

M. Koppel Company and National Organization of Industrial Trade Unions. Case 22-CA-2915

August 2, 1967

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On May 26, 1967, Trial Examiner William Seagle issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a brief in support thereof.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Trial Examiner's Decision and the Respondent's exceptions and brief, and hereby adopts the findings,² conclusions, and recommendations of the Trial Examiner, as herein modified.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, M. Koppel Company, Newark and Westwood, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

1. Substitute the words "like or related" for the word "other" in paragraph 1(e) of the Trial Ex-

¹ The Respondent's request for oral argument included in its exceptions, is hereby denied as, in our opinion, the record, including the exceptions and brief, adequately present the issues and positions of the parties.

The Respondent's Motion to Reopen the Record, filed separately, is also hereby denied. The additional evidence which the Respondent seeks to introduce is, by its own admission, cumulative, and, in any event, it has not shown that such evidence was newly discovered or that the Respondent was denied an opportunity to introduce such evidence at the hearing.

² The Trial Examiner remarks that the first interrogation by Vice President-Manager Strauss of the sorting-room employees took place before Strauss had received the Union's petition. It is not clear that this is so, as there is a conflict in both the Trial Examiner's Decision and the record as to the exact date of that event. We have therefore, for purposes of this Decision, assumed the facts to be as most favorable to the Respondent; i.e., that the interrogation took place after receipt of the petition.

aminer's Recommended Order.³

2. Substitute the words "on forms provided" for the words "to be furnished" in paragraph 2(b) of the Trial Examiner's Recommended Order.

³ The Trial Examiner recommended a "broad" cease-and-desist order. While his Recommended Order contained a "broad" prohibition, his Notice did not. We do not adopt his recommendation in this regard. In conforming the Recommended Order to the Notice, we are not persuaded that the nature of Respondent's unfair labor practices reveals an attitude of general opposition to the purposes of the Act such as would require a "broad" order.

TRIAL EXAMINER'S DECISION

WILLIAM SEAGLE, Trial Examiner: Upon a charge filed on October 13, 1966, and a complaint issued by the Acting Regional Director on November 23, 1966, this case was heard at Newark, New Jersey, on April 4 and 5, 1967.

It is alleged in the complaint that the Respondent violated Section 8(a)(1) of the Act by various acts of interference, restraint, or coercion, including interrogation of employees, threats of economic reprisals, and the promise of or the grant of benefits, and also that the Respondent violated Section 8(a)(5) of the Act by refusing to bargain collectively with the Union upon its request, although it represented a majority of the Respondent's employees in an appropriate bargaining unit.

Subsequent to the hearing, counsel for the General Counsel and for the Respondent filed briefs, which have been duly considered.

Upon the record so made, and in view of my observation of the demeanor of the witnesses, I hereby make the following findings of fact:

I. THE RESPONDENT

The Respondent, M. Koppel Company, is and, at all material times, has been a New Jersey corporation which maintains its office and plant at 60 Chapel Street, Newark, New Jersey, and a store at 396 Pascack Road, Washington Township, Westwood P.O., New Jersey (hereinafter referred to as the Westwood store), and which has been engaged at the said plant and store in the purchase, sale, and distribution to wholesale and retail purchasers of textile clippings, fabrics, remnants, and related products.

In the course and conduct of its operations during the past 12 months, which is a representative period, the Respondent caused to be sold and distributed to wholesale purchasers at its said plant and store materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were shipped from the said plant and store to wholesale purchasers in interstate commerce directly to States of the United States other than the State of New Jersey.

The Respondent admits that at all material times it has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and I so find.

II. THE LABOR ORGANIZATION INVOLVED

National Organization of Industrial Trade Unions (hereinafter referred to as the Union) is a labor organiza-

tion that has sought to represent the production and maintenance employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The Organizational Background*

The Respondent is evidently a family-type corporation, for its president is Michael Koppel; its secretary-treasurer is his wife, Helga Koppel; and its vice president and manager is Steven S. Strauss, their nephew. The Respondent was formerly located at Passaic, New Jersey, but moved to its present location in Newark, New Jersey, after a fire had occurred at the Passaic plant.

