Ansul Incorporated *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 30–CA–13991

October 29, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On May 27, 1999, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering 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,[1] and conclusions only to the extent consistent with this Decision and Order and to adopt the recommended Order as modified.

In February 1997,[2] the Union began to organize the Respondent's employees. Between April and May the Respondent assigned additional work to its hand portable assemblers. As a consequence, portable assembler Pam Larson approached Production Superintendent Lilian Sterzing and requested a job evaluation. (A possible consequence of such an evaluation would be a raise in pay for the position.) Other employees made similar requests to Sterzing. On July 22, Employee Relations Manager William Reimer told Larson that the Respondent would complete the evaluation by August 31.

On August 7, the Union filed a petition for a representation election in a unit of the Respondent's production and maintenance employees, which included the hand portable assemblers. On August 15, the Regional Director approved a stipulated election agreement between the parties and scheduled an election for September 18.

Shortly after August 31, Larson pointed out to Sterzing that the deadline for the evaluation had passed. Sterzing then went to Reimer who responded that he would try to convene a meeting of the job evaluation team. That meeting took place on September 9, and the team decided to increase the pay for the hand portable assembly position by two pay grades. Consistent with the Respondent's existing practice, Reimer prepared a memorandum that would inform the employees of the change. Following the advice of counsel, however, Reimer did not issue the memorandum. Instead, on September 10, Reimer and Sterzing read the following message to the hand portable assemblers.

> As you know, Ansul began a review of various production classifications in early 1997 to determine whether each classification, including your hand portable assembler position, fell within the correct grade.
>
> You may also recall that in June of this year each of you provided information regarding your job to assist us in that review.
>
> We have now completed our evaluation of your classification and again thank you for your input.
>
> However, we believe that we cannot legally announce the results of that review at this time.
>
> As you also know, the NLRB has scheduled an important election on September 18, 1997, and each [of] you are [sic] eligible voters in that election. Strict election rules protect employees against interference by an employer or a union.
>
> We are concerned that any announcement at this time might be viewed as an effort to influence the outcome of the NLRB election.
>
> In order to avoid even the appearance of such an effort, we have decided to postpone an announcement of the results of our classification review until the election results have been finalized.
>
> At that time the Company will then announce the results of its review and will do so regardless of the outcome of the election.
>
> Your patience and understanding is [sic] appreciated.

The judge found that this statement interfered with, restrained, and coerced the employees in the exercise of their right to support the Union, and thereby violated Section 8(a)(1), because the Respondent failed to assure the employees that the evaluation results would not change regardless of whether the Union was voted in. We disagree.

In *Uarco Inc.*, 169 NLRB 1153, 1154 (1968), the Board held that an employer may postpone a wage or benefit adjustment during an organizational campaign if the employer makes clear to the employees that the ad-

[1] For the reasons discussed in the judge's decision, we affirm his finding that the Respondent violated Sec. 8(a)(3) and (1) by demoting union supporter Jean Dausey and reducing her wages because of her outspoken support of the Union. Contrary to our dissenting colleague, we agree with the judge that the Respondent's actions with regard to Dausey were motivated by her publication of a prounion letter the day before her demotion was announced. In this regard, although our colleague correctly observes that the Respondent did not otherwise retaliate against Dausey even though she was a known union supporter during the entire organizing campaign, we find that the absence of other retaliation does not warrant a different result. Dausey published the letter in response to Production Manager Natalie Wolski's criticism of employees who issued union literature without signing it. The letter sparked a negative reaction from Dennis Orszulak, the Respondent's general products operations manager, who had originated several anti-union circulars distributed by the Respondent during the campaign. The decision to demote Dausey was made the next day by Wolski, who had previously voiced opposition to the Union. In these circumstances, we agree with the judge that the timing of the transfer strongly suggests that it was motivated by the Respondent's, and especially Wolski's, pique at Dausey's publication of the letter in response to Wolski's comments. We also agree with the judge, for the reasons stated by him, that the Respondent's shifting reasons for its actions lack support in the record and are pretextual.

