

**Waterford Park, Inc. and Mary Linda Hackney.**  
Case 6-CA-12436

August 27, 1980

**DECISION AND ORDER**

**CHAIRMAN FANNING AND MEMBERS JENKINS  
AND TRUESDALE**

On June 6, 1980, Administrative Law Judge Richard L. Denison issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief,<sup>1</sup> and the General Counsel filed a brief in answer to Respondent's exceptions and in support of the Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions<sup>2</sup> of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Waterford Park, Inc., Chester, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

<sup>1</sup> Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

<sup>2</sup> Contrary to Respondent, *Hotel & Restaurant Employees & Bartenders International Union, Local 343 (Resort Concessions, Inc.)*, 148 NLRB 208 (1967), in which the Board declined jurisdiction over an employer's restaurant and concession business at a particular racetrack, is not controlling herein. In this case, the record fails to establish that a labor dispute at Respondent's motel facility, in contrast to a labor dispute at the employer's concession business in *Resort*, would have a substantial adverse impact on the continued operation of the racetrack. Additionally, unlike *Resort* where the concession employees were licensed by the state racing commission, there is no significant state regulation of employees working at Respondent's motel. Accordingly, we agree with the Administrative Law Judge that Respondent's Waterford Inn is not integrally related to the operation of Respondent's racetrack and that it will effectuate the policies of the Act to assert jurisdiction in this case.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

**WE WILL NOT** discharge, punish, or otherwise discriminate against Mary Linda Hackney, or any other employee, because they have engaged in protected concerted activities for their mutual aid or protection.

**WE WILL NOT** interrogate our employees about their protected concerted activities, or about their contacts with Board agents, nor will we threaten employees with termination if they walk off the job or if they start a union.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in union activities or concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as amended.

**WE WILL** offer Mary Linda Hackney immediate and full reinstatement to her former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings she may have suffered as a result of our discrimination against her, with interest.

**WATERFORD PARK, INC.**

**DECISION**

**STATEMENT OF THE CASE**

**RICHARD L. DENISON**, Administrative Law Judge: This case was heard at Pittsburgh, Pennsylvania, on December 13, 1979, based on an original charge filed by Mary Linda Hackney on June 6, 1979.<sup>1</sup> The complaint, issued July 18 and amended at the hearing, alleges that

<sup>1</sup> All dates are in 1979 unless otherwise specified.

the Respondent violated Section 8(a)(1) of the Act by discharging Mary Linda Hackney because she engaged in protected concerted activity under the Act, specifically because she protested an increased workload, which the Respondent assigned to her and certain of her fellow employees. It is also alleged that the Respondent, in addition, engaged in unlawful interrogation and threats. The Respondent's answer denies the allegations of unfair labor practices alleged in the complaint.

Upon the entire record in the case, including my observation of the witnesses and consideration of the briefs, I make the following:

## FINDINGS OF FACT

### I. JURISDICTION

The complaint alleges and the answer admits that at all times material herein the Respondent is and has been a Delaware corporation engaged in the operation of a motel in Chester, West Virginia. During the 12-month period immediately preceding the issuance of the complaint in this matter, the Respondent, in the course and conduct of its business operations, derived gross revenue in excess of \$500,000 from the operation of its motel. During the same period of time, the Respondent purchased goods and materials valued in excess of \$50,000 directly and indirectly from suppliers located outside the State of West Virginia for use at its Chester, West Virginia, motel. As admitted in the answer, I find that the Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

However, in its answer the Respondent contends that the Board should not assert jurisdiction in this matter by virtue of Section 103.3 of its Rules and Regulations, wherein the Board declined to assert jurisdiction over the horseracing and dogracing industries. The Respondent maintains that its motel, the Waterford Inn, is an integral part of Waterford Park, a horseracing track.

I disagree, and conclude that the Board would assert jurisdiction in this case. Through oral testimony, documentary evidence, and numerous stipulations, the record shows that the Respondent is a part of a huge and highly complex pyramidal corporate structure. At the pinnacle is Ogden Corporation, a Delaware corporation, a holding company owning many international and domestic subsidiaries, among which is Ogden Management Corporation, the owner of Ogden American Corporation. Ogden American Corporation owns Ogden Leisure, and one of Ogden Leisure's subsidiary corporations is Waterford Park, Inc. There are interlocking corporate officers and directors both vertically and horizontally in the corporate structure. Thus, William S. Connell, the chairman of the board and director for Ogden Leisure, Inc., is also a member of the board of directors of Ogden Corporation, president and chairman of the board of Ogden Food Service Corporation, and chairman of the board of the Respondent. Likewise, John K. Mananec, the president of Ogden Leisure, Inc., is also president of the Respondent and, together with the manager of labor relations of Ogden Food Service Corporation, makes the labor relations policies for Respondent. Finally, in this

