

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

KAY MANUFACTURING COMPANY, INC.

and

Case 13-CA-34493

INTERNATIONAL UNION, UNITED
AUTOMOBILE & AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA, UAW

Howard I. Malkin, Esq. for the General Counsel
Michael G. Cleveland, Esq. for Respondent
John Truffa for the Charging Party

DECISION

Statement of the Case

MARGARET M. KERN, Administrative Law Judge. This case was tried before me in Chicago, Illinois July 23, 24 and 25, 1997. The complaint, which issued on April 17, 1997, was based upon unfair labor practice charges filed on August 2, 13, 16, 27 and September 4, 1996¹ by the International Union, United Automobile & Agricultural Implement Workers of America, UAW (the Charging Party or Union) against Kay Manufacturing Company, Inc. (the Respondent).

The central issue in this case is whether or not Respondent's discharge of employee Julie Osborne for her distribution and display of written materials in a break area during both working and non-working time violated the Act. For the reasons set forth herein, I find that Respondent was justified in discharging Osborne. I further find that Respondent did violate the Act on two occasions by threatening employees with a loss of benefits and by discriminatorily enforcing a rule requiring employees to receive approval to post union-related materials on a company bulletin board. In all other respects, I recommend dismissal of the complaint.

Findings of Fact

I. Jurisdiction

Respondent 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.

¹ All dates are in 1996 unless otherwise indicated.

II. Labor Organization Status

5 Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

A. Background

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Respondent is engaged in the business of manufacturing automobile parts at its facility in Calumet City, Illinois (the facility). Respondent operates three shifts and employs approximately thirty employees on each shift. Julie Osborne was employed as a lathe operator on the 4:00 p.m. to 12:00 midnight shift, and her immediate supervisor was Adam Ritchey, an admitted Section 2(11) supervisor. Respondent's employees are not represented by a labor organization.

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Employees on the 4:00 p.m. to 12:00 midnight shift take three regularly-scheduled breaks: a fifteen minute break at 6:00 p.m., a twenty minute break at 8:00 p.m. and a fifteen minute break at 10:00 p.m. Breaks are taken in the break area located between the main entrance/office area and the production area. The break area is made up of five tables, all approximately 10 feet long by three feet wide, arranged in the shape of a letter "E". Two tables are positioned together vertically, to form the spine of the "E", and three tables are positioned horizontally forming the top, middle and bottom rungs of the "E". Bordering the tables, and setting off the break area from the surrounding production area, are two large washstands to the left of the "E", a countertop with coffee pots and kitchen appliances to the top of the "E", and a tool area to the right of the "E". When the break area is not being used by employees during their break periods, it is used by Respondent as a waiting area for visitors, customers and suppliers. Employees who arrive early to work are allowed to sit in the break area. Ritchey is responsible for making sure the break room is orderly. Employees are expected to dispose of their trash after each break, and Ritchey identifies offending employees and chastises them to pick up after themselves.

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Employees traditionally sit in the same seats at the break tables. During her employment Osborne routinely sat at the middle rung table. Across from her sat employee Dallas Chin, Osborne's best friend and the man with whom she lives. Mamie Moore, another friend of Osborne's, also sat at the middle rung table if the weather prevented her from taking her breaks outside. A fourth employee, Alan Wong, sat at the middle rung table to the left of Chin and across from Osborne.

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Osborne is an avid reader and she frequently brought books to work to read during her breaks. She shared some of these books on occasion with other employees. She also, from time to time, shared audio tapes and video tapes with employees on current events and political topics. When Osborne shared these items with fellow employees, and occasionally with supervisors including Ritchey, she always did so on a one-on-one basis, and there is no claim that she was ever precluded or discouraged in any way from engaging in this activity prior to the events herein. Osborne had a habit of arriving to work approximately one hour early, and she usually sat at her spot at the break table and read.

Respondent maintains three bulletin boards at the facility. The first is a glass encased bulletin board which is used exclusively by management to post announcements. The second is a plastic covered bulletin board which is used by management to post official government notices. The third is a cork bulletin board maintained for employee use and referred to as the

employee FAX board (the FAX board). Nancy Summa, the Human Resources Manager and an admitted Section 2(11) supervisor, testified that she monitors the material posted on the FAX board on a daily basis. Employees come to her from time to time to seek permission to post items, and prior to May 1996, she never withheld that permission. She acknowledged, however, that employees “a lot of times” do not obtain prior approval, and non-approved notices are not necessarily removed. Summa does remove items which are inappropriate such as jokes or cartoons marked with employees’ names. However, other items are routinely posted without prior approval such as football pools, winning lottery ticket numbers, coupons for local amusement parks, credit union information, and notices to sell personal items such as automobiles and pets. A supply of push pins and thumb tacks are maintained on the FAX board for employee use.

B. The Union Organizing Effort

Osborne and Moore testified that sometime in late April they became aware that the Union was attempting to organize Respondent’s employees. No one testified on behalf of the Union with respect to its organizing activities at Respondent’s facility, and there is no evidence to establish either the definitive date on which the activity began or the extent of the organizing effort. Organizational meetings were held in the local Union hall on May 5 and May 11 which Osborne attended. There is no evidence that Union representatives were ever present at Respondent’s facility.

C. First Alleged Interrogation of Moore: Early May

Moore testified that sometime in early May, prior to May 5, she had a casual conversation with Summa. As the women spoke, they walked toward Summa’s office. Once inside the office, where they were alone, Summa allegedly asked Moore if she had heard about a union being organized, and Moore said no. According to Moore, Summa said that Moore should be getting an earful, and that Glen Coday, another employee, was doing the organizing. Summa asked Moore if she had spoken with her fiancée about the Union because Summa knew he worked for Ford Motor Company and was a member of the Union. Moore said she had spoken with him about the Union. Summa then asked Moore if she was going to go to the Union meeting scheduled for May 5. Moore could not recall in her testimony whether she told Summa that she didn’t know whether she was going to attend or whether she said she was not going to attend.

Summa testified that this conversation with Moore never took place.

D. Osborne’s Distribution of Union Flyers: May 6

The first organizing meeting was held on Sunday, May 5 at the Union hall. According to Osborne, she and approximately 30 employees attended and during the course of the meeting,

flyers were distributed entitled “What You Should Know About–UAW” (GC 2).²

On Monday, May 6, Osborne, assisted by Moore, distributed copies of GC 2 and another UAW flyer (GC 3) in the break area prior to the start of the 4:00 p.m. shift. They placed a copy in front of each seat at the break tables. On direct examination, Osborne testified that the flyers remained on the tables from 4:00 p.m. until after the 6:00 p.m. break, but when she returned to the break area at the 8:00 p.m. break, she observed the flyers had been removed. On cross examination, Osborne testified that the flyers remained on the tables for the entire shift. Consistent with Osborne’s testimony on cross, Ritchey testified that the flyers were on the break tables before the start of the 4:00 p.m. shift and remained there throughout the entire shift, including working time. By the end of the shift, however, he observed some had been scattered on the floor. Ritchey estimated that approximately twenty flyers were left on the table tops that day.

E. Second Alleged Interrogation of Moore: May 6

Moore testified that prior to the start of her 4:00 p.m. shift on May 6, she was in the break area looking for change. Summa approached her and said she had change in her office. Moore followed Summa into her office where they were alone. According to Moore, Summa asked Moore if she had gone to the Union meeting, who was present at the meeting and what was said. Moore could not recall with certainty what she said in response to Summa’s interrogation. Moore did recall that Summa stated that she had spies throughout the plant who had attended the meeting and would tell her what had been said. She also allegedly told Moore that if the employees really wanted a Union, she wouldn’t fight it, but employees would not get their Thanksgiving turkey or Christmas ham. Upon leaving Summa’s office, Moore claimed she repeated the substance of their conversation to several unnamed employees.

Summa denied having any such conversation with Moore. She did, however, acknowledge that one day in early May, she passed Moore in the hallway as Moore was coming in to work. Moore initiated the conversation and asked Summa if the Union came in, would the employees lose their holiday turkeys. Summa testified that she responded by telling Moore that it was her understanding that everything starts at zero and you work your way up.

Moore testified that on another occasion, Summa told her that a specific employee, whom she named, was one of her “spies”. Moore could not recall the date, time, place or circumstances of this statement, and Summa denied ever making such a statement.

F. Osborne’s Distribution and Display of Materials: May 7 to May 14

On May 7, Osborne distributed additional copies of GC 2 and GC 3. Whereas Osborne testified that she gathered the flyers at the end of each break and redistributed them at the beginning of the following break, Ritchey testified that flyers remained on the table tops and the countertops in the break area for the entire shift, during working time as well as break times.

On May 8, Osborne placed single copies of two different flyers in plastic covers on the

² Because of the very large amount of material which was distributed and displayed by Osborne during the course of the events herein, a partial index of those materials which were placed in evidence as exhibits is attached hereto as Appendix B and the materials are referenced throughout this decision by exhibit number.

break table, neither of which dealt directly with the Union organizing campaign. The first flyer depicted a little girl drinking water from an empty insecticide container with an anti-NAFTA message.³ The second flyer (GC 5), discussed a memo allegedly issued by an officer of Chase Manhattan Bank urging the elimination of the Chiapas Indians in Mexico. Osborne testified that at the conclusion of the 6:00 p.m. break, Ritchey asked to meet with her. This meeting, according to Osborne, lasted from 6:15 p.m. to 7:45 p.m. and was conducted first in the break area and then in Ritchey's office. Osborne testified that Ritchey asked her why she wanted a union, and implied that if a union came in, machinery could be removed from the facility and the business relocated. The only topic discussed for this one hour and thirty minute period, according to Osborne, was the Union. Ritchey denied that this meeting with Osborne ever took place.⁴

Ritchey testified that during the week of May 6, more and more copies of the same Union flyers were put out in the break area. By Friday of that week, there were 40 to 50 copies on top of the break tables, covering about 20 percent of the table surface area. At the beginning of the week, Ritchey observed employees reading the materials, but by the end of the week, the employees began pushing the flyers off the tables onto the floor to make room for their food and personal items. Ritchey picked the papers off the floor and put them back on top of the tables

On May 11, Osborne attended the second Union meeting and received copies of the Spanish version of "What You Should Know About-UAW" (GC 4). Osborne made copies of these flyers and placed them on the break tables. She was assisted in this effort by Chin and Moore.

On Monday May 13, there were 80 to 100 copies of the Union flyers (GC 2, 3, 4) fanned across all five of the table tops. After the first break, at 6:15 p.m., Ritchey gathered all the copies from the table tops and those that were on the floor, and stacked them into a single pile in front of Osborne's chair. At the 8:00 p.m. break, Osborne saw the pile and appeared angry. She immediately fanned the papers out again across the table tops. Ritchey told her he was the one who had piled up the papers, that he was picking papers up off the floor and that litter was becoming a problem. At the end of the second break, at 8:15 p.m., Ritchey again gathered the papers and put the pile in front of Osborne's seat. At the 10:00 p.m. break, Osborne again fanned the papers out where they remained until the next shift as Ritchey was too busy to clean up.

³ There is no copy of this flyer in evidence.

⁴ Ritchey did recall a meeting he had with Osborne prior to May 5, which occurred at the end of a break period and which lasted approximately 15 minutes. Osborne appeared irritated and upset that evening and was speaking in partial, unfinished sentences. Before she returned to operating her machine, Ritchey wanted to ascertain if she was all right. Osborne said that people were not taking her seriously when she told them about an impending government takeover. She talked about government conspiracies and the presence of NATO and Russian troops in the United States. She said the government had converted an Amtrak station in Indiana into a crematorium and that the government was going to convert shopping malls into prisons. She said she was trying to get the word out, but people weren't taking her seriously and were laughing at her. Ritchey said that her approach to people was often confrontational and people didn't appreciate that. She said that people had to wake up, it was happening now and if nobody paid attention, it would be too late. Ritchey told her if people didn't want to hear what she had to say, there was no point in getting upset. He told her that they had a job to do and that they had to stay focused. She went back to work, and there was no mention of a union.

On Tuesday May 14, when Ritchey arrived to work, he saw an even larger amount of flyers, and he also saw books, audio tapes and video tapes on Osborne's table. Ritchey recalled that several of the book titles related to President Clinton, the New World Order, and various conspiracies. He also saw a book and an article asserting that when the Pope was a young man in Poland he was convicted of child molestation. Ritchey stacked the materials once during that shift as he was attending to his primary responsibilities in the production area.

G. Posting of Union material on FAX board: May 15

On Wednesday May 15, prior to the start of the 4:00 p.m. shift, Osborne taped two notices to the FAX board using three inch wide box sealing tape. She did not avail herself of the available push pins and thumb tacks. The first notice posted was an invitation to attend a Union meeting (GC 8) and the second was a computer image of a palm tree with the following language, in substance: "From the desk of Julie Osborne - China '97 GM opens largest plant - Sept. '96 Labor Unites Against Outsourcing" (GC 7). Osborne also taped copies of both of these notices to the top of her break table. By 5:00 p.m., Osborne observed that the notices on the FAX board had been ripped down. There is no evidence from any witness to establish who removed these notices from the FAX board, but the evidence does establish that in removing the notices, the cork surface of the bulletin board was irreparably damaged and the bulletin board had to be replaced. According to Osborne, she had never used the FAX board prior to May 15, and she was not aware of any rules governing the posting of notices on the FAX board.

Osborne laid out even more materials in the break area on May 15 than had appeared the day before. Ritchey gathered the papers off the tables and off the floor and this time, threw them in the trash. Osborne asked him where the papers were and he showed her where he had thrown them in the trash. She got angry and said he couldn't do that, that it was her property. Ritchey said that he had told her the week before about the problem with trash on the floor and he said he was getting tired of picking up the mess. He said if an employee was interested in reading her papers, she could give the materials directly to the employee, but the manner in which she was scattering the papers was causing a litter problem in the plant which had to stop.

At 6:15 p.m., Ritchey summoned Osborne to Summa's office and the three met for about one hour. Ritchey had with him Respondent's employment policies and practices manual. This manual was regularly kept in the course of Respondent's business, and a copy of the manual was located near the shipping area for employees to inspect at any time. Ritchey read to Osborne the following three passages:

Solicitation and distribution of literature are prohibited during the working time of either the employee making the solicitation or distribution, or the targeted employee. The term "working time" does not include an employee's authorized lunch or rest periods or other time when the employee is not required to be working.

The distribution of literature in such manner as to cause litter on Company property is prohibited.

We allow employees to post notices in designated areas after approval.

Ritchey told Osborne that if she needed something posted on the FAX board, she had to get approval first and Summa would then post the item on the board. He also repeated that since employees had already read her flyers, they were pushing them onto the floor and causing a litter problem. He stated that she could offer anything to any employee, and if the

employee accepted it, that was fine. But if the employee refused the material, she was not to drop it on their table or force it upon them.

Summa testified that at the end of the meeting they had reached an understanding with Osborne that she could continue to bring her literature into work but that she had to keep it neat and straightened up on the tables and make sure it was not strewn all over the place. Summa admitted that during the course of the meeting, Osborne asked if she could post union materials on the FAX board and Summa responded that she, Summa, would need to get approval for that, but she did not anticipate a problem.

Ritchey testified that after the May 15 meeting, Osborne's practice of spreading numerous copies of flyers across the table tops ceased and litter was no longer a problem.⁵

H. The Displays on and after May 16

On May 16, Osborne for the first time brought in two three-ring binders and displayed them on the middle table with other books and materials. She set each binder upright so that all four panels could be viewed, for a total of eight display panels. Ritchey described the displayed binders as looking "like a science fair." Ritchey recalled seeing Union flyers displayed on the binders, but did not specify which ones. According to Osborne she displayed a newspaper article describing the defeat of an eavesdropping law which had been opposed by the AFL- CIO (GC 19), and the three Union flyers previously described (GC 2, 3 and 4).

Over time the number of three-ring binders Osborne displayed increased to four for a total of 16 display panels. She continued to bring in books, newsletters, audio tapes and video tapes in increasing numbers. Osborne set up the displays at the beginning of her shift, and they remained displayed until the end of the shift. Whereas at first, the display covered only her middle table, eventually the display took up space on multiple break tables. Employees continued to complain to Ritchey about the encroachment on their space. Ritchey recalled speaking to Osborne on or about May 19 and told her that he felt she was getting away from their verbal agreement of keeping things down, and that her materials were taking up too much space in the break area. Osborne's response was that she had to tell people about NAFTA and GATT and making slave labor out of people in the world. Ritchey said that she was taking much more than a normal allotment of space for one employee.

On cross examination, Osborne testified that the documents displayed on her binder panels on or after May 17 included GC 2, GC 3, GC 4, GC 5, GC 7 and GC 8. Ritchey testified that after May 19, her materials also included a picture of a dollar bill with something circled on

⁵ A considerable amount of testimony was introduced by the General Counsel through Osborne regarding various conversations and statements between Osborne and her supervisors. For example, Osborne testified that on May 8, Summa posted a notice relating to overtime and made a comment to her about the Union; that on May 9, Osborne made a safety committee speech to employees about poisonous spiders and that Ritchey made fun of her; that during the course of the May 15 meeting in Summa's office, Osborne was denied her request that a union sympathizer be allowed to accompany her; that on May 16, Osborne wore a T-shirt to work with the words: "Two Million Voices Unite Against Slave Labor. GM set to open largest plant in China in 1997"; that two notes were left for her, one calling her a "Norma Rae Wanna Be" and the other suggesting she believed in aliens. Osborne testified that Ritchey wrote both of these notes. None of these incidents are alleged in the complaint as violative of the Act, and I see no need to discuss them in further detail.

it and handwriting that said it was the sign of the devil and that U.S. currency was evil. There were documents averring that President Clinton was drug runner and a devil worshipper, that Hillary Clinton was a Satanist, and that the Pope was a child molester and the anti-Christ.

5 Employees complained to Ritchey about the same materials being put in front of them every day, and that their individual space was being encroached upon. Some employees, such as Alan Wong, quit eating in the lunchroom altogether. In Wong's case, he was a full time student and used his break periods to study. Wong testified that at first, Osborne spread papers on the table that they shared. He pushed the material out of his table space, but it was pushed back. After a while, Wong observed Osborne displaying flyers in binders, and Wong considered 10 some of the material, such as a reprinted article asserting that Chinese people eat fetuses, to be inflammatory and insulting to him as an American of Chinese ancestry. According to Ritchey, after a while, no one sat at Osborne's middle table with the exception of Chin because there was so much material accumulated on the table. The entire table top was cluttered with material and there was no room for anyone to eat lunch at the middle table. 15

I. The Events of June 6 and June 7

20 By June 6, Osborne's display reached its maximum and extended across four of the five break tables. Osborne draped a three feet by five feet United Nations flag over one of the tables, and displayed the following items:

- 25 • four three-ring binder notebooks (16 display panels)
- clipboard
- two audio cassette cases containing approximately 50 tapes
- cardboard box with video tapes
- plastic box with video tapes
- 30 • six books spread open and placed face down
- a cardboard box containing newsletters - Iron Mountain Report
- several pamphlets

35 A representative sampling of the titles of the video tapes which constituted part of Osborne's display was read in to the record:

1. Crime Bill HR 666 -- Amendments to Exclusionary Rule
2. The One New World Religions
3. Sixty Minutes in Guatemala—Another CIA Operative Killed
- 40 4. The Mena Connection—Documentary by Terry Reed, Ex-CIA Asset
5. Balanced Budget Amendment 7
6. Conrad and Dorgan Talking Law: Private Property Protection Act
- 45 7. House Can No Longer Criticize House Speaker
8. Mike Wallace: Rude Awakening Our Government Supplies
9. Roger and Me: an Update Version by Dog Eat Dog Films, Michael Moore - Pets or Meat
10. High Price of Free Trade: NAFTA and GATT—Under GATT Children Will be Marked at Birth
11. Project USA

12. Chain Gangs: Russian Hand Scanner
13. New World Bank - Religion and Rulers
14. Mena Connection - Clinton Chronicles
- 5 15. UFO Deception of the New World Order
16. Secrets of Dreamland/Planned Destruction
17. America Under Siege: Waco - the Actual Footage of the New World Order
- 10 18. The Clinton Chronicles
19. Justice Files—Midway, Barry Seals, CIA and Mena, Drugs, Clinton

15 At the 10:00 p.m. break on June 6, Osborne approached Ritchey by the washstands and said something about aliens. Ritchey replied that he did not know what she was talking about. Osborne showed him a piece of metal spillage with a tag on it which she said had been left on her workbench, and accused Ritchey of writing the message on the tag: "Footprint left behind by aliens found at Kay Mfg. Cal City IL on 6/6/96. If you spot one of these creatures report it at once to the proper authorities." Ritchey denied having anything to do with the piece of metal or the tag. He did tell Osborne, however, that management had made a decision that there were to be no more displays since she could not contain them. Osborne continued talking about the piece of metal and the tag. Ritchey repeated that he did not know who left it there and that someone was playing a gag on her. He emphasized to her that he was serious and that there were to be no more displays after that day. He said the displays were out of control and therefore she could not have any display at all. Osborne stated that he couldn't do that and Ritchey said he could and he would. He said it was company property, there was a business to run, and it was not professional to have visitors coming through the plant and seeing a big political display. Osborne repeated that she had the right to exhibit a display.