At the time of the events involved in the present proceeding, Michael Koppel, the president of the Respondent, and Helga Koppel, his wife, were not actively running the business, which they had left in charge of Steven S. Strauss, their nephew. Michael Koppel had heart trouble, and, accompanied by his wife, was vacationing at a health resort in Europe. The Koppels had left the United States on August 10 or 11, 1966,¹ and they did not return until September 11, which was a Sunday.

On August 18, which was shortly after the Koppels had left for Europe, Philip Glassman, a union representative, who was in the neighborhood of the Respondent's plant and who was engaged at the time in organizational work, encountered George Thompson, one of the Respondent's employees, and ascertained that the Koppel employees would be interested in having a union to represent them. Glassman gave Thompson some union authorization cards, and between August 18 and 22 seven of the Respondent's employees had signed such cards.² Most of the cards were signed at a meeting attended by some of the employees, the meeting being held at a bar in the neighborhood known as Grace's Bar, or Gracey's Bar.³

During the week of August 23 there were 12 employees on the Respondent's payroll⁴ in the appropriate bargaining unit, which consists of all production and maintenance employees employed at the Respondent's Newark plant and Westwood store, including shipping and receiving employees, but excluding all office clerical employees, confidential employees, professional employees, guards, and all supervisors as defined in the Act.

Under the date of August 23, Louis Lasky, the president of the Union, addressed a letter to the Respondent in which he stated that "a majority of your employees, excluding office clerical and supervisory employees, has authorized our union to represent them for the purpose of collective bargaining," and in which he also requested an early conference "for the purpose of discussing formal recognition of the Union and terms of a collective-bargaining agreement."

Under date of August 24, Strauss promptly acknowledged the receipt of Lasky's letter of August 23 but stated as follows:

Our Mr. Koppel, who is the head of our organization, is presently out of town, and shall [sic] not return until late September, at which time your com-

munication will be brought to his attention [emphasis supplied].

B. *The Violations of Section 8(a)(1) of the Act*

Having refused the Union's demand for recognition, and declined to meet with it, Strauss lost no time in attempting to undermine it. Either the same day that he dispatched his reply to the Union's letter, or the next day, he went into the sorting room of the plant, and interrogated the five girls whom he found there about the signing of the union authorization cards. The five girls were Theresa Howard, Louise Phillips, Arlene Randolph, Helen Dobbins, and Helen Bankston. Each of them was asked by Strauss individually whether she had signed a union card. Each of them denied it until Strauss put the question to Louise Phillips, who admitted it. Strauss then asked her whether she knew what the small print said, and when she said that she did not know, he queried: "You go around signing things you don't know?" Indeed, throughout the interview, Strauss seems to have been in a bad temper, denouncing the Union as a fraud, and behaving as if he knew that the signatures to the union authorization cards had been obtained by fraud. When Helen Bankston admitted also that she had signed a card but stated that her card was at home, Strauss offered: "Come on, I'll take you home and you give it to me" but his offer was declined. Arlene Randolph not only admitted that she had signed a card but also showed it to Strauss, and even asked him whether the girls were in trouble for signing the cards. Strauss' reply was that he did not know and that he would have to get in touch with his lawyer "to find out what kind of union it was."

Strauss' next step was to get in touch immediately with his uncle and aunt in Europe. He wrote them a letter informing them of the union threat. Under date of August 29, the Koppels wrote—in longhand—a three-page letter to their employees. Addressing them as "Dear Employees," they paid lip-service to their right to join or not to join a union but sought to dissuade them from disturbing the "harmonious relationship" which existed between them, and warned them that the upshot of their joining the Union would be that they would have to give up their business altogether. After calling the attention of the employees to their continuation in business despite two heart attacks—this referred to the heart attacks suffered by Michael Koppel—and despite "that terrible fire in Passaic," the Koppels declared:

I have been informed, that without realizing what you signed, the union got a signature from some of you. *This will not be valid and was an unfair act of the union organizer.*

We are only asking for this one favor now: Please do not vote or sign until we return and have a chance to sit down together with you and talk this over as friends. *After all this might mean the continuation of our firm, in other words, will the firm, be able to remain in business. After all you know that I am a sick man and surely will not be able to take all this*

¹ Unless otherwise indicated, all dates hereinafter mentioned should be understood as falling in 1966.

