiving 2 weeks of vacation pay was lowered from 3 years of continuous employment to 2 years, and the threshold for 4 weeks vacation was lowered from 17 to 15 years (GC Exhs. 2-3; Tr. 36, 136).

There were also restrictive changes in the new handbook. One provision provided that:

You are permitted in the building no earlier than fifteen (15) minutes prior to the start of your scheduled work shift and are to leave the premises within fifteen (15) minutes after completing your work assignments and punching out. If you are not working, you should not loiter on company premises.

(GC Exh. 3). This rule was resurrected from a pre-1995 rule in effect at Carter's, as Minton explained it, to combat theft and liability issues (Tr. 39, 213-214). Also, the new handbook said:

If any person tries to illegally coerce, trick, or force you into signing a card, you are encouraged to report it to your supervisor.

This statement was included in a section "What About Unions?" (GC Exh. 3). Lastly, the old handbook provided that employees "should notify their supervisor as soon as possible in advance of the anticipated tardiness or absence," and that poor attendance and excessive tardiness "may lead to disciplinary action, up to and including termination of employment" (GC Exh. 2). The new handbook provided:

If you must leave immediately after work on any particular day for a special appointment, you should notify your manager when you report for work. This will permit

<sup>2</sup> On February 27, 2001, the Acting General Counsel also filed a motion to amend GC Exhs. 1(c) and (m). It is represented that the Respondent has no objection. So, the motion will be granted.

your manager to make plans if extra work is needed in your area.

It is very important that you, as part of the team, notify the store manager or the person in charge of the store as soon as you know you are going to be:

1. Late more than fifteen (15) minutes past your scheduled starting time. If you do not call within this period of time, another Associate will automatically be called to work your schedule.
2. Absent that day. You must personally call EACH DAY to your department manager that you are going to be absent. This enables someone else to be scheduled in your place without damaging our customer service. Absence in excess of more than one (1) day may have to be substantiated by a doctor's report.

Associates who are habitually late are subject to disciplinary action. Excessive lateness is defined as being late more than an average of three (3) times per month.

Associates who are excessively absent are subject to disciplinary action. Excessive absenteeism is defined as being absent more than an average of one (1) day per month. Any Associate who is absent three (3) consecutive scheduled workdays without reporting their absence to their supervisor will be considered an "automatic quit." Associates who fail to report their absence on three (3) different occasions are subject to termination.

You are not to leave your job during your normal work schedule without first obtaining permission from your department manager or the person in charge of the store.

Take only the scheduled time for lunch. If more time is required, obtain your manager's approval. [GC Exh. 3.]

The Company also developed a new wage scale for employees in early 2000. According to Minton, he concluded in late 1998 or early 1999 that the Company's wages "were a serious problem" after examining the written exit interviews completed by departing employees, 17 percent of whom mentioned that low pay was a reason for their leaving. Minton also based his decision on the Company's high employee turnover rate, the low unemployment rate in Michigan, and competitors' higher wages (R. Exh. 2; Tr. 90, 108, 118, 186–187, 230). So, the new wage scale reduced the number of job categories from 33 to 5, renaming all the old categories. The lowest starting rate under the old scale, at \$5.50 per hour, was retained for the new category of service clerk, and the highest rate of \$13 under the old scale for two leader positions was reduced to \$12 in the new scale for the position of journeyman clerk. But the new scale provided increases for each of the five categories after set time periods of service—e.g., after 500 hours, after 1000 hours, after 1500 hours, etc. Thus, henceforth, each employee would know when his next wage increase would come by information regarding the number of accrued hours contained in his paycheck (Tr. 232). Also, department managers, 13 of whom worked at the Petoskey store, would be paid a salary, instead of an hourly wage, equal to 45 hours of work instead of only 40. Further,

cake decorators, assistant department managers, and the night crew received 50-cents-an-hour raises (GC Exhs. 4, 5; Tr. 28, 35, 65, 129, 131–134). Minton visited each company store, including Petoskey in April, and announced the new wage scale (Tr. 147–148, 216). But only Petoskey employees received the new scale in the mail (Tr. 228). Minton told the department managers that despite the change to salaried status they "still needed to use the timeclock" (Tr. 210).

