

Bel Air Chateau Hospital, Inc., d/b/a University Heights Hospital and Sundae Webb. Case 31-CA-5917

November 15, 1978

DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On September 15, 1978, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, the General Counsel filed limited exceptions and a memorandum in support thereof.

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 memorandum and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified below.¹

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, as modified below, and hereby orders that the Respondent, Bel Air Chateau Hospital, Inc., d/b/a University Heights Hospital, Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

Substitute the following for paragraph 2(d) of the Administrative Law Judge's recommended Order:

"(d) Mail a signed copy of the notice attached to the Board's Order to each of the employees who were employed by it prior to its ceasing operations."

¹ In par. 2(d) of his recommended Order, the Administrative Law Judge recommended that Respondent send letters to its employees notifying them of the Order and what steps the Hospital has taken to comply therewith. In agreement with the General Counsel's contention, we shall require Respondent to mail the attached notice to its employees in lieu of the proposed letter.

APPENDIX

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

The National Labor Relations Act gives all employees these rights:

- To engage in self-organization
- To form, join, or help unions
- To bargain collectively through a representative of their own choosing
- To act together for collective bargaining or other mutual aid or protection
- To refrain from any or all of these things except to the extent that membership in a union may be required pursuant to a lawful union-security clause.

WE WILL NOT do anything that interferes with, restrains, or coerces employees with respect to these rights.

WE WILL NOT threaten employees with closure of the Hospital in the event they file claims with the California Department of Industrial Relations against the Hospital for overdue, unpaid wages for services rendered.

WE WILL NOT discharge employees for filing such claims.

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

WE WILL make Sharon Canter, Jean Lawson, Elizabeth Okoye, and Sundae Webb whole for any wage and benefit losses they may have suffered as a result of their unlawful discharges, with interest.

WE WILL place Sharon Canter, Jean Lawson, Elizabeth Okoye, and Sundae Webb on a preferential hiring list for employment and, in the event we resume operations, give first preference to them in recall to their former jobs.

**BEL AIR CHATEAU HOSPITAL, INC., d/b/a
UNIVERSITY HEIGHTS HOSPITAL**

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On February 13, 1976,¹ Bel Air Chateau Hospital, Inc., d/b/a

¹ Read 1976 after all further date references omitting the year.

University Heights Hospital² (the Hospital) filed a petition with the United States District Court for the Central District of California for protection under chapter XI of the Bankruptcy Act (USDC Bankruptcy Case No. BK 76 02012 JB). On February 17, Sundae Webb filed an unfair labor practice charge against the Hospital in Region 31 of the National Labor Relations Board. On March 3, Bankruptcy Judge John Bergener appointed Sam Jonas of Los Angeles as Receiver to administer the Hospital's affairs. On April 26, the Region issued a complaint against the Hospital and Jonas as joint Respondents, based upon Webb's February 13 charge. After several extensions, on October 27, the Respondents filed an answer to the complaint. In August 1977, the Hospital ceased doing business. In September 1977, the court declared the Hospital bankrupt and appointed Jonas as Trustee in Bankruptcy to wind up its affairs. On a date not appearing of Record but prior to April 1978, the court enjoined the Board from proceeding against Jonas as a party respondent. On April 11, 1978, the Region amended the complaint to delete Jonas as a party respondent.

The complaint alleged the Hospital violated Section 8(a)(1) of the National Labor Relations Act, as amended (hereafter called the Act), by a February 12 statement its alleged agent, Doctor Harry Levine, addressed to Webb and other employees that the Hospital would have to close its operations if they filed claims for unpaid back wages with the California Department of Industrial Relations and by discharging Webb and other employees on February 13 because they filed such claims. In its answer to the complaint, the Hospital admitted Donald Dorr was its administrator, Jesse Sanchez was its assistant administrator, and the two were supervisors and agents of the Hospital acting on its behalf at times pertinent; admitted the commerce facts; admitted Levine made the statements to Webb and other employees on February 12 set out in the complaint; admitted it discharged employees Sharon Canter, Jean Lawson, Elizabeth Okoye, and Sundae Webb on February 13 and failed and refused to reinstate them thereafter; but denied Levine was a supervisor and agent of the Hospital acting on its behalf when he made the February 12 statement, denied the Hospital discharged Canter, Lawson, Okoye, and Webb because they filed wage claims with the State,³ and denied committing any violation of the Act.