same vein, Howard Graham, the Respondent's general manager and executive vice president, is in addition the executive vice president of Ogden Leisure, Inc. Among Graham's various responsibilities is the hiring and firing of employees of both the Respondent and Ogden Food Service Corporation, and the setting of prices for the food served by the Waterford Inn and the various concessions of Ogden Food Service Corporation located at the Waterford Park Racetrack. Graham sets the hours the concessions at the track will be open, and supervises the racetrack parking lot attendants.

The Respondent's facilities, consisting of the Waterford Inn, a 101-room motel, a horseracing track, a swimming pool, tennis courts, golf course, and a trailer park known as Waterford Mobile City, are located on a large tract of riverfront property in Chester, West Virginia. This large complex is named Waterford Park and is advertised as a racetrack and resort. Geographically located in the panhandle area of West Virginia, the Respondent's operations are readily accessible to both customers and employees living in the States of Pennsylvania, Ohio and West Virginia. The horseracing track, itself known as Waterford Park, is composed of a grandstand building and a clubhouse building, which contains the private membership Cap & Whip Club. The Waterford Inn is composed of motel rooms, restaurant, and lounge.

The manager of the Waterford Inn, whose offices are in the motel, reports directly to Howard Graham, whose office is located in the clubhouse building of the racetrack. Accounting services for Waterford Park, Inc., including the Waterford Inn, are performed by Peter A. Nea, the controller, whose office is located in the grandstand building of the racetrack. Nea credibly testified that he maintains the regular checking and payroll accounts for the Waterford Inn as well as the separate accounts for the Respondent's other facilities. However, unlike those of the racetrack employees, the payroll checks for employees of the Inn are prepared at the Waterford Inn, which also pays its payroll taxes directly under the racetrack's Federal Employer Identification Number. From time to time excess moneys in the Inn's accounts are transferred to the racetrack's Waterford Park, Inc., regular account. The Waterford Inn maintains its own books, and pays its own workmen's compensation by separate check. The Waterford Inn has its own beer and liquor licenses, but they are assigned by Howard Graham. The Waterford Inn has its own maintenance employees, but from time to time utilizes the Waterford Park maintenance crew for its painting needs and parking lot repairs. The Inn's electric bill is paid by Waterford Park, which in turn makes a bookkeeping charge to the Waterford Inn. Howard Graham sets the wage rates at both the track and the Inn, but on rare occasions when employee interchange occurs between the Inn and the club at the track, the employee in question transfers to the Inn's payroll. The racetrack program, sold at both the Inn and the track, contains advertisements for the facilities and services available at the Waterford Inn.

Contrasting with the evidence of the relationship between the Inn and the track facilities, however, is the ex-

istence of evidence of substantial differences in operations and functions. Thus, the Waterford Inn employees consist almost entirely of maids, bartenders, and waitresses, all of whom are hired by the motel's manager, and are paid on a separate payroll. Food and beverage services at the racetrack are performed by either the Ogden Food Service Corporation's concessions, or by Waterford Park, Inc. employees at the Cap & Whip Club, all of whom are compensated from a separate payroll. The racetrack also employs parimutuel employees, parking attendants, and security employees, none of whom are employed by Waterford Inn. Although horse trainers and owners customarily are housed and fed without charge at the Inn while racing at Waterford Park, the Inn and all of its facilities are accessible to customers from among the general public at all times of the year through a separate entrance denoted by a separate Waterford Inn sign. The meeting facilities of the Inn are available to the public on a year-round basis and are utilized for a variety of events, among which are negotiating sessions, national conferences, weddings, receptions, and meetings of various groups. The Inn maintains separate parking facilities from those of the track located approximately a mile away. The West Virginia Racing Commission, which maintains an office at the racetrack, licenses and oversees the employees and operations at the racetrack, but has no responsibilities with respect to the Waterford Inn. Similarly, the board of stewards at the racetrack has no authority over operations at the Waterford Inn. Thus, it is clear that a substantial community of interests does not exist between the racetrack employees and the employees of the Waterford Inn. In addition, the record clearly demonstrates that the functions of the Inn and the racetrack are completely different, and that while the racetrack is subject to stringent state controls and supervision, the Waterford Inn is not. The evidence also shows that, while the Inn's business operations far exceed the Board's jurisdictional standards, the percentage of the Inn's monetary contribution to the Respondent's overall business operations, compared with Waterford Park Track, is small. Although the Respondent argues correctly that a considerable quantity of evidence exists which, in an industrial setting, is frequently found to show the existence of a single-employer relationship, the Board has recently indicated that it will decline to exercise jurisdiction only when the business operations in issue are inextricably associated with the operation of the racetrack, and that where the employer's operations are not integrally related to the operations of the racetrack at which it is located, jurisdiction may be asserted. *Ogden Food Service Corporation*, 234 NLRB 303 (1978). In my view this case is determinative of the issue here and indicates, under all the circumstances described above, that the Board would assert jurisdiction in the instant case.