On March 31, 2000, the employee stock ownership plan (ESOP) purchased all of the Company's stock. To inform the employees, the Company posted an announcement on April 19 which stated that "[w]e now have the ability to control our own future as a company, as well as provide a more secure financial position for our associates by building equity in the company" (GC Exh. 9; Tr. 46–47). Then on May 5, the Company informed the employees that the existing "Savings & Profit Sharing Plan 401(k) and Trust" was changed as follows:

Associates can set aside up to ten percent (10%) of their earnings and . . . the company will match in company stock, any amount contributed by associates

Previously, the Company was not required to match employee contributions, and often did not (GC Exh. 8; Tr. 41, 42, 45, 236). On June 30, 2000, however, before it took effect, the Company rescinded this contribution change because it exceeded the ESOP's requirements (GC Exh. 13; Tr. 237–40).

In April 2000, Minton told the Petoskey employees that it was impermissible to place literature on any cars in the store parking lot (Tr. 134). However, the employee handbook provides that:

There shall be no solicitation or distribution of literature of any kind by any Associate during actual working time of the Associate soliciting or the Associate being solicited. This does not apply to rest periods or lunch periods.

Persons who are not Associates may not solicit or distribute literature for any purpose in any customer service area, Associate working area, or any area restricted to Associates only. [GC Exh. 3.]

On April 22, 2000, employee Bruce Lyon was unhappy receiving antiunion campaign literature in his paycheck. So Lyon talked with Petoskey Store Manager Larry Shoaff. Shoaff asked Lyon how things could change for the better at the store. Shoaff had never asked Lyon this before. Lyon told Shoaff, "embrace the union" (Tr. 140–144, 249–251).

On May 11, 2000, Minton sent a letter to the Petoskey employees that read, in part, as follows:

If you look at the union contract between UFCW and Olsen's you will see why they won't talk about improvements. The union has had a contract with them for years, and yet Carter's pays better wages, has better benefits, more flexible work rules and a much better retirement benefit (the 401-K) match, and ESOP, (which is 100% company-paid) than the Union has negotiated for it's dues paying members. Carter's has already proven we don't need the UFCW to put together a good wage and benefit package, and you sure don't need the union dues taken out of your take-home pay.

(GC Exh. 10). And on May 15, Minton sent the following letter to the Petoskey employees, in advance of the May 19 rerun election:

Next Friday is another big day for you and the entire Company. You will, again, be asked to decide whose team leadership you desire—The UFCW Union or the Company. All other Carter Associates will be watching closely to determine if you want to remain on their team or the unions. It's your decision to make, so cast a wise vote.

With each of us having beneficial ownership in the Company (ESOP Plan), the sky is the limit with job opportunities, wages and benefits. Why take a chance of derailing this positive condition for all of us by voting for UFCW Union Leadership? Has the UFCW Union helped the associates of Giant, Kroger, Hamady or Jewel here in Michigan? Why did all these stores close? Is this UFCW Union job security?

Let's look at what our leadership has provided!

A wage scale superior to the UFCW scale at another firm in Michigan which is comparable to ours. No caps on earnings . . . with good performance and increasing knowledge of business, the more potential. This is especially true for all part-time associates. The more they work, the sooner their next wage review. Not like the UFCW Union where associates are only reviewed every six (6) months.

In addition, there are no restrictions on when and where part-time associates can work like there is in union contracts. The cost to the company for the new PKP wage program is \$1,101,766, and it is not done yet. Remember part-time associates pay the same amount in dues as full-time associates regardless of the number of hours worked each week. (See the attached wage schedule).

I have also attached a list of the many benefits Carter associates enjoy without the UFCW Union charging additional fees, dues and assessments for them. The costs annually for Carter's benefit programs are \$3,191,784.92.