² The seven employees who signed union authorization cards were Luther F. Wilson, Arlene Randolph, Louise Phillips, William James Sussko, Theresa Howard, Helen Bankston, and, of course, George Thompson.

³ It appears in both guises in the record.

⁴ These 12 employees were Helen Bankston, Helen Dobbins, Max Goldman, Ester Goodstein, Betty McCloud, Louise Phillips, Arlene Randolph, Elsie Strauss, George Thompson, Luther Wilson, Theresa Howard, and William Sussko.

excitement, my health would not permit this. [Emphasis supplied.]

The Koppels concluded their letter by asking the employees to let Steven—this, of course, referred to Strauss—send Michael Koppel a telegram assuring them that they would wait until they returned on September 10. Upon its being received, the Koppels' letter was read to the employees by one of them, Helen Dobbins. There is no evidence, however, that any telegram was dispatched to the Koppels on behalf of the employees giving the requested assurance, and, evidently, Michael Koppel became impatient. He finally made a transatlantic telephone call to his nephew, and on September 8, following this telephone conversation, Strauss called into his office one by one the four girls who had signed union authorization cards, i.e., Theresa Howard, Arlene Randolph, Louise Phillips, and Helen Bankston, and told each of them except Theresa Howard that he was giving her a 10-cent-an-hour raise, and would also improve her fringe benefits. Theresa Howard was given only a 5-cent-an-hour raise because she was already making 5 cents an hour more than the other girls. The fringe benefits promised by Strauss were Blue Cross hospitalization insurance and a week's vacation with pay after a year's service. It appears, moreover, from the testimony of Louise Phillips and Arlene Randolph, the only two of the girls who testified about this matter, that the granting of the raises and the promise of the fringe benefits were accompanied by statements of Strauss that he would like to get the union business settled before his uncle came back, or by a request not to do anything about the Union until his uncle came back. Indeed, it would seem that in these interviews Strauss followed pretty much the same line that his uncle and aunt had employed in their letter to all the employees. As Louise Phillips testified:

He was talking and he wanted to know, he said we had been one happy family. He explained, he said, "You know my uncle is a very sick man. We have been in business for years," and I told him, "You see, we didn't sign the card to make it hard for your uncle or anything like that. We signed it to have everything better through the union," and he said, "If that is what you want, I can give you hospitalization . . . and not to do anything else until. . . ."

Similarly, Arlene Randolph testified:

He told me that, like I say, he would like to try to get this settled before his uncle came back and he was going to give us a dime raise starting that day and he was going to bring in a Blue Cross man to talk about that, you know, being covered by Blue Cross and vacation with pay after a year.

It is clear from the testimony of the General Counsel's witnesses that the Respondent violated Section 8(a)(1) of the Act in substantial respects. Strauss, the Respondent's only witness through whom the violations were committed, did not deny his interrogation of the employees or the grant of the wage increases, but he attempted to justify everything he did by explanations which cannot possibly be accepted, for they were contradictory, frequently nonsensical, and sometimes palpably false. Apart from his explanations, Strauss also offered pleas of inexperience, immaturity, ignorance (of the law), and lack

of authority to run the business and to do the very things which, obviously, he was doing, and which he had authority to do.

Strauss' testimony concerning his interrogation of the employees is somewhat incoherent but it was in substance that he was completely surprised by the filing of the Union's representation petition because Glassman had assured him even before he had received Lasky's letter of August 23 that he would take no action until after his uncle had returned from Europe, and that he questioned the girls in the sorting room in order to find out whether they were included in the "factory employees" to whom there was an alleged reference in the representation petition and also in order to determine whether the Union in fact represented a majority of the employees.

