

Wal-Mart Stores, Inc. and United Food and Commercial Workers International Union, AFL-CIO, CLC. Cases 25-CA-27387-1 and 25-CA-27389-1

November 28, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS
LIEBMAN AND WALSH

This case¹ presents two issues: (1) whether the judge correctly found that the Respondent violated Section 8(a)(1) of the Act by discriminatorily prohibiting union organizers from handbilling at its Noblesville, Indiana store, and by discriminatorily contacting the police and causing them to warn the handbillers that they were trespassing; and (2) whether the judge correctly dismissed the allegation that the Respondent violated Section 8(a)(1) by engaging in surveillance of union activity at its Muncie, Indiana store.

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 rulings, findings,² and conclusions of the judge as modified herein and to adopt the recommended Order as modified.³

1. For the reasons set forth below, we agree with the judge's conclusion that the Respondent discriminatorily applied its solicitation/distribution policy at its Noblesville, Indiana store by unlawfully prohibiting union organizers from handbilling while allowing other organizations to solicit, and by contacting the police and causing them to warn the handbillers.

On August 4, 2000,⁴ the Respondent, in a memo notifying its store managers of potential union activity, set

forth a solicitation/distribution policy that, inter alia, prohibits solicitation and distribution activities inside the Respondent's stores. With regard to solicitation and distribution activities outside a store, the policy states: "Insure that the individuals are not blocking the entrances and exits, and are at least 15 ft. away."

Carrie Shrock, an assistant manager at the Noblesville store, testified that she had "responsibilities" for dealing with solicitation issues and that when someone wanted to solicit on the Respondent's store property, she would "notify them that they would have to [be] outside the building about 15 feet away from the door." Shrock further testified that she told a person who was soliciting inside the building that he would have to leave, but, consistent with policy, she explained that the solicitation had to be 15 feet outside the building. Thus, according to Shrock's uncontradicted testimony, the Respondent not only permits solicitation on its premises, but also actually informs solicitors of its policy of permitting solicitation at least 15 feet from the entrance.

On August 15, union organizers Alberta Jordan-Rigsby and Jeffrey Kimbrough distributed union literature near two entrances at the Respondent's Noblesville store.⁵ There is no evidence that either organizer was blocking an entrance or exit. An assistant manager asked the two organizers to leave and, shortly thereafter, a second assistant manager told them to leave, adding that the Respondent did not support unions. Neither manager mentioned that they could solicit as long as they stayed at least 15 feet outside entrances and exits. Subsequently, Assistant Manager Jeff Staton called the police. When patrolman Timothy Hendricks arrived at the store, Staton told Hendricks that the two organizers did not have permission to handbill, and requested that they receive a warning for trespassing. Hendricks then warned the organizers that they were trespassing and asked them to leave. The organizers left the store.

The record shows that the Respondent's solicitation policy allows solicitation activities on its property, outside its stores, at least 15 feet from entrances and exits. The record further shows that the Respondent informs prospective solicitors of this policy. Yet at the Noblesville store, the Respondent did not inform union organizers Jordan-Rigsby and Kimbrough of its solicitation policy. Nor did it permit them to solicit at least 15 feet from

¹ On December 14, 2001, Administrative Law Judge Jerry M. Hermele issued the attached decision. The Charging Party filed exceptions and a supporting brief and an answering brief to the Respondent's cross-exceptions. The Respondent filed cross-exceptions and a supporting brief, an answering brief to the Charging Party's exceptions, and reply briefs to the Charging Party's and the General Counsel's answering briefs to the Respondent's cross-exceptions. The General Counsel filed an answering brief to the Respondent's cross-exceptions.

² 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.

³ We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996). Further, we shall substitute a new notice in accordance with our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

⁴ All subsequent dates are in 2000 unless otherwise indicated.

⁵ We agree with the judge that the distribution of the handbills, including the handbill concerning women's employment issues, was concerted activity. *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50, 66 (1975).

the entrances and exits of the store.⁶ Instead, the Respondent insisted that they leave the premises. The record, thus, establishes that the Respondent's actions towards Jordan-Rigsby and Kimbrough were inconsistent not only with its written policy, but also with its practice of explaining the policy to solicitors and giving them the opportunity to comply with that policy.⁷

The Respondent's failure to inform the union organizers at the Noblesville store of its solicitation/distribution policy, and its failure to apply the policy to them, establish that the Respondent discriminatorily prohibited union agents from engaging in lawful handbilling of employees while allowing other persons or organizations to engage in similar solicitation. Accordingly, we find that the Respondent's actions toward Jordan-Rigsby and Kimbrough at the Noblesville store violated Section 8(a)(1) of the Act.⁸

2. We also agree with the judge that Muncie, Indiana Support Manager Douglas Roof did not engage in unlawful surveillance when he sat on a bench outside the store entrance for about 30 minutes, watching the organizers distribute handbills. We emphasize that Roof acted in response to a complaint from a customer.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Wal-Mart Stores, Inc., Noblesville, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2.