As you review these attachments ask yourself who has the greatest interest in your future. Then cast a wise vote on Friday.

Thank you for your patience and understanding in this strained and sticky situation.

A "NO" vote will mean you want to follow Carter's leadership and prosper with us in the future.

The bigger the "NO" vote will clearly tell the union how each of you feel about them and their union.

Attached to this letter was the new wage scale, new vacation policy, new bereavement policy of "up to three days off for Death of an immediate family member," and recapitulation of other existing benefits (GC Exh. 12; Tr. 235). The Union lost the second vote as well, 43 to 22. But on May 25, the Union filed objections to the election, followed by the General Counsel's September 29, 2000 consolidated complaint.

### III. ANALYSIS

The General Counsel and the Union allege 6 unfair labor practices and 14 objections to the Respondent's conduct in early 2000, which despoiled the May 19, 2000 rerun election at the Petoskey store. Specifically, the subjects of dispute are as follows: (a) implementation of a new pay scale for all company employees; (b) beneficial changes in the Company's new employee handbook regarding attire, bereavement pay/funeral leave, and vacation eligibility; (c) new beneficial provisions regarding the ESOP and 401(k) plan; (d) restrictive changes in the new handbook regarding attendance, employee access on company premises, and union solicitation; (e) an April 2000, oral no-distribution rule promulgated at Petoskey; and (f) an April 22 illegal solicitation of grievances by the Petoskey store manager of an employee. The Respondent's main defenses to these charges are that the implementation of the various changes was unconnected to the May 2000 election or so de minimis as not to affect the outcome of the election.

As to the initial allegation, it is concluded that the Respondent's adoption of the new wage scale in early 2000 violated Section 8(a)(1) and (3) of the Act because it was designed to sway employees to vote against the Union on May 19, 2000. First, the timing of the new scale is incredibly suspicious because before 2000 the Company followed no set pattern regarding wage increases. Even conceding that it "was time" for an increase in 2000, the Respondent introduced no evidence that it contemplated increases before the onset of union activity in April 1999, other than Vice President Glen Minton's vague and self-serving testimony that he concluded in late 1998 that low wages "were a serious problem." In this regard, Minton testified that he relied on exit interviews from departing employees to reach this conclusion, but only 17 percent of those interviews even mentioned low wages. Second, aside from the increases themselves, the changes in the structure of the 2000 scale were significant in scope. For example, the 2000 scale reduced the number of job categories from 33 to 5, provided for increases based on the number of hours actually worked by an employee, converted certain employees from hourly to salary basis, and provided for 50-cents-an-hour premiums for three specific employee categories. Third, the Respondent defends the 2000 wage scale based on the fact that it was implemented company-wide, as opposed to at the Petoskey store only. However, the Respondent cites no legal basis in support of this argument. Fourth, while Minton announced the new wage scale at each store, it is significant that only the Petoskey employees received the new scale in the mail. And they received it just days before election accompanied by antiunion literature. In short, the favorable preelection wage revision was undertaken with the express purpose of impinging upon the employees' freedom of choice for or against unionization and was reasonably calculated to have that effect. *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964); *Ideal Elevator Corp.*, 295 NLRB 347, 351 (1989).

Second, the various beneficial changes in employees' vacation eligibility, dress code, and funeral leave/bereavement pay further violated Section 8(a)(1) and (3). Once again, the timing of these changes, established in the Company's March 2000 handbook and distributed to all employees, interfered with the

employees' free choice before the May 19 election. Indeed, the Respondent offered only a vague explanation as to the timing of these changes, claiming that it needed to clarify certain "vague" matters in the old handbook and address some complaints about attire restrictions. But even though the revision of the handbook began in late 1998 it took over a full year to finish, for reasons insufficiently explained other than pending union activity at the Petosky store. While the Respondent claims that these beneficial changes were minor, and thus unlikely to influence the election outcome, these changes must be considered in the context of all the unlawful changes made by the Respondent in the preelection period. Therefore, it is concluded that the beneficial changes set forth in the revised handbook also improperly interfered with the May 19 election.