30 On June 7, Ritchey saw Osborne arriving with Chin and both were carrying boxes from Osborne's car. Osborne set up a display on the middle table which was not as large as the day before. At the start of the shift, Osborne went to her machine and the display remained on the table. After consulting with his superiors, Ritchey boxed the display and sealed the box with tape. He wrote Osborne's name on the box and placed the box underneath the table. Sometime between 4:00 p.m. and 6:00 p.m., Ritchey observed the box back on top of the table. At the 35 6:00 p.m. break, he saw Osborne standing next to the box and pulling a pocket knife out of her pocket. Ritchey told her not to open the box and that there was to be no display. She cut the tape and said she had a right to have a display. Ritchey told her to either leave the box taped or put the box in her car, but there would be no display. He assured her that all of her materials were in the box. She said she had a right to the display and that he could not do this to her. 40 Ritchey told her again to leave the box taped and that if she set up a display, he would have no choice but to suspend her. Osborne said she was going to make a phone call and left the break area. Ritchey also left the break area, but when he returned about five minutes later he saw a display on the table consisting of two ring binders, a box of videotapes and books. Osborne told 45 Ritchey she had not opened the box, but had gone to her car and gotten different items. Ritchey asked if they could go somewhere to discuss the matter in private. Osborne refused. Ritchey told her to put the materials away and if she did that, he would not discipline her. She refused, stating "you can't stop me." Ritchey asked her not to do this, to please just put the display away, that it didn't have to be this way. Osborne said she had to make a stand. He told her she was suspended for three days and to take her things and leave. She started yelling loudly, and Ritchey wrote down what she said: "On the way home, look at the back of the street signs on Torrence Avenue, and you will see the markings that will instruct the NATO troops

where to go when they invade.” She also quoted from scripture and said she had to warn everyone what was going on with the New World Order. After several minutes, she took her materials and left the facility. It took her two or three trips to take everything to her car.

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J. Osborne’s Termination on June 12

10 On June 12, Steven Pelke, Respondent’s President, called Osborne and told her she was terminated for gross insubordination. Osborne insisted that she had not done anything wrong because the display material that she put on the table the second time on June 7 was not the same material that had been boxed. Osborne asked Pelke if he were sure he wanted to do this and Pelke said the decision was binding. He told her they had a business to run and that she apparently had beliefs that were more important to her than her job. At the end of the
15 conversation, Osborne said “Lord have mercy on your family.” Pelke asked her to repeat what she said and she repeated the statement. Pelke was concerned for his family’s safety and the incident was reported to the police.

20 Pelke, Summa and Ritchey each testified that the decision to terminate Osborne had nothing to do with the content of the material she distributed and displayed, and it would have made no difference if all of the materials she distributed and displayed related solely to the Union effort. The reason she was terminated was because of the manner in which she distributed and displayed the material and her refusal to abide by Respondent’s directions.

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K. Glen Coday

30 Glen Coday was employed by Respondent from 1987 to June 1996 when he was terminated for poor production. Coday testified that prior to the union campaign, he used the FAX board to post lottery tickets every week and never sought prior approval. After the union effort began, he recalled seeing a notice advising employees that anything posted on the FAX board would have to first be submitted to Human Resources. He nevertheless continued to post materials without permission. He noticed that non-union materials remained posted on the FAX board, but that union literature was removed although he never saw who removed the union
35 literature.

40 For several years Coday trained other employees and he frequently had occasion to speak with Summa and to report to her on the progress of the trainees. According to Summa, they developed a close personal friendship. In the course of their dealings, they had occasion to talk about management/employee relations. Several years before the events of this case, they spoke about the wall that exists between management and employees, and they made a pact that they would keep that wall as low as possible.

45 At the end of March or early April, Coday began acting derisively toward Summa at the facility. Whenever they would come in contact, he would look at her and laugh loudly. One morning in late May or early June, while Summa was stocking the first aid kit in front of the plant, Coday was standing nearby and he laughed at her. A few seconds later, he walked past her and she told him that they had to talk. After the 10:15 break, Coday went to Summa’s office. According to Summa’s account of this meeting, she asked Coday what she had personally done to him to cause him to treat her this way. He did not respond. She asked why he was he building a wall between them. He said he was done with the company, that he had had it, that he was going to bury the company and that he was going to bury them. She told him that if he was so unhappy, why didn’t he go on and be successful somewhere else. He stood

up, told her to shut up and said that he would quit when he got ready to quit. He told her to stop threatening him and to leave him alone. She said he should do the same and the meeting ended. Summa testified that she felt threatened by Coday when he stood, told her to shut up and said that he would bury them.

5 Coday's account of this meeting is slightly different. According to Coday, Summa asked him why he was building a wall with the Union and that if he was unhappy, he should leave. In response, Coday testified that he stated that he would be buried with the company. Coday did acknowledge that Summa asked him why he was laughing at her, and he responded, "this is America, I'll laugh wherever I want to laugh." Coday claimed that Summa said she could stop him, she had ways, and he said she should do whatever she had to do.

10 Coday testified that starting on May 5 and for a period of three weeks, he wore a Union button every day to work. He was very active in the Union effort, and felt he had nothing to hide. He was terminated for poor production in June, and his discharge is not alleged as violative of the Act.

IV. Analysis

A. Credibility

20 Julie Osborne was not a reliable witness. Her testimony was rambling and unfocused, her answers consistently disjointed and frequently unresponsive. On cross examination she was asked a question about a document and she gave a vague verbal response. I instructed Ms. Osborne that she had to give a yes or no answer for the record, and she responded to me, "You know what? I wasn't even listening." A short time later, after giving several non-responsive answers, I instructed Ms. Osborne to listen carefully to the questions and to just answer the questions put to her. Osborne replied, " I'm having a hard time staying awake." When she was impeached with a prior inconsistent statement given during the course of her testimony in an unemployment compensation hearing, her explanation for the inconsistency was that she hadn't been paying attention then either. At times during her testimony, Osborne appeared panicked to get her point across and several times lost her composure. As a result of my observations, I do not rely on Osborne's confused recitation of events.

35 I wholly discredit the testimony of Mamie Moore. Moore appeared angered by her own termination by Respondent which is not alleged as violative of the Act. As a result of her termination, Moore's medical insurance benefits lapsed, and Moore remained distressed by this fact at the time of her testimony. Moore testified that she is a friend of Osborne's and Chin's, and she admitted that prior to her testimony at the hearing, the three of them reviewed the affidavit she had previously given to the Board and corrected at least one "mistake" she had made. Moore testified to a series of statements allegedly made to her on a one-on-one basis by Nancy Summa which Summa flatly denied. Moore testified that on at least one occasion, she left Summa's office and promptly reported Summa's remarks to other employees. These employees were not named and were not called to corroborate any portion of Moore's testimony. Because I credit Nancy Summa's testimony in its entirety, wherever there is a conflict in the record between Moore and Summa, I have adopted Summa's version of events.

45 Dallas Chin's testimony, like that of Moore, appeared studied and rehearsed. He also engaged in strange behavior during his testimony. When he was asked to stand to take the oath, he waved his left arm in the air pretending to be looking for a Bible. During a portion of his direct examination, he testified with his eyes shut tight. On cross examination, he sat at the very edge of his chair, neck craned over the witness box, peering at Respondent's counsel. I

discredit Chin's testimony in its entirety.