[2] All dates refer to 1997.

justment would occur whether or not they select a union and that the sole purpose of the postponement is to avoid the appearance of influencing the election's outcome. The Respondent's statement clearly states that the reason for the postponement was to avoid the appearance of tainting the election, and it explains that the Respondent will announce the results of the review regardless of the outcome of the election. This is all that is required under the *Uarco* standard. We do not believe that a reasonable employee would have interpreted the Respondent's statement as suggesting that the Respondent might alter the results of the classification review depending on the outcome of the election. Accordingly, we reverse the judge's finding that the Respondent's statement violated Section 8(a)(1).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Ansul Incorporated, Marinette, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(a) and reletter the subsequent paragraphs.

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

MEMBER HURTGEN, dissenting in part.

Unlike my colleagues, I would reverse the judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by temporarily reassigning Dausey to work as a hand portable assembler.

The judge found, and I assume arguendo, that the General Counsel has established a prima facie case that a reason for the Respondent's action was Jean Dausey's union activities. I find below, however, that the Respondent has rebutted the prima facie case by showing that it would have reassigned Dausey even absent her union activities.[1]

The Respondent contends that the need for Dausey to work as an assembler was greater than the need for her work as a trainee backup welder, and that this was the motivation for reassigning her. The uncontested evidence shows that the Respondent was experiencing production problems in its "red line" hand portable assembly area as a result of employee transfers to a different production area (the "21st Century" area). This personnel shortage peaked around late August and early September. Nonetheless, the Respondent expected Production Superintendent Lilian Sterzing to continue to meet "red line" production quotas. During or following a production meeting on September 9, Sterzing informed fellow supervisors of her need, and she made a request for additional help. Supervisor Natalie Wolski volunteered to reassign Dausey, having made a judgment that Dausey was an appropriate choice for the job and could be spared.[2]

Until her reassignment to assembly work, on September 12, Dausey had been working essentially full time for 4 months as a trainee backup welder. The backup welder training program was 12 months long. The Respondent had a practice of reassigning trainee backup welders during the training period.[3] The Respondent's interruption of Dausey's training for temporary reassignment to critical work as an assembler, 4 months into her training period, was consistent with the Respondent's practice.[4]

The Respondent assigned employee Pursley to do any necessary backup welding work during Dausey's temporary reassignment. Pursley was senior to Dausey as a backup welder.[5] Moreover, the Respondent only needed Pursley's services as a backup welder 2 times (for 2–3 days each) during the period of Dausey's temporary reassignment. This fact supports the Respondent's position that there was a greater need for Dausey in hand portable assembly than in welding.

Although I have assumed arguendo that the General Counsel established a prima facie case, I note that there are substantial weaknesses in that case. These weaknesses give added support for my conclusion that Respondent's reassignment of Dausey was motivated by lawful reasons. I note that the Respondent had opposed the union from the beginning, and had been aware of Dausey's union support since May or June 1998. Dausey's continued progress as a welding trainee, her receipt of wage increases during the preelection period, and her subsequent promotion into a machine operator job, are all at odds with my colleagues' conclusion that the Respondent was bent on retribution against her union support.[6]

[1] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

[2] The Respondent maintained in the personnel files of each employee an "employee profile," documenting his or her qualifications to work in various jobs and classifications. Dausey's file showed that she was well qualified to perform the work of hand portable assembly.

[3] According to Employee Relations Manager William Reimer, the welders "bounced back and forth" between assignments and pay classifications. Trainee backup welder Larry Pursley testified that his training as a backup welder was not continuous and that he was reassigned to other work from time to time.

[4] There is no evidence that any other qualified employee was similarly available.

[5] The record contains evidence that the Respondent employed seniority as a basis for at least some job and training assignments, include backup welding. Pursley had trained as a backup welder before Dausey. At the relevant time, he had obtained a different job with Respondent as a metal conditioner.