Third, the May 5, 2000 promise of matching contributions to the employees' 401(k) plan also violated Section 8(a)(1), as did the May 15, 2000 letter to employees urging an antiunion vote, which at the same time reminded employees of various recent beneficial changes, including the March 31, 2000 ESOP purchase of all the Company's stock. Again, the timing of these announcements, just before the May 19 rerun election, is highly suspicious. While the 401(k) change was erroneously promised, that promise was not rescinded until after the election. Moreover, no Respondent witness testified as to rationale for the change in the first place, nor does the Respondent discuss this matter at all in its brief. Therefore, it is likewise concluded that these actions were designed to interfere with employees' free choice in the May 19 election.

Fourth, turning to the onerous changes set forth in the new handbook, the Respondent contends that it adopted the new rule encouraging employees to report anyone "illegally" coercing, tricking or forcing them into signing union cards because of one employee's 1999 complaint about union representatives visiting her at home. While there is no evidence to support this proposition (Tr. 243-245), by limiting the rule to illegal union conduct, it cannot be concluded that employees would reasonably interpret it to include lawful union attempts to persuade employees to sign union cards. Compare, *Nashville Plastic Products*, 313 NLRB 462 (1993) (rule requesting employees who were "bothered" or "harassed" to report it to management violated the Act). Therefore, this change did not violate the Act. Next, the new no-access rule allowed employees to be in the building only 15 minutes before and 15 minutes after the work shift, and prohibited loitering on company premises during nonworking time. This latter clause, however, arguably limited nonworking employees' access to nonworking areas. Further, the Respondent failed to offer a legitimate business reason for this rule, other than vague concerns about theft and liability. Moreover, the timing of the new rule strongly suggests that it was promulgated in response to the union campaign. See *Nashville Plastic Products*, supra. Hence, the rule violated Section 8(a)(1) and (3) and the Respondent will be ordered to rescind it. *Tri-County Medical Center*, 222 NLRB 1089 (1976). Lastly, the new attendance policy was far more specific than the old rule which merely provided that employees should notify their supervisor as soon as possible in advance of an absence or tardiness, and that poor attendance and excessive tardiness could lead to disciplinary action. In view of

the Respondent's failure to provide any justification for the implementation of new rules immediately before the election, a violation of Section 8(a)(1) and (3) has been established. Thus, the Respondent will be required to rescind these rules.

Fifth, in April 2000 Minton told the Petoskey employees that they could not place literature on any cars in the parking lot. But this new oral rule contradicted the handbook, issued just one month before, which prohibited distribution only during working time. Moreover, the Respondent advanced no legitimate business justification for the new rule, thus strongly suggesting that the purpose of this rule was to dampen support for the upcoming union vote. Hence, the oral promulgation thereof violated Section 8(a)(1) and (3) and the Respondent will be ordered to rescind that one too. *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615 (1962).

Sixth and finally, the General Counsel alleges that Petoskey Store Manager Larry Shoaff improperly solicited grievances from employee Bruce Lyon on April 22, 2000, when Lyon complained about receiving antiunion literature in his paycheck and Shoaff asked how things could be improved at the store. But Shoaff did not initiate this meeting nor did he inquire about a specific complaint from Lyon. Also, Shoaff did not promise to remedy Lyon's complaint. Under the circumstances, therefore, the Respondent did not violate Section 8(a)(1). Compare, *Altrex Industries Corp.*, 328 NLRB No. 57 (1999) (not reported in Board volumes) (supervisor explicitly solicited grievances and promised to take action on employee complaint); *American Freightways*, 327 NLRB 832 (1999) (employer promised to fix specific complaints).