In his departure from reality Strauss' testimony concerning his interrogation of the employees is typical of his testimony as a whole. In the first place, the interrogation took place *before* he had even received the petition, for it could not have been received by him until *after* he had received Lasky's letter of August 23 and replied to the letter on August 24. In the second place, it is impossible to believe that he had received any assurances from Glassman that no further action would be taken by the Union before the return of his uncle from Europe because if he had in fact obtained such an assurance, he would have accused the Union, in replying to its letter of August 23, of a breach of faith in failing to honor the supposed assurance. In the third place, the testimony of the girls who were interrogated shows that Strauss questioned them about their signing of the union authorization cards rather than about a representation petition. Finally, although he claimed to be satisfying his curiosity in questioning the employees about the representation petition, when he had received Lasky's letter of August 23, he had not in replying to it manifested the slightest curiosity either as to what the Union meant by "a majority of your employees" or as to whether it in fact represented a majority of the employees.

The tactic he had decided on was to play for delay, to try to hold the Union off at least until his uncle should return from Europe. Once having made this decision, there was no longer any conceivably legitimate reason for questioning any of the employees about their signing of union authorization cards. Once the petition had been filed, there was equally no conceivably legitimate reason for questioning any of the employees, for all the questions which were, supposedly, puzzling him would have been decided in the representation proceeding initiated by the filing of the petition. It seems hardly necessary to point out, moreover, that the obviously uneducated factory girls were the last persons in the world who could have explained to the educated Strauss the scope of the bargaining unit sought by the Union.

It is apparent that the actual purpose of the interrogation of the girls by Strauss was to intimidate them and to frighten them into withdrawing their support from the Union. All the circumstances of the interrogation were plainly coercive. Strauss, in his approach to the girls, manifested anger rather than the spirit of inquiry, and by making unfounded accusations of fraud against the Union and stupidity on the part of the girls, he was hardly giving them assurances against reprisals. Indeed, when asked for such an assurance, Strauss declined to give it until he had consulted a lawyer.

I also cannot regard the Koppel letter of August 29 as

an exercise of the privilege of free speech, although this is claimed for it. If there were nothing more in the case than the letter itself, there might be some room for argument. But the letter was preceded by the coercive interrogation of the employees, in which they were upbraided for joining the Union, and the letter from the Koppels plainly indicated that they shared Strauss' view that the employees had been deceived by the union organizer, and that they, too, would regard as invalid the union authorization cards which they had signed. Under these circumstances, the employees could only regard as a threat the further intimation that Michael Koppel would be forced to discontinue the business to preserve his health. The fact that he actually had severe heart disease made the threat more credible and its execution more imminent.

Strauss was no more successful in attempting to justify the pay raises and the promises of other benefits than in attempting to justify his interrogation of the employees. The evidence shows that back in July 1966 four of the girls, who had been hired after the plant moved to Newark, had demanded a 10-cent-an-hour raise. Michael Koppel had refused to give them any raise, and they had threatened a walkout. He had then given them a 5-cent-an-hour raise and promised them another 5-cent-an-hour raise some time later. In giving them, except for Theresa Howard, a raise of 10 cents an hour, Strauss obviously had exceeded the raise that had been promised to them by his uncle, and he was not, therefore, merely implementing his uncle's promise. Similarly, the evidence shows that there had been some talk about hospitalization insurance while the Koppels were located in Passaic but nothing had come of it because the Koppels then had too few employees, apparently, to meet Blue Cross coverage requirements. The girls to whom hospitalization insurance was promised in September 1966 were hired after the move to Newark, and they knew nothing, of course, about the abortive Blue Cross inquiry in Passaic.