[6] I also note that the absence of any 8(a)(1) conduct. My colleagues rely on the fact that Manager Dennis Orszulak spoke with Dausey about her September 8 letter and that the letter "sparked a negative reaction" from Orszulak. The judge found that Orszulak met Dausey at the plant and commented that he had seen her letter, Dausey asked Orszulak's opinion of the letter, and Orszulak replied that Dausey was "wrong" and that he disagreed with her. I do not quarrel with my colleagues' characterization of Orszulak's reaction as "negative." How-

For the reasons set forth above, I find convincing the Respondent's contention that it temporarily reassigned Dausey for business reasons. It was the need for a qualified, additional hand in the hand portable assembly area, and Dausey's availability, that motivated the reassignment. Thus, I find that the Respondent would have reassigned Dausey even absent her union activities. Accordingly, I would reverse the judge and dismiss this allegation and the complaint, in its entirety.

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 demote, reassign, discharge, impose wage reductions or otherwise discriminate against any employee for supporting International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, or any other union.

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.

WE WILL make employee Jean Dausey whole for any loss of earnings and other benefits suffered as a result of her unlawful demotion and wage reduction, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to Jean Dausey's unlawful demotion, and within 3 days thereafter notify her in writing that this has been done and that this demotion will not be used against her in any way.

ANSUL INCORPORATED

Percy J. Courseault, Esq., for the General Counsel.
Donald J. Calms, Esq. (Lindner & Marsack), of Milwaukee, Wisconsin, for the Respondent.

ever, a negative reaction, if not coercive, is lawful. Under the circumstances, I would not find Orszulak's comments to Dausey coercive. Further, the General Counsel has not shown that Orszulak or any other agent of the Respondent took any retaliatory action against Dausey.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Green Bay, Wisconsin, on February 1 and 2, 1999. Upon a charge filed September 15, 1997,[1] by the Union, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, a first amended charge filed by the Union on September 16, a second amended charge filed by the Union on September 18, a third amended charge filed by the Union on December 12, and a fourth amended charge filed by the Union on February 25, 1998, the Regional Director for Region 30 issued a complaint on March 6, 1998, alleging that Respondent, Ansul Incorporated (Ansul) had violated Section 8(a)(1) and (3) of the Act, by announcing a pay increase to employees on the same day the Acting Regional Director for Region 30 announced that the Union had withdrawn a petition for an election among Ansul's employees, and by demoting employee Jean Dausey, and reducing her wages, because she supported the Union. Ansul, by its answer to the complaint denied committing the alleged unfair labor practices.

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

FINDINGS OF FACT

I. JURISDICTION

Ansul, a corporation, manufactures, sells at nonretail and distributes fire protection equipment at its facility in Marinette, Wisconsin, where it annually sells and ships products valued in excess of $50,000 directly to customers located outside the State of Wisconsin. Ansul 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 and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Wage Increases

The Union began a campaign to organize Ansul's employees in February. The record shows that from May 16 until on or about September 16 Ansul issued letters and handbills to its employees expressing its opposition to the Union's effort. There was no allegation in this case that any of these letters and handbills violated the Act.

Between April and May, Ansul assigned additional work to its hand portable assemblers. In June, portable assembler Pam Larson approached Production Superintendent Lilian Sterzing, an admitted supervisor[2] and requested a job evaluation. Soon, other portable assemblers approached Sterzing with similar requests. Sterzing asked Larson to review the new job description for hand portable assemblers, discuss the changes with her colleagues, and then notify Sterzing when she had completed the discussions. Sterzing would set up a series of meetings with Employee Relations Manager William Reimer. Sterzing set up the first meeting for June 6.

[1] All dates are in 1997 unless otherwise indicated.

[2] Sterzing was married in 1998. Her surname at the time of the hearing was Wauters.

On July 22, Reimer told employee Larson that Ansul would complete the evaluation for the hand portable assemblers, also known as the red line, by August 31. Reimer made a note of this commitment and filed it in his office. Larson told Sterzing of Reimer's commitment. Sterzing told Larson: "OK. That sounds great. What I'm going to do is put a little note up on my wall to tell us to keep active on it and keep following through with Bill [Reimer] on that." Indeed, Sterzing wrote such a note, dated it July 30 and initialed it "L. S." and put it up on a bulletin board in back of her desk.[3]

On August 7, the Union filed a petition for a representation election in a unit of Ansul's production and maintenance employees, which included Pam Larson and the other hand portable assemblers. On August 15, the Regional Director for Region 30 approved a Stipulated Election Agreement between Ansul and the Union. An election among Ansul's production and maintenance employees was scheduled for September 18.