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

"(a) Within 14 days after service by the Region, post at its store in Noblesville, Indiana, copies of the attached notice marked 'Appendix.'² Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized repre-

⁶ In light of the Respondent's failure to follow its policy or practice, we find it unnecessary to determine where, in fact, the union organizers were situated at the Noblesville store.

⁷ The Respondent's actions toward the union organizers' handbilling at the Noblesville store stand in contrast to its actions toward union handbilling activities at its Muncie, Indiana store. There, the Respondent followed its policy. Support Manager Douglas Roof did not tell the organizers to leave the property. Rather, Roof not only told them about the 15-foot rule, but also came to an agreement with them about exactly where they could stand.

⁸ Chairman Battista notes that the Respondent discriminated against the Union by treating the Union differently than it treated all others with regard to solicitation. Accordingly, he finds it unnecessary to reach the issue of whether an employer violates the Act by allowing solicitation by charitable organizations while restricting solicitation by all others (including unions).

sentative, 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 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 August 15, 2000.

"(b) 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."

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

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 discriminatorily prohibit union agents from engaging in lawful handbilling of employees on our premises while allowing other organizations to engage in solicitation on our premises.

WE WILL NOT discriminatorily contact the police and cause the police to warn union agents who are engaged in lawful handbilling of employees on behalf of United Food and Commercial Workers International Union, AFL-CIO, CLC on our premises.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WAL-MART STORES, INC.

Kim Sorg-Graves, Esq., for the General Counsel.
John T. Neighbours and *Stuart Buttrick, Esqs. (Baker & Daniels)*, of Indianapolis, Indiana, for the Respondent.
George Wiszynski, Esq., of Washington, D.C., for the Union.

DECISION

STATEMENT OF THE CASE

JERRY M. HERMELE, U.S. Administrative Law Judge. In a June 29, 2001, complaint, the General Counsel alleges that the Respondent, Wal-Mart Stores, Inc. (Wal-Mart), violated Section 8(a)(1) of the National Labor Relations Act (the Act) regarding handbilling by the United Food and Commercial Workers International Union, AFL-CIO, CLC (the Union), at two Wal-Mart stores in Indiana on August 15, 2000. The Respondent denied these allegations in answers filed on July 12 and August 17, 2001.

This case was tried on August 30 and 31, 2001, in Indianapolis, Indiana, with the General Counsel calling five witnesses and the Respondent calling three witnesses. All parties, including the Union, then filed briefs on October 25, 2001.

FINDINGS OF FACT

Wal-Mart, the major retailer in the United States, owns two stores in Noblesville and Muncie, Indiana, both of which derive annual gross revenue over \$500,000, and purchase and receive interstate goods exceeding \$50,000 (GC Exhs. 1(e), (g), and (h)).

The Company's written policy regarding solicitation and distribution of literature at its stores is as follows:

Selling Areas:

Solicitation and/or distribution of literature is not permitted at any time in selling areas during the hours the store is open to the public.

Working Areas:

Distribution of literature is not permitted at any time in working areas.

Non-Associates:

Solicitation and/or distribution of literature by non Associates is prohibited at all times in any area of the store.

(GC Exh. 2.) But the Company allowed solicitation such as people leaving written material on car windshields in the parking lot (Tr. 345-46).

On August 4, 2000, the Company sent a memorandum to its stores regarding "Potential Union Activity in August." Therein, the memorandum stated, "We have information that the United Food & Commercial Workers Union may plan to disrupt our business over the next few weeks." In this connection, the Company wrote:

Solicitation/Distribution of Literature Policy (PD-38):

This policy should be reviewed in Pipeline (click on the link above.) The basics of the policy are that we *do not* allow anyone to solicit or distribute literature *inside* our facilities. Should a member of management witness some type of solicitation they should follow the steps listed below.