In contending that he was merely carrying out previous promises when he gave the girls raises and promised them other benefits in September 1966, Strauss involved himself in particularly absurd contradictions. He performed the feats of testifying that it had always been the practice of the Koppels of giving raises of 10 cents an hour, although he also testified that his uncle had told him that he had given the girls 5 cents an hour in July 1966, and he himself had given Theresa Howard only a 5-cent-an-hour raise in September 1966; that raises were always given on the basis of individual merit, although in September 1966 they were given to all four of the girls who had signed union authorization cards; that he had no authority to give raises on his own, although his uncle in the transatlantic telephone conversation had not told him how much of a raise to give the girls, and he, therefore, had to make the decision on the amounts of the raises, that in giving the four girls the raises he was only carrying out his uncle's promise to them, although he also testified that he did not learn what raises his uncle had promised the girls until after the charges in the present case had been investigated. These extraordinary efforts must be regarded, alas, as wholly wasted, for the credible evidence establishes that the raises were given and the other benefits were promised explicitly as substitutes for what

the employees hoped to obtain through the Union.

C *The Violation of Section 8(a)(5) of the Act*

It is evident from the testimony of the employees who signed union authorization cards and who were witnesses at the hearing, i.e., Theresa Howard, William Sussko, George Thompson, Louise Phillips, and Arlene Randolph, that they were in no way deceived, but knew perfectly well that they were signing union authorization cards which would enable the Union to represent them. Although Helen Bankston and Luther Wilson were not witnesses at the hearing, Glassman testified that both of them were present at the organizational meeting of August 22, at which most of the union authorization cards were signed, and that the card of Luther Wilson was signed in his presence at this meeting. The card of Helen Bankston was signed on August 22 and was mailed to the Union, which had possession of it when the Union's letter of August 23 was written to the respondent, and the Respondent stipulated at the hearing that Helen Bankston had signed her card.

In the course of his testimony Strauss related, to be sure, that on August 26 he had had a conversation with Luther Wilson who told him that he had signed his authorization card just to be one of the gang, and because all the other employees had told him that the card was "just an address card." The Respondent did not produce Luther Wilson as a witness, and considering the character of Strauss as a witness, I do not accept his uncorroborated testimony concerning his alleged conversation with Luther Wilson. But even if I were to accept Strauss' testimony it would not serve to invalidate Luther Wilson's card. It would not be evidence of misrepresentation but would merely establish that the motive which led him to sign his card was an example of the familiar bandwagon psychology which frequently obtains in union organizing campaigns. As for Wilson's union authorization card being just an address card, there is even greater reason to doubt that he told that to Strauss. In any event, if he did, it was the literal truth, for each card bore in print on its reverse side the Union's address, to make it convenient for the signer to mail it in to the Union.

The validity of the union cards is also attacked in general because each card bore the legend: "All information will be held strictly confidential." I fail to perceive how this legend produced any infirmity in the cards. They were union membership application cards, as well as cards expressly authorizing the Union to represent the signer and to bargain on his or her behalf with the employer. The legend only expressed what is common practice among labor organizations who attempt to keep information received in connection with membership applications or authorization cards as confidential as possible, and who, as a rule, seek to exhibit such cards only to neutral third parties. The legend was not a promise that the Union would never show the cards to anyone. Literally, the card only contained a promise that the *information* would be kept strictly confidential. The card itself was, obviously, not secret because it was an open card designed to be sent through the mails.⁵ But even if the legend on the cards must be construed as going beyond this they would still be valid.⁶

⁵ See the comment of the court in *NLRB v Hobart Brothers Company*, 372 F.2d 203, at 205

⁶ See, for instance, *Consolidated Rendering Company, d/b/a Burlington Rendering Company*, 161 NLRB 1, 12

Since during the week of August 22 there were 12 employees on the Respondent's payroll in the appropriate bargaining unit, and the Union had 7 validly signed union authorization cards, it had a clear majority unless for some other reason any of the card signers must be disqualified. The eligibility of Theresa Howard and William Sussko is challenged on the ground that when they signed their cards they were temporary employees. But this contention is based on the testimony of Strauss, and I reject it, for it is even more incredible than the rest of his testimony.