Soon after August 31, Pam Larson approached Sterzing and pointed out that the August 31 deadline for the job evaluation had passed without any word of a reclassification. Sterzing raised the job evaluation and the deadline with William Reimer. Reimer replied that he would try to convene a meeting of the job evaluation team and "get working on it." Sterzing was a member of that team.

Reimer and the job evaluation team met on September 9. The team decided to increase the pay for the hand portable assembly position by two pay grades. On the same day, Reimer prepared a memorandum for distribution to members of Ansul's management announcing that the hand portable assembly position had been raised from grade 9 to grade 11 and that, effective September 9, the hourly pay of employees in that grade would rise from $11.40 to $12.30. However, on advice of Ansul's counsel, Reimer did not issue this memorandum. I find from Reimer's testimony that Ansul's practice has been to issue a written announcement of the results of a job evaluation within a day of the evaluation.

However, on September 10, Reimer and Sterzing went to the hand portable assemblers, on each of the two shifts that Ansul was operating, and read the following message to them, without deviating from this text:

> As you know, Ansul began a review of various production classifications in early 1997 to determine whether each classification, including your hand portable assembler position, fell within the correct grade.
>
> You may also recall that in June of this year each of you provided information regarding your job to assist us in that review.
>
> We have now completed our evaluation of your classification and again thank you for your input.
>
> However, we believe that we cannot legally announce the results of that review at this time.
>
> As you also know, the NLRB has scheduled an important election on September 18, 1997, and each [ofj you are [sic] eligible voters in that election. Strict election rules protect employees against interference by an employer or a union.
>
> We are concerned that any announcement at this time might be viewed as an effort to influence the outcome of the NLRB election.
>
> In order to avoid even the appearance of such an effort, we have decided to postpone an announcement of the results of our classification review until the election results have been finalized.
>
> At that time the Company will then announce the results of its review and will do so regardless of the outcome of the election.
>
> Your patience and understanding is [sic] appreciated.

On September 17, the Acting Regional Director for Region 30 issued an order approving the Union's request to withdraw its petition for an election among Ansul's production and maintenance employees. On the following day, Reimer issued a memorandum to Ansul's management announcing the results of the evaluation of the hand portable assembler position. On the same day, Reimer and Sterzing told the hand portable assemblers of their higher grade and their increased hourly wage, effective September 9.

The Board has recognized that an employer may postpone an expected wage increase in the face of a representation election as long as it "[makes] clear to employees that the adjustment would occur whether or not they select a union, and that the 'sole purpose' of the adjustment's postponement is to avoid the appearance of influencing the election's outcome." *Atlantic Forest Products*, 282 NLRB 855, 858 (1987), quoting from *Uarco Inc*., 169 NLRB 1153, 1154 (1968). In the instant case, Ansul's message to the portable assemblers, in it's announcement of September 10, was that after," "the Company will then announce the results of its review and will do so regardless of the outcome of the election." Absent from this message is a clear assurance that the results of that evaluation would not be changed depending upon the outcome of the election. Thus, Ansul left the hand portable assemblers to ponder whether a vote for the Union would cause Ansul to come up with a negative result in its evaluation. I find, therefore, that by omitting such a clear assurance, Ansul left employees to worry about the fate of a possible wage increase if the Union won the election. Thus, I find that Ansul's message interfered with, restrained, and coerced its employees in the exercise of their right to support the Union, and thereby violated Section 8(a)(1) of the Act. *Shelby Memonal Home*, 305 NLRB 910, 918 (1991), enfd. 1 F.3d 550, 558 (7th Cir. 1993).