The issues before me for determination are:

1. Whether Levine was a supervisor and agent of the Hospital acting on its behalf when he made the February 12 statement to employees alleged in the complaint and admitted in the answer.

2. Whether Canter, Lawson, Okoye, and Webb were discharged by the Hospital on February 13 because they filed claims with the State.

3. If so, whether by such actions the Hospital violated the Act.

4. In the event violations occurred, what remedy is appropriate.

² Hereafter called the Hospital or the Respondent.

³ The Hospital stated as affirmative defenses alleged reasons for discharging the four employees other than the reason alleged in the complaint; since the Hospital neither appeared nor offered any evidence in support of its allegations, the affirmative defenses shall be, and are, dismissed.

Counsel for the General Counsel and the Charging Party appeared at the hearing and were afforded full opportunity to adduce evidence, examine witnesses, argue, and file briefs. The General Counsel argued orally at the hearing.

Based upon my review of the entire record,⁴ observation of the witnesses, examination of the argument, and research, I enter the following:

FINDINGS OF FACT

I. JURISDICTION

The complaint alleged, the answer admitted, and I find that at times pertinent the Hospital was a California corporation engaged in the operation of an acute care facility at Los Angeles, California; that it annually purchased and received goods or services valued in excess of \$2,000 from points outside of California and derived gross revenues in excess of \$250,000; and that, on the basis of the foregoing, it was an employer engaged in commerce in a business affecting commerce within the meaning of Section 2(2), (6), and (7), and (14) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts⁵

At times material the Hospital was staffed on a 24-hour basis. The four alleged discriminatees were employed on the day shift in the nursing department. Canter was a registered nurse, Lawson and Okoye were nursing assistants, and Webb was a ward clerk. Canter was hired by the Hospital in November 1975; Lawson was hired in May 1966; Okoye and Webb were hired in August 1975; and all four were discharged on February 13.

The Hospital followed the practice of paying its employees twice a month: on the 20th of each month, they were paid for work performed between the 1st and the 15th, and on the 5th of each month, they were paid for work performed between the 16th and 31st.

In late 1975, the employees began to experience difficulty in securing their pay and in receiving it in timely fashion; on several occasions, paychecks were returned to employees by their banks because of insufficient funds on deposit at the bank they were drawn on; the Hospital was late in issuing paychecks; etc.

On January 5, the four alleged discriminatees were not paid their wages earned between December 16 and 31, 1975. The four met, discussed the matter, and decided to complain to management. They went to the Hospital's business offices and contacted the administrator (then Mr. Umpstead), the assistant administrator (Sanchez) and the director of nurses (Claire Alyea). Canter spoke on behalf of the four. She complained over their failure to receive pay for their work between December 16 and 31 and stated the four were thinking of filing a claim for the unpaid wages with the State if they were not paid. Umpstead replied that due to the holidays Medicare and Medicaid payments due

⁴ Certain errors in the transcript herein have been noted and corrected.

⁵ The findings herein are based upon the mutually corroboratory testimony of Canter, Lawson, Okoye, and Webb.

the Hospital had been delayed but should be received within a few weeks, so he would appreciate it if the employees would be patient. The four employees decided to withhold filing wage claims with the State for awhile. On January 12, they received their paychecks for the December 16-31 pay period.

On January 20, the four again failed to receive their paychecks for the January 1-15 pay period. They approached Sanchez, and Canter stated that they had bills to pay and could not afford to work without being paid for their labor, that collecting a small unemployment compensation check was better than no check at all, and that the four were going to the State to see what their rights were. Sanchez suggested Canter discuss the matter with Elliott Leonard, the Hospital's attorney, and called Leonard and put Canter on the telephone. Canter repeated her comments, adding that the four would not go to the State if the Hospital would pay 50 percent of the amount due then and the balance in a few days. Leonard replied that if the employees failed to continue working they would be considered quits and could not collect unemployment benefits. Canter replied the four were not quitting, they just were withholding their services unless and until they were assured they would be paid for their services.