Theresa Howard was employed by the Respondent in January 1966, and she left voluntarily on September 9. She became pregnant in July but she planned to continue to work until December. When she left on September 9, however, her pregnancy had nothing to do with her departure. The reason was that she had a crippled child who was on crutches and who had to be taken to a therapist three times a week. When Michael Koppel would not let her come in later than usual, she had no alternative but to quit.

Strauss testified that he regarded Theresa Howard as a temporary employee from the time that he learned that she would be leaving because of her pregnancy,⁷ and in his direct testimony he fixed the time of his obtaining this knowledge as "early July." If this were indeed true, he would have learned of her pregnancy almost before she did, and perhaps this explains why he changed his testimony on cross-examination to "late July." In fact Strauss did not know that Theresa Howard was pregnant until the time that she quit on September 9, for he testified in the representation proceeding initiated by the Union after its request for recognition had been denied that at this time "her pregnancy hadn't taken that state where you could tell."⁸ Indeed, if Strauss had known about her pregnancy on September 8, and expected her to quit her employment for this reason, he would hardly have given her even a nickle raise on September 8. Although Theresa Howard was planning to quit work in December, the Board has held it to be immaterial that an employee intends to quit after an election and subsequently carries out the intention.⁹

So far as William Sussko is concerned, he started to work for the Respondent in July 1966 and quit of his own accord on September 16. On his direct examination, Strauss testified both that Sussko was hired on a trial or probationary basis, and also that he was hired to work during the busy cutting season that extended from July into October, although it was not he who had hired Sussko but his uncle. Strauss also testified that Sussko's work proved unsatisfactory, but since he had no authority to terminate Sussko's employment, he intended to discuss the matter with his uncle when he returned from Europe. Before he could do so, Sussko quit. But, if, in fact, Sussko was a probationary employee and his work was so unsatisfactory, it is difficult to understand why Michael

Koppel had not discharged him during the considerable time that elapsed between his hiring and his own departure for Europe, or during the 5-day period between Michael Koppel's return from Europe and the day that Sussko quit his employment. I regard Sussko's "probationary" or "busy season" status—two ideas that are in themselves contradictory—as only another one of Strauss' uninspired inventions. The fact is that every eligibility list submitted to the Board's Regional Office in connection with the representation proceeding includes the name of William Sussko. The last of such lists was transmitted with a covering letter dated October 10, 1966, in which it was stated that Sussko was no longer with the Respondent, "due to the fact that he has not shown up for work since September 16, 1966." It is not mentioned in this letter, of course, that Sussko was hired as a probationary employee, or only for the busy season.

I conclude, therefore, that when the Union requested in its letter of August 23 recognition and bargaining because it represented a majority of the Respondent's employees it did in fact represent 7 of the 12 employees in the appropriate bargaining unit, or a clear majority of the employees in the bargaining unit. I also conclude that Strauss' refusal to accord such recognition pending the return of his uncle from Europe in "late September" was not motivated by a good-faith doubt that the Union represented a majority of the employees but by opposition to the principle of collective bargaining itself and the desire to gain as much time as possible¹⁰ to undermine the Union by unfair labor practices designed to destroy its majority.

Counsel for the Respondent now argues that it cannot be found guilty of violating Section 8(a)(5) of the Act because the Union never made a proper request in its letter of August 23 for recognition and collective bargaining, failed to define the bargaining unit, and in filing the representation petition, which it subsequently withdrew, sought to exclude from the bargaining the two employees at the Westwood store. It seems to me plain, however, that the Union's letter of August 23 did contain a plain request for recognition and collective bargaining and that, while the Union did not precisely define the bargaining unit, the language used was broad enough to include not only the plant employees but also the two Westwood store employees, in which unit the union did in fact have a majority. Since all the card signers were Newark plant employees, the Union did have a majority in either of the alternative units. In any event, the contentions now advanced are only the afterthoughts of counsel. In rejecting the Union's request for recognition and bargaining the respondent did not do so on any of these grounds, but merely sought delay.

