

employees who were involved in the Union’s organizing campaign or who supported the Union; (3) threatened employees that it would lose its contract with The Kroger Company and be forced to discharge all the employees at the Louisville terminal if they selected the Union as their representative; (4) threatened to cease making contributions to employees’ employee stock ownership plan accounts if they selected the Union as their representative; (5) coercively interrogated employees about their union activities, all in violation of 8(a)(1). The Board also noted that the fact that the Employer operated several other terminals nationwide, and it was foreseeable that the Employer’s decision to cease operations at the Louisville terminal would have had the effect of chilling unionism at these other terminals and affiliates. However, the Board also noted that the Employer did not violate 8(a)(1) when it instructed a manager to engage in surveillance of its employees’ union activities.

The Board concluded that the Employer violated Section 8(a)(1) and 8(a)(4) by singling out an employee and implicitly threatening to take legal action against him because he filed an unfair labor charge. Finally, the Board concluded that due to the fact that the Employer’s decision to close part of its business was motivated by antiunion reasons in violation of Section 8(a)(3), the Employer also violated Section 8(a)(1) and 8(a)(5) by failing to provide the Union with notice and an opportunity to bargain regarding its decision to cease operations at the Louisville terminal and discharge all the unit employees.

The Board majority provided a broad remedy that included the following orders: (1) the Employer must reopen and restore its business operations at the Louisville terminal as they existed on December 9, 2020; (2) offer reinstatement to the unlawfully discharged unit employees to the extent that their services are needed at the Louisville terminal to perform the work that the Employer is able to attract and retain from The Kroger Company or new customers after a good-faith effort; (3) offer reinstatement to any remaining unit employees to any positions in its existing operations that they are capable of filling, with appropriate moving expenses; (4) place any unit employees for whom jobs are not now available on a preferential hiring list for any future vacancies that may occur in positions in its existing operations that they are capable of filling; and (5) the certification year be extended by 12-months with its accompanying 12-month decertification bar.

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