Following that conversation Canter contacted the Unemployment Service and was informed that employees who withhold their services because they have not been paid are eligible for unemployment benefits. She called Leonard back and so informed him.

Levine subsequently contacted Canter by telephone. Canter repeated the employees' position to him. Levine asked what he could do to resolve the situation. Canter stated the employees would remain on the job if they received on-half of their pay now and the balance within a few days. Levine stated he would get back to Canter. Canter closed the conversation with the statement that the four would not be in to work the next day if they did not receive the requested pay.

That evening Alyea called Canter at her home and stated that the Hospital would have one-half the amount due the employees the next day and that the balance would be paid a few days later. Canter called the other three and informed them of Alyea's message. They all agreed to report for work the next day.

On January 21, they received one-half the pay due to them for the January 1-15 pay period. On January 22, they received the balance of their pay for that pay period.

On February 5, Sanchez contacted Canter and asked her if the girls would continue to work if the Hospital paid them one-half the pay due them for the January 16-31 pay period, with the balance to be paid later. Canter conferred with the other three and they agreed to continue working, to accept the payment offered, and to file claims with the California Department of Industrial Relations for the balance due if not received promptly. Canter so advised Sanchez and asked Sanchez to arrange for the four to talk to Dorr, who had succeeded Umpstead as administrator. The meeting with Dorr was arranged. On seeing Dorr, Canter asked how long it would be before the second half of their pay for the January 16-31 pay period would be paid. Dorr replied it would be paid in a few days.

On February 6, the Hospital issued checks to the four for one-half the pay due them for the January 16-31 pay period.

On February 11, the four still had not received the balance of their pay for the January 16-31 pay period. Canter contacted Sanchez and stated that the four were not going to work the next day if they were not paid the balance due them for work in the previous pay period and that the four were going to file claims for their unpaid wages with the State Industrial Relations Department. Sanchez promised to pay the balance due if they would come to work the next day. The four discussed the matter and decided to come to work and file pay claims with the State if not paid.

The four worked the next day and were not paid the balance due. They filed wage claims with the State. They also contacted Levine, Sanchez, and Alyea. Canter stated the four needed their pay for the previous pay period and if they did not receive it they were going to withhold their services until and unless it was paid. In the course of that conference, Levine made the statement alleged in the complaint and admitted in the answer, i.e., that the Hospital would be forced to close its operation if the employees pressed their wage claims through the state agency. Canter informed Levine the claims had been filed.

The following day, on reporting for work, the four were handed checks for the balance due them for the January 16-31 pay period and layoff notices. Canter asked Dorr for the pay due for their work between February 1 and 13. Dorr stated there was no money to pay it.

On February 20, Okoye and Lawson went to the Hospital and requested pay for the days they worked between February 1 and 13. Sanchez informed them the Hospital was not going to pay them because they filed claims with the State. They noted replacements had been hired and were performing their jobs.

The employees were informed while employed at the Hospital that Levine was a part owner of the Hospital and its vice president. They observed him function as staff physician, and from time to time he directed them in the performance of their work at the Hospital.

B. Analysis and Conclusion

The threshold question is whether an employee engages in concerted activities protected under the Act when he seeks help from a state agency to collect overdue wages for services previously performed.

The Board, with court approval, has held it is.⁶ As the Board stated in the *B & M* case at (1154),

Respondent discharged the Charging Parties because they filed claims with the State Labor Commission for certain overtime wages. . . . [T]his action by the Charging Parties . . . constituted . . . concerted activities in which Respondent's employees were engaged. Thus the record demonstrates, and we find, that: A group of Respondent's employees, among them the

⁶ *B & M Excavating, Inc.*, 155 NLRB 1152 (1965), enfd. 368 F.2d 624 (9th Cir. 1966); *Gates Air Conditioning, Inc.*, 199 NLRB 1101 (1972); *Brooklyn Nursing Home, Inc., d/b/a Sassaquin Convalescent Center*, 223 NLRB 267 (1976).