B. Jean Dausey's Transfer and Wage Reduction

1. The facts

Ansul hired Jean Dausey on November 9, 1994, and assigned her to its labor pool at an hourly wage of $7.73. On March 17, Dausey worked in the cartridge area as a labor pool employee. Her hourly wage was $8.76. Effective May 12, Ansul assigned Dausey to a postion as a backup shell welder, at an hourly wage of $12. This position had a 1-year training period. During the next 4 months, Ansul gave Dausey three wage increases. Effective August 11, Dausey's hourly wage as a backup shell welder was $13.31.[4]

Dausey contacted the Union in February in an effort to organize Ansul's employees. During the Union's ensuing campaign at Ansul, Dausey solicited support for the Union among her fellow employees, organized union meetings with Ansul's employees, sent out flyers and made phone calls, all on the

[3] My findings regarding the job evaluation are based on Wauters' and Reimer's uncontradicted testimony.

[4] My findings regarding Dausey's employment history are based on her uncontradiicted testimony and Ansul's records, which have been received in evidence.

Union's behalf. In addition, Dausey openly voiced support for the Union at Ansul's department meetings, and in discussions with her supervisor, Natalie Wolski, during the summer of 1997. On August 7, the Union filed its petition for a representation election among Ansul's production and maintenance employees.

During the preelection campaign, Dausey's supervisor, Production Manager Natalie Wolski, criticized employees who issued prounion literature without signing it. Wolski distributed some of Ansul's antiunion literature to employees and expressed her sentiment to Dausey about employees signing prounion literature.

On September 8, Dausey issued and signed a prounion letter addressed: "To my fellow co workers." This letter was Dausey's response to Wolski's criticism of employees who did not stand up for their rights by signing their prounion literature. The following sentences in the last paragraph of Dausey's letter reflected her purpose in issuing it: "I am signing this letter to show you that there should be no fear in your opinion. By law we have the right to organize without fear.''

Dausey placed copies of her letter in plant lunchrooms and left copies in the Union's office for employees who were members of the plant organizing committee. On the same day, Dennis Orszulak, Ansul's operations manager, standard products, met Dausey at the plant and said he had seen her letter. Dausey asked his opinion of her letter. Orszulak replied that she was wrong and disagreed with her. Orszulak had been shown as an originator on five of the antiunion circulars that Ansul issued during the preelection period.[5]

Soon after she began work on September 9, a foreman instructed Dausey to report to the hand portable packout area in Ansul's building 29, on Monday, September 15. On that date, Dausey began working as a hand portable assembler at an hourly wage of $10.11. In her new assignment, Dausey worked on an assembly line, as part of a team, attaching a hose to a shell strapping it to the shell, putting the assembly in a box to be sent through a machine and then on to a pallet. The only skill that the packout process required was knowing how to set up the machine. Two of the employees on her team knew how to set up the machine. I find from Dausey's testimony, and her timecards, that Ansul resumed her to backup welding on October 6 and restored her hourly wage to $13.31.

Production Superintendent Lilian Sterzing, who was the production manager in building 29, had asked Natalie Wolski, Dausey's immediate supervisor, to send anyone she could "free up" to help get production up in building 29. Sterzing testified that she had a daily production meeting which Wolski attended. According to Sterzing, she asked Wolski for help on September 12 or 13 and Wolski offered Dausey. However, Sterzing seemed uncertain as she testified about the date of her request to Wolski. This uncertainty and Dausey's uncontradicted, straightforward testimony that on September 9, a foreman told her to report to building 36 on September 15 caused me to reject September 12 or 13 as the date of Sterzing's request. I find, instead, that Sterzing made her request on the morning of September 9.

Sterzing expected Wolski to designate a labor pool employee for assignment as a hand portable assembler in building 36. I find from Sterzing's testimony that she did not ask Wolski for either Dausey or any specific employee to help train the other team members on the hand portable assembly line. It was Wolski, who named Dausey as the filler for the assembly line. Indeed, Sterzing admitted on cross-examination that, based on her experience at Ansul, she was prepared to accept a labor pool employee. According to Sterzing, to have Dausey assigned to the hand portable assembly line provided "(a) big plus."