Since the Union in fact had a majority in the appropriate bargaining unit, the Respondent violated Section 8(a)(5) of the Act by insisting on an election and employing the time thus gained to dissipate the Union's

⁷ "As soon as an employee is pregnant," Strauss declared, "they are temporary."

⁸ The hearing in the representation proceeding was held on September 14, 1966.

⁹ See *Personal Products Corporation*, 114 NLRB 959, 961, and *Ely & Walker*, 151 NLRB 636, 654.

¹⁰ In attempting to explain why he had stated in his letter of August 24 to the Union that his uncle would not return from Europe until late in September, although he actually had returned much earlier, Strauss testified that his uncle returned earlier than he had intended because he felt better.

I find it difficult to accept even this testimony because the Koppels in their letter of August 29, written only 5 days after Strauss' letter of August 24, gave the date of their return as September 10. This leads me to conclude that the Koppels had planned before they left to return when they actually did return. They continued to play for delay after the present proceeding was commenced by repeatedly applying for and obtaining through their counsel adjournments of the hearing for a period totaling more than 4 months on the ground of Michael Koppel's ill health, although he was not a necessary witness.

majority. However, even if there can be said to be a technical flaw in the Union's request that would prevent a finding of an 8(a)(5) violation, it has long been settled that this would not afford a basis for withholding a bargaining order. A bargaining order has been held to be appropriate where a majority of the employees have duly authorized the union to represent them, and the evidence shows that the employer has engaged in 8(a)(1) violations calculated to undermine the union's majority.¹¹

As is usual in cases of this sort counsel for the Respondent relies on *N.L.R.B. v. Flomatic Corporation*, 347 F.2d 74 (C.A. 2), which was decided by a divided court, and in which the majority refused to enforce the Board's bargaining order on the ground that the 8(a)(1) violations were *de minimis*. This decision has no application, however, in the circumstances of the present case which include substantial violations. Moreover, the Second Circuit itself has confined *Flomatic* to its precise facts, and pointed out that in this case there was no demand and refusal to bargain.¹² Furthermore, the *Flomatic* decision has been explicitly repudiated in *United Steelworkers, AFL-CIO [Northwest Engineering Co.] v. N.L.R.B.*, 376 F.2d 770, (C.A.D.C.), and has not been followed in other circuits or in Board decisions.¹³

IV. THE REMEDY

In view of the serious nature of the Respondent's unfair labor practices, I shall recommend a broad form of cease-and-desist order restraining the Respondent from infringing on any of the rights guaranteed to employees by Section 7 of the Act.

By way of affirmative relief, I shall recommend that the Respondent be directed, upon request of the Union, to bargain collectively with it as the exclusive representative of the respondent's employees in the appropriate bargaining unit and embody in a signed agreement any understanding which may be reached.

CONCLUSIONS OF LAW

1. The Respondent, M. Koppel Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, National Organization of Industrial Trade Unions, is a labor organization within the meaning of Section 2(5) of the Act.

3. By coercively interrogating its employees; by threatening to go out of business if the employees supported the Union; by granting some of its employees wage increases and promising them other benefits, in order to induce them to refrain from supporting the Union, the Respondent interfered with, restrained, and coerced its employees in the rights guaranteed to them in Section 7 of the Act, and thereby committed unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act.

4. All the production and maintenance employees at

the Respondent's Newark, New Jersey, plant and Westwood, New Jersey, store, including shipping and receiving employees, but excluding all office clerical employees, confidential employees, professional employees, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times since August 22, 1966, the Union has been the representative for the purposes of collective bargaining of a majority of the employees in the appropriate bargaining unit, as aforesaid, and, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in the said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other terms and conditions of employment.

6. On August 23, the Union requested the Respondent to bargain collectively with it as the exclusive representative of all the employees in the appropriate unit, as aforesaid, with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment.