## II. THE ALLEGED UNFAIR LABOR PRACTICES

Mary Linda Hackney was 1 of the 12 or 13 maids employed at the Waterford Inn during the month of May, under the supervision of Housekeeper Janet Beaver or, in

her absence, Assistant Housekeeper Dorothy Ober.<sup>2</sup> A normal day's work assignment consisted of the cleaning of 12 rooms per maid. This workload was increased, however, on May 1, when Ober gave each maid 15 rooms. On May 8, 4 maids were assigned 16 rooms each by Ober. On May 15 Ober assigned them 14 rooms each. As a result of the increased workload, maids Marie Robinson, Peg Henderson, Delores Foster, Ruth Morris, and Mary Linda Hackney engaged in discussions among themselves at various times during the workday and during breaks about how they considered it unfair that they had been required to clean more than the usual number of rooms while other maids cleaned a lesser number. These discussions led to concerted activity by Hackney, Henderson, and Carol Gamble on May 15 when together these employees protested to Ober concerning that day's workload assignment.

Since Hackney was a part-time maid, she did not work May 16 and 17. When she reported for work on May 18 Hackney asked Janet Beaver for an opportunity to talk with her. Later, in the afternoon, Beaver came to one of the rooms Hackney was cleaning. No one else was present. Hackney began by stating that, "We didn't like the increased number of rooms that we were getting," and that Beaver should make an effort to call other maids to work when needed. Beaver answered that she could not promise to assign the maids a certain number of rooms to clean, rather they had to do whatever was assigned to them. Hackney answered that the other maids agreed with her, but were afraid to speak up for themselves. Beaver responded that Hackney would either have to work on her terms or not work and look elsewhere for work. When Hackney retorted that she would ask the girls to "walk out," Beaver became angry, called Hackney a "troublemaker," and told her, "Get your things and go-go right now." When Hackney offered to finish her two remaining rooms, Beaver insisted, "No, just get your things and get out."<sup>3</sup>

A few minutes later Beaver called what she described as "an emergency meeting" of the maids in the maids room. Despite the fact that she had been told to go, Hackney attended. Beaver began by asking for gripes or complaints, and when no one else responded Hackney said that it was unfair for them to be assigned 14 rooms when no effort had been made to call in any others. Next a maid named Pearl asked why they could not call in help instead of increasing the number of rooms assigned. When Beaver answered that she could not promise to assign a certain definite number of rooms, and that they either worked on her terms or did not work, Pearl asked Hackney, "What do you want us to do?" Hackney replied that she needed backing because her job was on the

<sup>2</sup> The complaint alleges and the answer admits that Beaver and Ober are supervisors and agents of the Respondent within the meaning of Sec. 2(11) and (13) of the Act, respectively.

<sup>3</sup> This account of the conversation is based upon Hackney's credited testimony which is corroborated by Beaver's admissions that she told Hackney to seek employment elsewhere and that following Hackney's statement about a "walkout" she told Hackney to "go." Hackney was calm and precise while testifying. Beaver was hostile. I am persuaded that Hackney told the truth to the best of her ability and thus, where her testimony differs from that of Beaver, Hackney is credited.

line, and asked if any of the maids would walk out with her. Gamble answered that she could not afford to walk out because her husband was on strike. Henderson stated, as did other maids, that they could not afford to walk out because they needed their jobs. After Hackney mentioned their need for a union, to which Gamble objected, Beaver declared that, "Anyone who goes out that door with her is done. If you try to start a union you'll be out the door so fast your head will spin. Unions are for the birds." Continuing further, Beaver amplified this remark by stating that the Inn's manager, Mr. Taylor, would "never go for it." During the course of the meeting Beaver called Hackney a troublemaker several times. Toward the end of the meeting Hackney asked for her job back and Beaver agreed, stating that Hackney should either do the assigned work or not work. Beaver specified that she would reinstate Hackney on the condition that Hackney would not cause any more trouble, stating that she did not need a troublemaker on her crew. Beaver said Hackney should stay away from the other girls and not cause trouble, otherwise she could walk out the door. The meeting dissolved, Hackney completed her work assignment, and nothing further occurred that day.