In summary, the Respondent committed a variety of illegal acts just before the May 19, 2000 rerun election, involving both beneficial and detrimental changes to the employees' working conditions. On the beneficial side of the ledger, the Respondent implemented a better wage scale, promised to match employee contributions to the 401(k) plan, and implemented a better vacation policy, a more liberal dress code, and better policies regarding bereavement pay and funeral leave. As for detrimental changes, the Respondent tightened rules on attendance, employee access during nonworking time, and distribution in the parking lot. And the Respondent's May 15 mailing to employees was an attempt to discourage a prounion vote by reminding them of the recent benefits. Because of the number of violations, their severity, and the impact on all the employees, the Presiding Judge concludes that the "laboratory conditions" of the May 19, 2000 election were so adversely affected as to warrant setting aside the election result. *Caron International*, 246 NLRB 1120 (1979); *Dal-Tex Optical Co.*, 137 NLRB 1782 (1962). Thus, a new election will be ordered, as well as rescission of the detrimental changes and an appropriate notice posting.

#### CONCLUSIONS OF LAW

1. The Respondent, Carter's, Inc., is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

2. The Union, Local 876, United Food and Commercial Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) and (3) of the Act in early 2000 by implementing various beneficial changes to the employees' wage scale, as alleged in paragraphs 8(a) and (h) and 9(a) of the Acting General Counsel's complaint.

4. The Respondent violated Section 8(a)(1) and (3) of the Act in March 2000 by making various changes to its employee handbook favorable to employees, including a more lenient dress code, better funeral benefits, and better vacation benefits, as alleged in paragraph 8(c) of the complaint.

5. The Respondent violated Section 8(a)(1) and (3) of the Act in March 2000 by implementing more onerous attendance requirements and access rules in the employee handbook, as alleged in paragraph 9(b) of the complaint.

6. The Respondent violated Section 8(a)(1) and (3) of the Act in early 2000 by orally promulgating a rule prohibiting employees from distributing literature in the parking lot, as alleged in paragraph 8(b) of the complaint.

7. The Respondent violated Section 8(a)(1) of the Act in May 2000 by promising employees that it would match employee contributions to the 401(k) plan of up to 10 percent, as alleged in paragraph 8(g) of the complaint.

8. The Respondent violated Section 8(a)(1) of the Act on May 15, 2000, by impliedly advising employees that the improvement to the ESOP and other beneficial changes were dependent upon employees voting against union representation, as alleged in paragraph 8(f) of the complaint.

9. The Acting General Counsel has failed to prove his allegations in paragraphs 8(d) and (e) of the complaint.

10. The Union's Objections 2, 3, 4, 5, 8, 9, and 14 are sustained.

11. The Union's Objections 1, 6, 7, 10, 11, 12, and 13 are overruled.

12. The unfair labor practices and campaign misconduct of the Respondent, described in paragraphs 3, 4, 5, 6, 7, 8, and 10, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Accordingly, IT IS ORDERED<sup>3</sup> that the Respondent, Carter's, Inc., Petosky, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting employees from distributing literature in the parking lot.

(b) Promising employees during an election campaign that it will match employee contributions to the 401(k) plan.

<sup>3</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.

(c) Impliedly advising employees during an election campaign that beneficial changes are dependent upon employees voting against union representation.

(d) Implementing additional onerous rules affecting employees during an election campaign.

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

2. Do the following

(a) Rescind the March 2000 changes set forth in the employee handbook regarding employee access and attendance.

(b) Rescind the oral rule promulgated in April 2000, prohibiting employees from distributing literature in the parking lot.

(c) Post at its facility in Petosky, Michigan, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice on forms provided by the Regional Director for Region 7 after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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, been purchased or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent since February 2000.

(d) 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.

IT IS FURTHER ORDERED that the Acting General Counsel's February 27, 2001 motion to amend General Counsel's Exhibits 1(c) and (m) is granted.

IT IS FURTHER ORDERED that paragraphs 8(d) and (e) of the Acting General Counsel's complaint are dismissed.

IT IS FURTHER ORDERED that the election held in Case 7-RC-21554 on May 19, 2000, is set aside, and that the case is remanded to the Regional Director for Region 7 for the purpose of conducting a new election.

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."