Plan of action if solicitation takes place *inside* the building:

1. Approach the individual soliciting/distributing *inside* the facility.
2. Identify yourself as a member of Wal-Mart management.
3. Inform them that our policy does not allow solicitation/distribution of literature within our building.
4. Ask them to refrain from soliciting/distributing literature.
5. If they refuse, a member of management should stay with them and another should call the union hotline for additional instructions.
6. Under no circumstances should anyone engage in any confrontation.
7. Call the Union Hotline if you have any solicitation distribution of literature (501-273-8300).

Picketing or Leafleting outside the facility:

Should anyone attempt to picket or leaflet outside the facility, management should address it in the following way:

Plan of action for picketing or leafleting *outside* the facility:

1. Insure that the individuals are not blocking the entrances and exits, and are at least 15 ft. away.
2. If leafleting, insure that the individuals are personally handing out the leaflets. Do not allow leaflets to be placed on car windshields, etc.
3. Place additional trash barrels clearly marked "TRASH" outside the entry doors.
4. Safety sweep the store frequently to insure no leaflets get left in the store by customers, or dropped on the floor.
5. Call the Union Hotline (501)273-8300, and be prepared to fax a copy of the leaflet. [GC Exh. 3.]

Union organizer Alberta Jordan-Rigsby handbilled at about 50 Wal-Mart stores in 2000. She knew about the Company's new rule requiring that leafleting occur at least 15 feet away from a store's entrance (Tr. 145, 200-201). On August 15, 2000, she and Jeffrey Kimbrough, another union organizer who had never handbilled at a Wal-Mart store before, arrived at the Wal-Mart store in Noblesville, Indiana, at 2 p.m. They both distributed two pieces of union literature to Wal-Mart employees wearing either company vests or name tags. One leaflet read: "Get a Union and Get a Say" and the other leaflet discussed the lack of promotions of women employees at "Wally World." (R. Exh. 2.) The latter leaflet did not specifically mention the benefits of the Union, but did state that the "UFCW is distributing this information to women employed at Wal-Mart to inform them about public interest and women's legal groups working against discrimination in employment." Jordan-Rigsby stood near one entrance and Kimbrough was at the other entrance, a few hundred feet away. According to Jordan-Rigsby, she was 10 to 15 or 12 to 15 feet away from the store entrance (Tr. 146-149, 219, 265-267, 285). About 10 minutes later, an assistant manager came outside and asked them to leave. According to Jordan-Rigsby and Kimbrough, it was

Jeffrey Staton, but Stanton denied it was him. Stanton testified that he first saw the handbillers inside the store vestibule, located just before a customer meets the store greeter, measuring about 20 by 30 feet, and housing such things as pop machines and video games. In either event, Jordan-Rigsby told this individual that the lawyers from the Union and Wal-Mart had agreed that handbilling could occur if the store entrances were not blocked and customers were not interfered with. So, she continued to handbill. Then, another manager, Patty, came outside and told them to leave, adding that Wal-Mart did not support unions. (Tr. 106–107, 120, 150–155, 186, 267–269.) Usually, according to assistant manager Carrie Shrock, she would tell solicitors to stand about 15 feet away from the door (Tr. 178).

Staton was told that the handbillers were in the vestibule handing out leaflets, whereupon he called the Noblesville police department after being unable to contact the Wal-Mart union telephone hotline. Patrolman Timothy Hendricks then arrived. He saw Jordan-Rigsby and Kimbrough handbilling outside, 10 feet from the store entrance. They told Hendricks that they had permission to be there but Hendricks told them to step into the store's vestibule so that he could talk with the manager. Jeff Staton and Jeff Stadick, two assistant managers, met them in the vestibule along with other members of management. According to Staton, and Assistant Manager Carrie Shrock, the handbillers were getting loud. Either Staton and/or Stadick then told Hendricks that they did not have permission to handbill and he requested that they receive a warning for trespassing. Hendricks so warned them, told them to leave, and Jordan-Rigsby and Kimbrough obeyed (Tr. 114, 118, 121–122, 126, 130, 136, 156–160, 185, 189, 244–248, 259, 270–273).