Hackney was not scheduled to work on May 19, a Saturday. Nevertheless, she went to the Inn and talked to the manager's wife about the work assignment problem. She recounted what had occurred, and complained that she had gotten nowhere with Beaver. When Hackney mentioned that she had asked the other maids to walk out, but they had refused, Mrs. Taylor answered, "Don't ever do that." She then referred to a previous strike, and remarked that if her husband had known about it at the time the employees would never have been allowed to return to work.

Sunday, May 20, was a workday for Hackney. She received her work assignment from Beaver and, late in the day, when it was completed, Beaver pointedly stated, "Linda, I'll call you when I need you." No call ever came. On May 31 Hackney returned to confront Beaver in the maids room. It was only then Beaver told Hackney she was fired, and said she thought Hackney knew about being discharged because she had not been called to come to work. Hackney never received any reason for her discharge, either orally or in writing.

There is a legion of Board cases approved by the courts which hold that, when employees concertedly and peacefully protest changes in their wages, hours, working conditions, and other terms and conditions of employment to their employer, such activities fall under the protection of the Act. These cases further leave no room for doubt that, when an employer retaliates against an employee or employees because they led or engaged in such activities, a violation of the Act occurs. The circumstances described above clearly reveal, and I find, that the Respondent discharged Hackney because she was the "troublemaker" who led the dissatisfied employee group and suggested a "walkout" and a "union." The accuracy of this conclusion is reinforced by the testimony of Carol Gamble's and Beaver's own admissions. Gamble testified that on June 29 Beaver questioned her concerning whether or not she had been contacted by "that woman from the Labor Board," and stated that she

did not know what "that troublemaker Mary Linda was trying to prove." Although Beaver generally denied making certain threats or asking certain questions of employees, she admitted interrogating at least five maids about whether or not they had been contacted by a Board agent and further admitted stating that Mary Linda was a troublemaker and that she did not know what she was trying to prove. I find the employee witnesses credible, since they are supported by Beaver's admissions. Thus, any scintilla of doubt which might have existed concerning the Respondent's motive for discharging Hackney was completely removed by Beaver's own testimony. I find that the Respondent violated Section 8(a)(1) of the Act by discharging Mary Linda Hackney in retaliation for her protected concerted activities as alleged in the complaint.

I also find that during the course of her various conversations with employees, as described above, Janet Beaver interrogated employees with respect to their concerted activities and their contacts with Board agents, and threatened employees with discharge if they engaged in a strike, or started a union. This additional conduct, also alleged in the complaint, further violated Section 8(a)(1) of the Act.

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Board would assert jurisdiction in this case.
2. By discharging Mary Linda Hackney because she engaged in protected concerted activities protesting an increased workload, by interrogating employees about their concerted activities and their contacts with Board agents, and by threatening employees with termination if they walked off the job or if they started a union, the Respondent violated Section 8(a)(1) of the Act.
3. The Respondent has not violated the Act in any respects other than those specifically found.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that the Respondent has engaged and is engaging in certain unfair labor practices, I find it necessary to order that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Mary Linda Hackney, I find it necessary to order that the Respondent offer her immediate and full reinstatement with backpay computed on a quarterly basis plus interest as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>4</sup> I shall also order the Respondent to post an appropriate notice with respect to the violations found to have occurred.

<sup>4</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

**ORDER<sup>5</sup>**

The Respondent, Waterford Park, Inc., Chester, West Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee for the purpose of discouraging employees from engaging in protected concerted activities for their mutual aid or protection.

(b) Interrogating employees about their protected concerted activities, and their contacts with Board agents.

(c) Threatening employees with termination if they walked off the job, or started a union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other protected concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condi-

<sup>5</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

tion of employment, as authorized in Section 8(a)(3) of the Act, as amended.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Mary Linda Hackney immediate and full reinstatement to her former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon 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.

(c) Post at its facility at Chester, West Virginia, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of said notice, on forms provided by the Regional Director for Region 6, after being signed by an authorized representative of Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

<sup>6</sup> In the event that 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."