Charging Parties, believed they had the right which the Charging Parties were asserting to receive over time pay. . . . [A] number of them consulted with one another concerning the filing of claims for these wages; they discussed the procedure to be followed; and as a result several of them, including the Charging Parties, eventually filed individual claims with the knowledge of the others. Moreover, even if the Charging Parties had independently filed the instant claims, without such prior consultation, such individual filing must itself be considered a protected activity, since the individual action so taken . . . is but an extension of the concerted activity. . . .

As the employees had a right guaranteed by Section 7 of the Act to engage in concerted activities for mutual aid and protection, it is clear, and we find, that the Respondent's discharge of the Charging Parties for doing so not only interfered with their exercise of that right but also had the inherent effect of coercing and restraining its exercise by their fellow employees.

In this case Canter, Lawson, Okoye, and Webb met to discuss their mutual concern over the late payment of their wages and over whether, and when, they would be paid for their services; they decided on a procedure to follow—request for payment, followed by the filing of wage claims if payment was not promptly received; they followed that procedure, warning management of their intentions if not paid in accordance with the understanding (within a few days after the first half-payment); and they carried out their mutual agreement by filing claims for their back wages with the State when management failed to perform on its promise. This was concerted activity, and it was undertaken by the four for purposes of mutual aid and protection in an area of vital concern to any employee—timely receipt of wage payment for previously rendered services.

The next question is whether the four were discharged because they exercised their right to engage in that protected concerted activity. The efforts of management to avert the filing of the wage claims, the hostility expressed by management on learning they had been filed, the timing of the discharges, and the immediate replacement of the discharges with new employees all support a conclusion that this indeed was the reason for the discharge, and I therefore so find and conclude.

I further find and conclude that by so discharging the four the Hospital violated Section 8(a)(1) of the Act.⁷

Findings have been entered above that Levine, at pertinent times, was identified to the employees as part owner and vice president of the Hospital; that he functioned as a staff physician at the Hospital; and that he directed the Hospital's employees in the performance of their duties. On the basis of these findings, I conclude that, at the time (February 12) he stated to Canter, Lawson, Okoye, and Webb that the Hospital would be forced to close its operation if they filed wage claims against it with the State, he was a supervisor and agent of the Hospital acting on its behalf.

The next question is whether such statement was viola-

tive of the Act. I find it was; the statement carries an implied threat to close the Hospital and thereby terminate the employment of the employees to whom it was uttered if they engaged in concerted activity protected under the Act—filing claims with a state agency against the Hospital in an attempt to collect overdue and unpaid wages. Such an implied threat interferes with, restrains, and coerces employees in the exercise of their rights under Section 7 of the Act. I therefore find and conclude that by such implied threat the Hospital committed an additional violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. At times pertinent, the Hospital was an employer engaged in commerce in a business affecting commerce within the meaning of Section 2(2), (6), (7), and (14) of the Act.
2. At times pertinent, Levine, Umpstead, Dorr, Sanchez, and Alyea were supervisors and agents of the Hospital acting on its behalf within the meaning of Section 2(2), (11), and (13) of the Act.
3. The Hospital violated Section 8(a)(1) of the Act by Levine's February 12 statement to employees that the Hospital would be forced to close its operations if they filed claims against the Hospital with the California Department of Industrial Relations for overdue, unpaid wages.
4. The Hospital violated Section 8(a)(1) of the Act by discharging Canter, Lawson, Okoye, and Webb for filing the claims alluded to in the previous paragraph.
5. The aforesaid unfair labor practices affected commerce as defined in the Act.

THE REMEDY

The Board normally requires that discriminatees be reinstated and made whole for their wage and benefit losses, that the Respondent cease and desist from committing the unfair labor practices found to have occurred and refrain from committing those or similar unfair labor practices, and that the Respondent post notices to its employees to that effect.

Such a remedy is obviously inappropriate here, inasmuch as the Hospital has ceased its operations and a Trustee in Bankruptcy is winding up its affairs.

I therefore shall recommend the Board issue an Order directing the Hospital to make Canter, