

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

OFFICE DEPOT, INC.

and

Case 7-CA-38847

DENISE M. DeLAURA,
An Individual

Amy Bachelder, Esquire and Blair Simmons, Esquire
of Detroit, Michigan for the General Counsel.
Mark Theodore, Esquire (Jackson, Lewis, Schnitzler &
Krupman) of San Francisco, California for the
Respondent.

DECISION AND CERTIFICATION

CHARNO, *Administrative Law Judge*:

This case was tried before me in Detroit, Michigan on May 6, 1997. After oral argument, I issued a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations. Appendix A is the portion of the transcript containing my decision, while Appendix B contains corrections to that transcript. In accordance with Section 102.45 of the Board's Rules and Regulations, I certify the accuracy of the amended transcript containing my decision. Based on the findings of fact and conclusions of law contained therein and upon the entire record in this case, I issue the following recommended:¹

ORDER

Respondent, Office Depot, Inc., Plymouth, Michigan, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Threatening employees that if they select a union as their collective bargaining representative they (1) would earn less money, (2) would have to pay union dues, and (3) would not be able to take their problems to management.

(b) Discharging its employees because of their protected concerted activity of making common cause with employees engaged in a protected work stoppage.

¹ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

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

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(a) Within 14 days from the date of this Order, offer Denise DeLaura immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits as a result of the discrimination against her, in the manner prescribed in *F. W. Woolworth Co.*, 90 N.L.R.B. 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 N.L.R.B. 1173 (1987).

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

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

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(d) Within 14 days after service by the Region, post at its Plymouth, Michigan facility copies of the attached notice marked "Appendix C."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent's authorized representative, shall be posted by 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 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 13, 1996.

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(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

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Done at Washington, D.C., this 13th day of June, 1997.

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Steven M. Charno
Administrative Law Judge

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² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX B

Transcript Corrections

	<u>Page</u>	<u>Line</u>	<u>Delete</u>	<u>Insert</u>
5				
	76	13	charge, timely file to complaint	charge timely filed, a Complaint
	77	23	witness,	witness
10	78	3	Respondent's -- or	
	78	4	facility	facility,
	78	24	that the union would, quote, "probably --"	
			pardon me--	saying
	78	25	would, quote, "probably," close quote	would "probably"
15	79	2	management, quote,	management
	79	2	way," close	way."
	79	3	quote.	
	79	4	that	that,
	79	5	Union got in the Employees	union got in, the employees
20	79	5	Union dues	union dues
	79	12	complaint	Complaint
	79	15	allegation. It	allegation, it
	79	20	quote,	
	79	20	newspaper," close	newspaper."
25	79	21	quote.	
	80	14	the argument	General Counsel's argument,
	80	15	state,	state
	80	21	quote,	
	80	22	close quote,	
30	80	23	employees	employee's
	81	2	a, quote,	a
	81	2	assault," close quote,	assault"
	81	5	of, quote,	of
	81	6	close quote,	
35	81	13	impression,	impression
	81	15	scab	"scab"
	81	16	NLRB	N.L.R.B.
	81	19	scab	"scab"
	81	24	supra	<u>supra</u>
40	82	2	scab	"scab"
	82	5	a, quote,	a
	82	6	close quote,	
	82	15	rational	rationale
	82	16	protectual	pretextual
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APPENDIX C

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

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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.

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Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

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WE WILL NOT do anything that interferes with these rights.

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WE WILL NOT threaten employees that they will earn less money, that they will have to pay union dues or that they will no longer be able to take their problems to us if they select a labor organization as their collective bargaining representative.

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WE WILL NOT discharge Denise DeLaura or any other employee because of their protected concerted activities or because they make common cause with employees engaged in a protected work stoppage.

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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.

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WE WILL offer Denise DeLaura immediate and full reinstatement to her former position of employment without prejudice to her seniority or any other rights or privileges she enjoyed, or if that position no longer exists, to substantially equivalent position, remove from our records any reference to her discharge, and we will make her whole for any loss of earnings and other benefits resulting from our discrimination, plus interest.

OFFICE DEPOT, INC.

(Employer)

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Dated _____ By _____
(Representative) (Title)

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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, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313-226-3219.

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