[5] My findings regarding Dausey's union activity and her encounters with Wolski and Orszulak are based on Dausey's uncontradicted testimony.

2. Analysis and conclusions

The General Counsel contends that Ansul violated Section 8(a)(3) and (1) of the Act when it transferred Jean Dausey from her backup shell welding position, paying $13.31 per hour, to a hand portable assembler position, and cut her hourly wage by $3.20 because she openly supported the Union. Ansul urges rejection of the General Counsel's contention on the ground that he has not made a prima facie showing of unlawful motive. I find that the General Counsel has provided adequate support for his contention.

It is axiomatic that an employer violates Section 8(a)(3) and (1) of the Act by taking adverse action against an employee because he or she engaged in union activity. See *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 400–403 (1983); *NLRB v. Dorothy Shamrock Coal Co*., 833 F.2d 1263, 1266 (7th Cir. 1987). Under Board policy, where the record shows that an employer's hostility toward union activity was a substantial or motivating factor in a decision to take adverse action against an employee, the adverse action will be found unlawful, unless the employer shows, as an affirmative defense, that it would have taken the adverse action against the employee even in the absence of the union activity. *NLRB v. Transportation Management*, supra at 402–403, affg. *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996). Where it is shown that the business reason or reasons advanced by the employer for the adverse action either did not exist or were not in fact relied upon—it necessarily follows that the employer has not met its burden and the inquiry is logically at an end. *Wright Line*, supra at 1084.

There can be no doubt that Dausey's open, and often expressed, support for the Union was well known to Ansul"s management. She spoke for the Union at Ansul's department meetings during the preelection campaign. Further, Dausey supported the Union in discussions with her immediate supervisor, Natalie Wolski, who voiced antiunion sentiment during their exchanges.

Dausey's letter of September 8 to her fellow employees strongly supported the Union's campaign. Also, in the same letter, Dausey encouraged her readers to express prounion sentiment without fear. She declared that that she was signing the letter to show that there should be no fear in openly supporting the Union. The letter also carried the assurance that the law gave to the employees "the right to organize without fear." Dausey issued this letter in response to Wolski's contention that the employees would not stand up for their rights as long as they refrained from signing their names to the prounion literature they were issuing. Thus did Dausey take up her supervisor's challenge.

Dausey issued her letter on September 8, 10 days before the scheduled representation election among Ansul's production and maintenance employees. Prior to that event, Ansul had clearly shown hostility toward the Union's organizing cam-

paign. During the preelection period, from May until September 15, Ansul's management issued a stream of antiunion literature. Dausey's letter ran counter to Ansul's effort to discourage employee support for the Union. Indeed, on the very day she issued the letter, Dennis Orszulak, a member of Ansul's management, who was one of the sources of much of its antiunion literature, challenged the sentiments Dausey had expressed in it. Thus, I find it likely that Wolski and other members of Ansul's management were aware of Dausey's letter and found it offensive.

The timing of the message announcing Dausey's reassignment to assembly work strongly suggests that Dausey's letter provoked Wolski. Dausey received the reassignment message only 1 day after she had distributed a letter in which she encouraged other employees to join in the Union's organizing effort without fear, a letter she had signed to show that she was standing up for her statutory right to support a union. This letter was Dausey's answer to Wolski's challenge. The timing of Wolski's decision, on the morning of September 9, to remove Dausey from her welding position paying $13.31 per hour and transfer her to an assembler's position paying $10.11 provided considerable support for the General Counsel's contention. Wolski's antiunion attitude adds to that support.

Sterzing's surprise at hearing Wolski offer to send Dausey to be a hand portable assembler adds substantially to the General Counsel's showing of unlawful motive. As a backup shell welder with 4 months' training, Dausey had, according to Sterzing's testimony, become a skilled employee. When she approached Wolski about assigning an employee to the assembler position, Sterzing expected to receive an unskilled employee, a member of Ansul's labor pool. According to Sterzing, her expectation in this regard was based on Ansul's practice of assigning labor pool employees to unskilled positions. Thus, the record showed that Wolski went out of her way, and abandoned Ansul's policy, to reduce Dausey's hourly wage by $3.20 and interrupt her training as a welder. In view of the timing of Wolski's decision to offer Dausey for assembly work, Wolski's antiunion sentiment, and her departure from Ansul's practice, I find that the General Counsel has made a stongshowing that Dausey's union activity motivated that decision.