7. By refusing at all times since August 24, 1966, to bargain with the Union collectively as the exclusive representative of all the employees in the appropriate bargaining unit, as aforesaid, in order to undermine the Union and to destroy its majority status, the Respondent has committed unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

RECOMMENDED ORDER

Upon the entire record of this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that the Respondent, M. Koppel Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees coercively concerning their union sympathies and activities.

(b) Threatening their employees with economic reprisals, including loss of employment, because of their support of the Union.

(c) Granting its employees wage increases or promising its employees economic benefits in order to induce them to refrain from supporting the Union.

(d) Refusing to bargain collectively with the Union with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment.

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action in order to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Union as the exclusive representative of the employees in the bargaining unit hereinbefore described as appropriate with respect to rates of pay, wages, hours of employment,

¹¹ See, for instance, *D H Holmes Company, Ltd. v. N.L.R.B.*, 179 F.2d 876 (C.A. 5); *N.L.R.B. v. Joe and Mike Calderera, d/b/a Falstaff Distributing Company* 209 F.2d 265 (C.A. 8); *Editorial "El Imparcial" Inc. v. N.L.R.B.*, 278 F.2d 184, 187 (C.A. 1); *Piasecki Aircraft Corporation v. N.L.R.B.*, 280 F.2d 575 (C.A. 3); *Teamsters Local 152 v. N.L.R.B.* 343 F.2d 307, 309 (C.A. D.C.); *N.L.R.B. v. Delight Bakery, Inc.*, 353 F.2d 344 (C.A. 6)

¹² See *Irving Air Chute Co. v. N.L.R.B.*, 350 F.2d 176, 182 (C.A. 2);

and *N.L.R.B. v. Gotham Shoe Mfg. Co.*, 359 F.2d 684, 687 (C.A. 2).

¹³ See *Engineers & Fabricators, Inc.*, 156 NLRB 919, 935, fn. 16; *Sheboygan Sausage Company, Inc.*, 156 NLRB 1490, 1517, fn. 66; *Copeland Oil Co., Inc.*, 157 NLRB 126, 136; *Dayco Corporation*, 157 NLRB 1459, 1469; *Ralph Printing & Lithography Co.*, 158 NLRB 1353, fn. 22; *Goodyear Tire & Rubber Company Retread Plant*, 159 NLRB 834, 841, *National Can Corporation*, 159 NLRB 647 fn. 63; *Wylte Manufacturing Company*, 162 NLRB 799, fn. 36.

or any other term or condition of employment, and embody in a signed agreement any understandings which may be reached.

(b) Post at its plant at Newark, New Jersey, and at its store in Westwood, New Jersey, copies of the attached notice marked "Appendix."¹⁴ Copies of the said notice, to be furnished by the Regional Director for Region 22, after being duly signed by an authorized representative of the Respondent, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where such notices are usually displayed. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Recommended Order, what steps have been taken by the Respondent to comply therewith.¹⁵

¹⁴ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

¹⁵ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 22, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES OF OUR NEWARK PLANT AND WESTWOOD, NEW JERSEY, STORE

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL, upon request, bargain collectively with National Organization of Industrial Trade Unions, as the exclusive bargaining representative of our employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and any other term or condition of employment, and, if an understanding is reached, WE WILL embody such understanding in a written, signed agreement.

The bargaining unit is:

All production and maintenance employees at our Newark, New Jersey, plant and Westwood, New Jersey, store, including shipping and receiving employees but excluding all office clerical employees, confidential employees, professional employees, guards, and supervisors, as defined in Section 2(11) of the Act.

WE WILL NOT coercively interrogate our employees concerning their union sympathies and activities.

WE WILL NOT threaten our employees with economic reprisals, including loss of employment, because of their support of the Union.

WE WILL NOT grant wage increases to our employees or promise our employees economic benefits in order to induce them to refrain from supporting the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

All our employees are free to become or remain, or refrain from becoming or remaining, members of any labor organization, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the National Labor Relations Act.

M. KOPPEL COMPANY
(Employer)

Dated _____ By _____ (Representative) _____ (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark, New Jersey 07102, Telephone 645-2100.