Jordan-Rigsby and Kimbrough next visited the Wal-Mart store in Muncie, arriving at 4:30 p.m. Again, they handbilled 5 to 15 feet from the store's entrance. Support Manager Douglas Roof learned of their presence and he walked outside, telling them to remain 15 feet from the store entrance. Jordan-Rigsby told Roof of an agreement between the Company and the Union giving them permission to handbill. Roof said the handbillers had to be at least 15 feet away. So, Roof, Jordan-Rigsby, and Kimbrough eventually agreed on a point 15 feet from the entrance, whereupon Roof returned into the store again (Tr. 30–31, 62–64, 75, 83–84, 97, 161–166, 220–221, 274–277, 317). Shortly thereafter, after following the Company's August 4, 2000, memorandum, Roof instructed an employee to bring two trash cans outside, notwithstanding the existence of two trash cans already near the entrance. A sign marked "Trash" was taped to each can, brought outside, and they were placed between the handbillers and the store entrance. According to Roof, he did not want customers to think that these cans were sales items. Further, he wanted the store's parking lot to remain free of any discarded union leaflets. Moreover, trash cans were previously put out near vendors selling food outside the store. (Tr. 67, 76, 79, 85, 166–167, 277–278, 317–320.)

Shortly thereafter, Roof called the Company's "union hot line." Then, a customer complained to Roof about being bothered by the handbillers. So, Roof returned outside and smoked a cigarette at a bench near the entrance, located about 25 feet from the handbillers, from where he and two other Wal-Mart

workers watched the handbillers. Roof usually smoked either there or at the side of the building. One of those workers had a walk-talkie, which all management personnel carried. According to Roof, he wanted to ensure that the handbillers stayed 15 feet away and did not bother any more customers. After about five or 10 minutes he returned to the store. According to Jordan-Rigsby and Kimbrough, however, Roof and the person who brought out the garbage cans and someone else with a "support manager" badge remained by the bench for 30 to 40 minutes. During this time, they continued to handbill, but with less success because some people refused to take any and three people looked at Roof after taking the handbills and then threw them away, whereupon Roof laughed. After Roof returned to the inside of the store, the handbillers left (Tr. 52–53, 65, 168–170, 225–227, 229, 234, 279–281, 291, 320–331, 343, 352).

Analysis

The General Counsel does not allege that Wal-Mart's August 2000 rule requiring solicitors to remain at least 15 feet away from a store's entrance doors violated the Act (GC Exhs. 3–4). Rather it is alleged that management violated Section 8(a)(1) of the Act in enforcing this rule at the Noblesville and Muncie stores on August 15, 2000.

First, regarding Noblesville, the General Counsel alleges that management failed to allow the two union handbillers to solicit within 15 feet of the store entrance. Actually, one of the union handbillers, Alberta Jordan-Rigsby, started leafleting at 2 p.m. on August 15, somewhere between 10 and 15 feet from the entrance, despite being fully aware of the minimum 15-foot rule in a possible attempt to provoke an incident. Nevertheless, there is no evidence that management knew she was less than 15 feet away because one management official, either Jeffrey Staton or someone else, simply came outside and asked her to leave, without mention of the 15-foot requirement. This request clearly violated the Company's own August 4 rule which required management to "[i]nsure that the individuals are not blocking the entrances and exits, and are at least 15 ft. away," and there is no evidence that either handbiller was blocking an entrance or exit. Moreover, according to Assistant Manager Carrie Shrock, she would normally inform solicitors of the 15-foot requirement. Further, another assistant manager, Patty, also came outside and told the handbillers to leave, adding that Wal-Mart did not support unions. Thus, it is concluded that Wal-Mart violated its own recently adopted solicitation rule on August 15 when presented with an instance of union solicitation. Finally, the Presiding Judge rejects that Respondent's defense that the solicitation that day was unprotected activity because one of the two leaflets discussed women's employment issues, which was not union activity but merely that of "individual concern." Rather, that leaflet specifically mentioned the lack of job promotions among women at Wal-Mart and stated that the "UFCW is distributing this information." Thus, the Respondent is clearly wrong in contending that the leaflet addressed unconcerted activity. See *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984). Moreover, it is clear that the other leaflet discussed union activity and was distributed along with the other leaflet. Also, unlike any of the cases cited by the Respondent regarding racial slurs or obscene language, it can-

not be said that this handbill was defamatory or malicious, thus removing it from the protection of Section 7 of the Act. Therefore, it is concluded that the Respondent's request that the handbillers leave, rather than that they comply with the 15-foot rule, violated Section 8(a)(1).