I find no merit in Ansul's shifting and inconsistent explanations for demoting Dausey on September 15. That Ansul has resorted to a variety of excuses for its conduct toward Dausey suggests that it was hard pressed to camouflage the real motive. The initial explanation came in Ansul's letter of January 23, 1998, to a Board attomey. There, counsel explained that Ansul had demoted Dausey on September 15, "because she had completed her training in the backup [welding] position." However, the record shows that Dausey had not completed 12-month training course. She had trained for only 4 months.

In the same letter, Ansul asserted that on September 15, it had resumed Dausey "to her pretraining assigned tasks of assembling hand portable units." This assertion contradicts Dausey's personnel record showing that her pretraining assigned job title had been "LP-Cartridge." There was no mention of hand portable assembly work on her record until September 15. Here, again, the record did not help Ansul's explanation.

Ansul's second position letter, dated February 18, 1998, repudiated its earlier explanation. Ansul now insisted that the only reason for Dausey's "return to the assembly area" was "a pressing need . . . for other skills which Ms. Dausey possessed." In its posthearing brief, Ansul revised this explanation, asserting that it was Sterzing's pleas for "qualified trained assemblers." However, neither version finds support in the record. Sterzing's testimony showed that she was not seeking a skilled employee of Dausey's caliber. On the contrary, Sterzing testified that she was seeking help from the unskilled employees in the labor pool. There was no showing that the labor pool was unable to provide the help Sterzing sought.

Finally, the record does not support Ansul's suggestion, in its second letter, that without Dausey, Ansul had sufficient welders for the week of September 15 and the following 2 weeks. Thus, I find from the testimony of employee Larry Pursley that twice after September 15, Ansul removed him from his metal conditioning work and assigned him to welding. Ansul did this notwithstanding that Pursley had rejected the backup welding position, which Dausey wanted. In sum, I find that Ansul's proffered defense of its decision to demote Dausey is pretextual.

I have considered the strong evidence of unlawful motive and Ansul's failure to rebut it. I find that the General Counsel has sustained his burden of showing by a preponderance of the evidence that Ansul demoted Dausey and reduced her wages because of her outspoken support of the Union's organizing campaign at Ansul's Marinette plant. I further find that, by this demotion and wage cut, Ansul violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

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

2. The Union, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By telling its employees that the announcement of the results of its classification review was being postponed until after the results of a pending representation election, without assuring its employees that the results of the review would not be changed regardless of whether the Union won or lost the election, Ansul 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.

4. By demoting employee Jean Dausey and reducing her hourly wage because she supported the Union, Ansul violated Section 8(a)(3) and (1) of the Act.

REMEDY

Having found that Ansul 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. Ansul, having demoted employee Jean Dausey and reduced her hourly wage from $13.31 to $10.11, must make her whole for the period from September 15, 1997, until Ansul returned her to backup welding on October 6,1997, by paying to her the difference between the two wage rates for all hours she worked during this period plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I shall also recommend that Ansul be required to remove from its files any reference to Dausey's demotion. Further, I shall recommend that Ansul be required to notify Dausey that it has removed the references to that unlawful demotion and that it will not use it against her in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Ansul Incorporated, Marinette, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that previously scheduled announcements of classification reviews, wage increases or other benefits are being withheld because of employees' support for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, or for any other labor organization.

(b) Demoting, reassigning, discharging, imposing wage reductions, or otherwise discriminating against any employee for supporting International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO.

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

(b) Within 14 days from the date of this Order, remove from its files any reference to Jean Dausey's unlawful demotion, and within 3 days thereafter notify her in writing that this has been done and that the demotion will not be used against her in any way.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Marinette, Wisconsin, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. 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 September 10, 1997.

(e) 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.

[6] 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.

[7] 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."