I also discredit the testimony of Glen Coday who was angry and argumentative throughout his testimony. His admission that he repeatedly derided Summa by openly laughing at her in the workplace because, "this is America, I'll laugh wherever I want to laugh," accurately sums up his arrogant and untruthful demeanor.

Respondent's witnesses were far more credible than the witnesses for the General Counsel. Summa and Ritchey impressed me as honest and straightforward in their testimony. Both of these individuals knew, from the beginning of the events in this case, that they needed to proceed cautiously given the personalities involved. They were rational, perceptive observers who kept careful track of the events as they unfolded, and they related their observations clearly, concisely, and credibly on the witness stand. I credit their testimony completely. Similarly, I credit the testimony of Pelke with respect to the contents of his conversation with Osborne on June 12.

B. The 8(a)(1) Allegations

It is alleged that in late April, Summa interrogated Moore and created the impression of surveillance of employees' union activities. These allegations are based entirely on the discredited testimony of Moore, and I therefore recommend dismissal of these complaint allegations. It is further alleged that on or about May 6 or 7, Summa again interrogated Moore and created the impression of surveillance, and that in mid-June, Summa told Moore that a named employee was one of her union spies. For the same reason, I recommend dismissal of these complaint allegations.

The allegation that on May 9, Ritchey interrogated Osborne and impliedly threatened her with loss of work or employment if the Union won an election for representation is based entirely on the testimony of Osborne which I not only find unreliable, but in this particular instance, not credible. Ritchey was the sole production supervisor on the 4 to 12 shift, and Osborne's claim that he spoke with her on this occasion for one and one half hours during working time is not believable. I credit Ritchey's denial that these statements were ever made, indeed that this conversation ever took place, and I recommend dismissal of these complaint allegations.

The allegation in the complaint that on June 19 Summa impliedly threatened Glen Coday with discharge due to his union activities is not supported by any credible evidence. Summa testified that the reason for the June 19 meeting was because Coday was mocking her openly in the facility, and she called him into her office to address the problem. Coday admitted in his testimony that he had in fact engaged in this mocking behavior and that Summa spoke to him about it at this meeting. When Summa, who had thought she enjoyed a personal friendship with Coday, asked him why he was "building a wall" between them, Coday told her to shut up and threatened to bury the company. It was at that point that Summa suggested he look for work elsewhere, a not unreasonable suggestion in my view. I credit Summa that there was absolutely no mention of the Union during this conversation and that Summa's comments were not in any way related to or motivated by Coday's union activities. I therefore recommend dismissal of this allegation of the complaint.

With respect to the complaint allegation that Summa threatened Moore with a loss of benefits, specifically the Thanksgiving turkey and the Christmas ham, I find that Respondent, by Summa, did violate Section 8(a)(1) of the Act. I make this finding solely on the credible testimony of Summa who testified that when Moore asked her if the Union came in would

employees still get their holiday turkeys, she replied that employees would have to “start from zero” and work their way up. The standard for determining whether a statement of this type violates Section 8(a)(1) is whether the statement, in context, could reasonably be understood by employees as a threat of loss of existing benefits and leave employees with the impression that what they ultimately receive depends upon what the union can induce the employer to restore. On the other hand, such a statement is not violative of the Act when other communications make it clear that any reduction in wages or benefits will occur only as a result of the normal give and take of negotiations. *Lear-Siegler Management*, 306 NLRB 393 (1992) citing *Taylor-Dunn Mfg. Co.*, 252 NLRB 799, 800 (1980), enf’d 679 F.2d 900 (9th Cir. 1982). Applying this standard to the facts here, it is clear that Moore could reasonably have understood Summa’s statement as a threat of loss of the existing holiday benefits. In the absence of any other statement made to employees regarding the normal give-and-take of collective bargaining negotiations, Summa’s statement violated Section 8(a)(1) of the Act.

Finally, with respect to the allegation that Respondent disparately enforced its rule on posting notices by removing union literature from the FAX board and by requiring permission to post union materials, I find that Respondent did violate Section 8(a)(1) of the Act. I make this finding solely on the credible testimony of Summa and Ritchey who admitted that they told Osborne that any union material which she wished to post on the bulletin board had to be submitted to Summa for pre-approval. There is no question that prior to the union campaign, employees’ access to the FAX board was virtually unfettered. Although there was a written policy requiring pre-approval of all materials posted, the rule was never enforced. The evidence establishes that the pre-approval rule was imposed only upon Osborne and only in the context of her posting union materials. The imposition of the rule on Osborne under these circumstances was therefore a disparate application of Respondent’s rule in violation of Section 8(a)(1) of the Act. *Honeywell, Inc.*, 262 NLRB 1402 (1982), enf’d 722 F.2d 405 (8th Cir. 1983); *Axelson Inc.*, 257 NLRB 576 (1981).

I decline to find a violation based on the removal of Osborne’s notices from the FAX board on May 15 inasmuch as there is no evidence that any supervisor or agent of Respondent removed the items. Similarly, I find no violation based on Coday’s testimony that the union materials he posted on the bulletin board were removed inasmuch as there is no evidence that Respondent’s supervisors or agents removed them.

C. Osborne’s Discharge

The threshold question in any case which concerns an employer's restraint of employee efforts to distribute literature on the employer's premises is whether, apart from the location of the activity, distribution of the literature is the kind of concerted activity that is protected from employer interference by Sections 7 and 8(a)(1) of the Act. If it is, then the second question is whether the fact that the activity takes place on Respondent's property gives rise to a countervailing interest that outweighs the exercise of Section 7 rights in that location. *Eastex, Inc. v. NLRB*, 437 U.S. 556, 563 (1978). To resolve the first issue, it is necessary to determine whether all, some or none of the materials distributed and displayed by Osborne were pertinent to matters encompassed by Section 7 of the Act. *Ford Motor Co.*, 221 NLRB 663, 666 (1975), enf’d 546 F.2d 418 (3rd Cir. 1976).

1. May 6 through May 15

On May 6 and May 7, Osborne distributed multiple copies of GC 2 and GC 3 and there

is no dispute that both documents dealt exclusively with employees right to organize under the Act. These documents were unquestionably protected materials.

5 On May 8, Osborne displayed a flyer which depicted a little girl drinking water from an empty insecticide container with an anti-NAFTA message. The anti-NAFTA theme, in fact, carried over to other distributions made by Osborne, her belief obviously being that passage of the North American Free Trade Agreement not only meant loss of jobs for workers in the United States, but the use of "slave labor" in foreign countries to manufacture goods sold in the United States. As reflected in GC 18, Osborne similarly objected to the GATT treaty insofar as she asserted that it contained 22,000 pages on trade rules and not one sentence on human rights. 10 She therefore equated both NAFTA and GATT with the enslavement of foreign workers. On May 8, Osborne also displayed GC 5 dealing with the statement of a U.S. banking officer discussing rebel activity in Chiapas, Mexico and the ensuing peso crisis.

15 The mutual aid and protection clause of Section 7 is not limited to protecting activities within the immediate employer-employee relationship and extends to assistance given to employees of other employers. The Act's protection does not, however, extend to wholly political propaganda which does not relate to employees' problems and concerns *qua* employees. *Ford Motor Co., id.* I conclude that the anti-NAFTA flyer displayed by Osborne on May 8 was protected as it commented on the adverse effect the treaty has on the working 20 conditions of employees and their children. However, I conclude that GC 5 bore no relationship whatsoever to any employee interest and was a purely political tract. Its display and distribution was therefore not protected.