Furthermore, the Respondent violated Section 8(a)(1) again when Assistant Manager Staton asked a police officer to warn them that they were trespassing. After receiving the two above-discussed visits outside then store, the two handbillers continued with their protected activity, and sometime thereafter, Staton called the police. Staton claimed that he did so on being informed that the handbillers had entered the store. But there is no evidence that either Jordan-Rigsby or Kimbrough did so. Instead, police officer Hendricks credibly testified that he saw them 10 feet away from the entrance, whereupon he told them to step inside the store vestibule to discuss things with management. Although some voices were raised in the ensuing discussion, Staton asked the officer to warn the handbillers that they were trespassing, again rather than simply informing everyone of the existing 15-foot rule. So, the General Counsel is correct that this additional misconduct likewise violated the Act. Accordingly, the Respondent will be ordered to cease and desist these two instances of illegal conduct, and will be required to post an appropriate remedial notice.

At the Muncie store, which the two handbillers visited at 4 p.m. that day, Manager Douglas Roof handled the situation somewhat better. Roof walked outside and informed both handbillers of the 15-foot rule, whereupon everyone marked off the 15 feet and the handbillers adhered to the rule, despite the appearance of additional trash cans placed between the handbillers and the entrance. But the General Counsel alleges that the Respondent illegally surveilled the handbilling thereafter. But, Roof credibly testified that he received a complaint from a customer about the handbilling, causing him to return outside, with at least one other management official, to ensure that the handbillers were complying with the Company's requirements. According to Roof, he watched for about 10 minutes, while Jordan-Rigsby and Kimbrough estimated the duration at about 30 minutes. So, the issue is whether the observation of the handbilling by one-to-three management officials for up to 30 minutes, during which more leaflets ended up in the trash cans, constituted illegal surveillance.

It is well settled that "management officials may observe public union activity without violating the Act so long as those officials do not 'do something out of the ordinary.'" *Eddyleon Chocolate Co.*, 301 NLRB 887, 888 (1991). Here, Roof's 30-minute observation, along with one or two other supervisors, exceeded Roof's usual cigarette break but he was concerned about the customer's complaint and the parking lot was part of his job jurisdiction. Further, all of the cases cited by the General Counsel and the Union involve either surveillance by management for substantial periods of time on several occasions, or exacerbating factors by those officials in addition to mere observation. Finally, given the fact that the General Counsel has not alleged a violation of the Act regarding the Respondent's new August 2000 policy regarding the placing of additional trash cans outside stores being leafleted by union organizers, it would be inapposite to conclude that Roof's incidental observa-

tion of some of the August 15, 2000 leaflets winding up in those trash cans constituted illegal surveillance, or polling, or which employees favored the Union. Therefore, it is concluded that the Respondent did not illegally surveil the union handbilling at the Muncie store. See *ITT Automotive Electrical Products*, 231 NLRB 878 fn. 1 (1977). Accordingly, this complaint allegation will be dismissed.

CONCLUSIONS OF LAW

1. The Respondent, Wal-Mart Stores, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. The Respondent did not violate Section 8(a)(1) of the Act, as alleged in paragraphs 5(a) and 6 of the General Counsel's complaint by surveilling union activity on August 15, 2000.

4. The Respondent violated Section 8(a)(1) of the Act on August 15, 2000, as alleged in paragraphs 5(b) and 6 of the complaint, by discriminatorily prohibiting union agents from engaging in lawful handbilling of employees on its premises while allowing other organizations to engage in solicitation on its premises at Noblesville, Indiana.

5. The Respondent violated Section 8(a)(1) of the Act on August 15, 2000, as alleged in paragraphs 5(c) and 6 of the complaint, by discriminatorily contacting the police and causing the police to warn the union agents because they were engaged in lawful handbilling of the employees on behalf of the Union at the facility in Noblesville, Indiana.

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Wal-Mart Stores, Inc., Noblesville, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminatorily prohibiting union agents from engaging in lawful handbilling of employees on its premises while allowing other organizations to engage in solicitation on its premises.

(b) Discriminatorily contacting the police and causing the police to warn union agents who are engaged in lawful handbilling of employees on behalf of the Union on its premises.

(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. Do the following.

(a) Post at its facility in Noblesville, Indiana, copies of the attached notice marked "Appendix."² Copies of the notice on

¹ 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.

forms provided by the Regional Director for Region 25, 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

² 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."

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, the Respondent shall duplicate the mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent since August 15, 2000.

(b) 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 paragraph 5(a) of the General Counsel's complaint is dismissed.