25 On May 13, Osborne distributed copies of GC 2, GC 3 and GC 4, all of which materials which were clearly protected.

30 Beginning on May 14, Osborne began adding books, audio tapes and video tapes as part of her display. After a very careful review of the record in this case, I draw the following conclusions as to the nature of these materials. There is no evidence that any of the books, audio tapes or video tapes distributed by Osborne constituted protected materials. They all dealt with purely political issues which were important to Osborne. There is no doubt in my mind that Osborne truly believed that her co-workers were at risk of actual physical harm by reason of the existence of various conspiracies and the like, and that she felt it incumbent upon herself to "get the word out" to employees in order to protect them. However, it is an objective standard that is to be applied in these circumstances, not an employee's subjective beliefs, and there is 35 no objective evidence that any of the books, audio tapes and video tapes dealt with matters even remotely related to employee interests as employees. The burden is on the General Counsel to show that the content of these materials came within the ambit of the Act's mutual aid and protection clause, and that burden was not met.

40 On May 15, Osborne posted on the FAX board and taped to the break area tables copies of GC 7, dealing with the issue of outsourcing in the auto industry, and GC 8, an invitation to employees to attend a Union meeting. I find the matters discussed in both of these flyers to be protected.

45 It is appropriate at this juncture of the analysis to review Osborne's actions from May 6 to May 15, the period of time prior to her use of display notebooks. Up until May 15, it is readily apparent that the majority of materials which Osborne distributed and displayed in the break area were protected under Section 7. She distributed literally hundreds of copies of flyers setting forth employee rights to join the Union and to organize, and only GC 5, the article about the Chiapas Indians, and the several books and tapes displayed on May 14 were not protected. The Board has dealt with similar "mixed" situations. In *Samsonite Corp.*, 206 NLRB 343 (1973), employees distributed two editions of a newsletter. The majority of the articles in the

newsletters dealt with employee protests of inadequate wages and poor working conditions. The Board affirmed the following observation made by the ALJ at p. 346:

5 The fact that *some* of the articles in the newsletter contained gratuitous remarks or "social comment" matters doen (sic) not detract from the conclusion that the distribution of the [newsletter] was a concerted activity for the purpose of seeking improvements in wages and conditions of employment (emphasis supplied).

10 Two years later, in *Singer Co.*, 220 NLRB 1179 (1975), the Board found that newsletters which contained "some" articles of general social commentary were nevertheless protected because "the publications dealt *primarily* with such issues concerning the Singer Company as layoffs, subcontracting, substandard health and safety conditions, and the lack of adequate union representation..." *Id.* at 1180 (emphasis supplied).

15 A month after the Board decided *Singer Co.*, it affirmed Judge Julius Cohn's findings in *Ford Motor Co.*:

20 And the Board has recently held that if *some* of the material in newsletters contain gratuitous remarks or "social comment" matters, that does not detract from the conclusion that the distribution was a concerted activity for the purpose of seeking improvements in working conditions...

25 ...The fact that the second page of the letter dealt with political matters *to some extent* does not compel a contrary conclusion because, as noted, these mixed letters have been held to be protected (emphasis supplied).

30 In *Firestone Steel Products Co.*, 244 NLRB 826 (1979), en'f'd 645 F.2d 1151 (D.C. Cir. 1981), the Board dealt with the outer limits of political speech. In that case, the Board concluded that the leaflets distributed by employees were "purely political tracts" and dealt not at all with employee problems and concerns as employees. The company's refusal to allow distribution of these leaflets was deemed not violative of the Act.

35 In this case Osborne was distributing large amounts of material on a daily basis, some of which was protected and some of which was not. The issue is therefore whether the *simultaneous* distribution of wholly protected materials with wholly unprotected materials constitutes protected activity.

40 The General Counsel concedes in his brief that some of Osborne's documents were not protected, specifically the Iron Mountain newsletter and the article(s) referring to Chinese people eating fetuses. It is the General Counsel's theory, however, that if "most" of the documents displayed and distributed were within the scope of Section 7 protection, then the simultaneous distribution of protected and unprotected material is protected. The General
45 Counsel in his brief uses the terms "most", "vast majority" and "overall tenor" of the entire mass of distributed material as the concept to be applied to determine whether Osborne's activities were protected. Respondent, on the other hand, argues that to hold that an employee has the right to distribute whatever she wants so long as she mixes non-protected materials with protected materials would deny an employer any right whatsoever to control its workplace and be entirely inconsistent with cases holding that section 7 rights must be accommodated to an employer's right to control its property.

I accept the General Counsel's theory that the appropriate standard to be applied in this case is whether or not the materials distributed by Osborne at any given time were predominantly protected or unprotected. I find that this standard is consistent with the Board and Court's holdings as set forth herein. There is obviously no mathematical formula that is applied, and the Board has never adopted a *per se* fifty percent rule. The Board in *Singer* did, however, conclude that when the distributed materials dealt "primarily" with protected subjects, the entire distribution was protected. The decisions in *Samsonite*, *Firestone* and *Ford* all suggest a similar analysis.

Utilizing this approach, I conclude that from May 6 through May 15 a predominant amount of the materials distributed and displayed by Osborne were protected under Section 7 of the Act, and therefore all of her entire distributions and displays during that period were protected.

2. May 16 through June 5

During this period of time, I find, based on all of the credible evidence, that Osborne displayed approximately six documents which were protected: GC 2, GC 3, GC 4, GC 7, GC 8 and GC 19. The evidence further establishes that during this time, a number of the documents incorporated in the displays were clearly unprotected, to wit, the reference to U.S. currency reflecting the sign of the devil, and the articles about President Clinton, Hillary Clinton and the Pope. I am unable to determine, with any degree of certainty, that the predominant nature of the materials distributed and displayed during this period was protected or not protected. The record is simply not clear, largely because of the unfocused testimony of Osborne. Since the burden is on the General Counsel to prove the protected nature of Osborne's activity, I conclude that that burden was not met for the period of time between May 16 and June 5.

3. June 6 and June 7

As of June 6, Osborne's display had ballooned to include a large flag of the United Nations, sixteen display panels, a clipboard, approximately fifty audio cassette tapes, a minimum of nineteen video tapes, six books, multiple copies of the Iron Mountain Report, and several pamphlets. At most, incorporated in this display were ten protected documents: GC 2, GC 3, GC 4, GC 7, GC 8, GC 9, GC 15, GC 16, GC 18, and GC 19. Unquestionably, the majority, if not the vast majority, of the materials displayed on that day were not protected. Osborne's entire display, therefore, was not protected and Respondent was at liberty to direct Osborne, as Ritchey did on June 6, that the display had to come down and stay down.

Osborne's display on June 7 was not materially different from the display on June 6 and was erected by Osborne in direct contravention of Ritchey's lawful directive given the day before. Her actions on June 7 were also unprotected, and Respondent was again free to remove the materials from the table tops, to box them, and to direct Osborne not to open the sealed boxes. When Osborne proceeded to set up yet another display, she was not engaged in a protected activity and there were no restraints cognizable under the National Labor Relations Act on Respondent's power to ban that display and to suspend and discharge Osborne for insubordination.

Returning to the *Eastex* threshold question, in any case which concerns an employer's restraint of employee efforts to distribute literature on the employer's premises, the first issue is whether the distribution of the literature is the kind of concerted activity that is protected from employer interference. On June 6 and June 7, I find that Osborne was not engaged in activity protected from employer interference. Respondent's restraint of her activity was not violative of the Act, and its subsequent discharge of Osborne for defying that restraint was also not violative of the Act. In the event that the Board disagrees with this determination, however, I will address the second *Eastex* issue, that is, whether protected activity takes place on Respondent's property gives rise to a countervailing interest that outweighs the exercise of Section 7 rights in that location.

When employees who are already rightfully on an employer's property distribute literature, it is the employer's management interests rather than its property interests that primarily are implicated. *Hudgens v. NLRB*, 424 U.S. 507, 521-522, n.10 (1986); *Eastex v. NLRB*, 437 U.S. 556, 573. Here, unlike the facts in *Eastex*, Respondent adduced significant evidence that its management interests were prejudiced by Osborne's use of the space in the break area. Osborne was told repeatedly that she could distribute her materials during non-work time in the break area provided she did not litter and provided that she did not physically occupy more than a fair allotment of space for a single employee sharing a break area with twenty-nine other employees. Osborne exceeded these reasonable guidelines and obstinately insisted that her right to distribute literature was unfettered. Other than her boyfriend Chin, no employees were able to sit at the middle rung table because there was no room for them to eat or place their personal items. At the height of the display, on June 6, Osborne's materials were placed over four of the five table tops and remained on the tables for the entire eight hour work shift. Osborne had virtually taken over the break area, not only during the break periods, but during working time as well when visitors, customers and suppliers of Respondent were present. Respondent had a legitimate management interest to provide employees with an uncluttered break area, *Erie Marine, Inc.*, 192 NLRB 793 (1971), *enf'd* 465 F.2d 104 (3rd Cir. 1972), and, for the vast majority of the time when the break area was a work area, Respondent had a legitimate management interest to keep the area clear of distributed material.

Finally, Respondent had promulgated and maintained a no-distribution rule, the validity of which is not challenged by the General Counsel. From the very first day that she distributed materials on May 5 until the day she was suspended on June 7, Osborne left her displays on top of the break area tables during working time and therefore in a work area. On June 6, Ritchey told Osborne that there was a business to run and that it was not professional to have visitors coming through the break area and viewing a big political display. That Osborne repeatedly failed to collect her materials at the end of each break was in clear violation of the valid no-distribution rule and an activity for which she could be lawfully disciplined.

4. Analysis under *Wright Line*

The General Counsel is required, in the first instance, to make a *prima facie* showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision. Once this is established, the employer has the burden to demonstrate that the same action would have taken place even in the absence of the protected conduct. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), *enf'd*. 622 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). The Supreme Court has said that a *prima facie* case requires the General Counsel to prove by a preponderance of the evidence that the employer had a discriminatory intent that was a substantial or motivating factor in the discharge. *NLRB v.*

Transportation Management Corp., 462 U.S. 393, 400 (1983).

5 The General Counsel has failed, in the first instance, to demonstrate that on June 6 and June 7 Osborne was engaged in protected concerted activity. Assuming however that she had been engaged in the distribution of protected materials at the time of her suspension and discharge, General Counsel failed to demonstrate that the protected nature of her activity was a motivating factor in the employer's decision. There is no credible evidence of any statement of union animus made toward Osborne or any other employee by Respondent as a result of their organizational efforts. Employees including Moore, Chin and Coday were openly supportive of the Union effort, assisted in distributing union literature and wore union insignia without incident. 10 The only reason for Osborne's discharge was credibly described by Ritchey under cross examination:

15 Q: And it didn't matter if the display contained some Union material or all Union material at that time did it?

A: I never tried to edit her materials. If I tried to edit her materials, I would have been - - I wouldn't have let her display any from the beginning. The point of the matter was the size of her display. She was pushing other employees out of the break area. It was the display, it was the disposition of all the space. 20

In conclusion, for all of the reasons set forth herein, I find Respondent did not violate the Act when it suspended Osborne on June 7 and discharged her on June 12. 25

Conclusions of Law

30 1. Respondent is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

35 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

40 3. Respondent, by Nancy Summa, on or about May 6, violated Section 8(a)(1) of the Act by threatening employees with the loss of their holiday turkeys if employees selected the Union as their collective bargaining representative.

45 4. Respondent, on or about May 15, violated Section 8(a)(1) of the Act by discriminatorily requiring employees to seek approval to post union-related material on the employee FAX board.

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Remedy

10 Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

15 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

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ORDER

The Respondent, Kay Manufacturing Company, Inc., its officers, agents, successors, and assigns, shall

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1. Cease and desist from

(a) threatening employees with the loss of their holiday turkeys if they select the Union or any other labor organization as their collective bargaining representative;

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(b) discriminatorily requiring employees to seek approval to post union-related material on the employee FAX board;

(c) in any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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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 Calumet City, Illinois facility copies of the attached notice marked "Appendix A."⁷ Copies of the notice, on forms provided by the Regional Director for Region 13, 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

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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.

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⁷ If this Order is enforced by a Judgment of the 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."

copy of the notice to all current employees and former employees employed by the Respondent at any time since May 6, 1996.

5 (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.

10 IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C.

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Margaret M. Kern
Administrative Law Judge

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APPENDIX A

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.

WE WILL NOT threaten employees with the loss of their holiday turkeys if they select the International Union, United Automobile & Agricultural Implement Workers of America, UAW, or any other labor organization as their collective bargaining representative.

WE WILL NOT discriminatorily require employees to seek approval to post union-related material on the employee FAX board.

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

KAY MANUFACTURING COMPANY, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 200 West Adams Street, Suite 800, Chicago, Illinois 60606-5208, Telephone 312-353-7589.

APPENDIX B

General Counsel's Exhibits

- 2 *What You Should Know About -UAW* (English) - one page document with printing on both sides dealing directly with union issues - wages, benefits, dues, initiation fees, etc.
- 3 *Know Your Rights - What A Supervisor Cannot Do* - one page document setting forth twelve different unfair labor practices.
- 4 *What You Should Know About -UAW* (Spanish)
- 5 *Banker to Mexico - Go Get 'Em* - one page document with the reprint of a small article supplemented by Osborne's handwriting.

Reprinted material: Washington Insiders are shaking their heads over a report circulated on Capitol Hill by the Chase Bank's influential Mexico expert, Riordan Roett. The Mexican government, still reeling from the peso crisis, must "eliminate" the opposition in the rebellious southern state of Chiapas, argues Roett, and should "consider carefully whether or not to allow opposition victories [even] if fairly won at the ballot box." And indeed, President Ernesto Zedillo's soldiers rolled into Chiapas last Thursday to crack down on the rebels and arrest their leaders as criminals. A spokesman for Chase, which has made extensive loans to Mexico, said Roett's analysis "does not reflect the bank's views."

Handwritten material: David Rockefeller's [sic] Chase-Manhattan Bank gives order to ... Eliminate the opposition (People, who have lived in peace in their own land - till this order was put forth!)
Eliminate the Chiapas Indians of Mexico !!! And they did.

- 6 *Gainsharing Plan* - one page document setting forth a chart describing how employee bonuses are calculated and certain eligibility requirements. Highlighted is the following statement: Kay Manufacturing reserves the right to alter, change, or withdraw the foregoing gainsharing plan at any time. Any change or cancellation will be communicated in advance. Handwritten below the xeroxed page: Contract or Policy - Which Do You Prefer?
- 7 *From the desk of Julie Osborne - China '97* - one page document depicting a palm tree and a beach. The text is handwritten: China '97 G.M Opens Largest Plant - Sept. '96 Labor Unites Against Outsourcing
- 8 *May 1996 UAW letter* - copy of one page letter from John Truffa, Union representative to Respondent's employees thanking them for attending the Union meeting on May 5 and inviting them to attend the next meeting on May 19. Xeroxed to the bottom of the letter are the typed words "Whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech". Handwritten material: Let's Exercise our Right to Unionize, Julie Osborne. Addendum of Liberty added by J.O.
- 9 *AFL-CIO Says: 'This Summer, Do Justice'* - one page reprint of a newspaper article describing a summer program sponsored by the AFL-CIO encouraging young people to work on union organizing and political initiatives.

- 10 *Don't Forget to See the Employee Fax Board* - one page document entirely handwritten with a diagram of a cartoon "Christians v. Lions" and the caption "This is the sheet I displayed when someone had placed an 8x8" picture of a joke".
- 11 *Norma Rae Wanna Be* - one page document entirely handwritten. On half of the page are the words "Norma Rae Wanna Be". Other notations: Placed in my things on or about 5/23/96; Collateral evidence appears to have been placed by my supervisor; Casper Milktoast slithered this into my stuff - Who R U - I set this hanging over the end of the table.
- 12 *Value Jet article* - two page reprint from the N.Y. Times New Service downloaded from America Online - the first paragraph reads as follows:

As many as five jet engines in commercial service on American planes, overhauled in Turkey, might be vulnerable to flaws that could cause a catastrophic accident, the National Transportation Safety Board and the Federal Aviation Administration said on Thursday. An accident involving such an engine destroyed a ValuJet DC-9 on a takeoff run at the Hartsfield International Airport, in Atlanta on June 8, they said.

The article went on to detail the overhauling of Pratt & Whitney engines by a Turkish airline whose approval from the FAA to perform overhauling services had lapsed. Handwritten across the bottom of the first page were the words: Value Jet's engines were overhauled off shore. It cost American jobs and lives.

- 13 *Five NY Times News Service articles* - downloaded from America Online and consisting of three typewritten pages. The five articles are titled as follows: (1) Shanghai Mayor Votes in Favor of Foreign Investors; (2) French Conservatives Embroiled in Scandal; (3) Major Gamble Should Keep Major At Head of Tory Ticket; (4) German Court Shoots Down Benetton Ad; (5) European Commission Upbeat on World Trade.
- 15 *McDonald Douglas Strikes* - one page document entirely handwritten: McDonald Douglas Strikes Reason Outsourcing None of Us is as Strong as All of Us!
- 16 *AFL-CIO Says: 'This Summer, Do Justice'* - same article as GC 9 with handwritten notations: It isn't just a UAW awakening/It crosses all unionizing in all industrial nations.
- 17 *Report from Iron Mountain on the Possibility and Desirability of Peace* - sixteen page article subtitled "Is Our Government secretly operating on the theoretical principle that lasting peace is NOT desirable? If so, WHY?" The introductory paragraph setting forth the thesis of the article is as follows:
- The report which follows summarizes the results of a two-and-a-half-year study of the broad problems to be anticipated in the event of a general transformation of American society to a condition lacking its most critical current characteristics: its capability and readiness to make war when doing so is judged necessary or desirable by its political leadership.
- 18 *Most Favored Nation Status* - one page document with typewritten material and handwritten material.

Typewritten material: Most-favored-nation status is a provision in a commercial treaty that grants each signatory the automatic right to any tariff reduction that may be negotiated by one of them with a third country. For example, if the United States were to negotiate a tariff reduction on automobiles with Japan, it would also be committed to such reductions with all its other trading partners to whom it has granted most-favored-nation status. All nations belonging to General Agreement on Tariffs and Trade GATT have agreed to the most-favored-nation principle as a condition of membership.

Handwritten material: 7 summits led us to G.A.T.T. 22,000 pages on trade rules and not one sentence on human rights. G.A.T.T. = Slavery. China '97 GM's Largest Plant Opens

- 19 *Eavesdrop Law Ruled Invalid* - one page document reprinting a newspaper article with handwritten notations. Printed material described the defeat of an Illinois law which would have allowed employers to listen in on employee conversations. The law was opposed by the Illinois AFL-CIO. The handwritten material reads as follows: United labor confronts Gestapo laws in the workplace and wins for all of us.
- 20 *We Can Distribute Union Leaflets at Work* - four page document authored by the UAW Organizing Department on employee rights to distribute union literature on company premises.
- 21 *PBS Exposes a Modern Day Trade in Black Slaves* - two page reprint of a newspaper article discussing the existence of a slave trade in Africa and the current enslavement of 90,000 Africans by Arabs and Arab-Berbers in the countries of Mauritania and Sudan.
- 22 *UAW Dues* - one page document with the typewritten words: UAW Dues - It Pays to Belong.
- 23 *Eating Fetuses in China* - two page typewritten document authored by "Snuff It -The Journal of the Church of Euthanasia" and apparently downloaded from the Internet. Discusses the sale of aborted human fetuses in China for human consumption.
- 24 *Sign* - one page handwritten sign: If you want a (tape etc.) copy ask - I'll let you borrow or I'll copy - Price FREE.
- 25 *Letter* - one page copy of a letter from Senator Paul Simon to Julie Osborne discussing his reasons for voting in favor of ratification of the GATT agreement.
- 26 *What You Should Know About -UAW (English)* - same two pages of text as GC 2 and *Who Runs the Union?... YOU DO!* a one page document authored by the UAW National Organizing Department setting forth employees membership rights.
- 27 *Pope Calls for Christian Unity* - one page reprinted newspaper article, the first paragraph reads:

Pope John Paul II on Tuesday urged a unification of Christians as one church, opened the possibility for re-examining the role of the pope, and admitted some past popes have abused their power.

- 28 *Attorney Who Has Militia Ties Arrested* - one page reprinted newspaper article, the first two paragraphs read:

Attorney Linda D. Thompson, who has ties to the national militia movement, was arrested Thursday on the fourth floor of the [Indianapolis] City-County Building.

She was taken into custody about noon after she refused to show a gun permit for a .45 caliber automatic pistol she had in a shoulder holster, according to police.

Respondent's Exhibits

- 10 *Banker to Mexico - Go Get 'Em* - same text as GC 5
- 20 *The Labor Lawyer* - xerox of front cover page of the Fall 1994 edition of *The Labor Lawyer Journal* of the American Bar Association.
- 23 *Murdoch* - xerox of front cover of this book by William Shawcross.
- 24 *The Creature from Jekyll Island, A Second Look at the Federal Reserve* - xerox of front and back covers of this book by G. Edward Griffin.
- 28 *Compromised: Clinton, Bush and the CIA, How the Presidency was Co-opted by the CIA* - xerox of front cover of this book by Terry Reed and John Cummings.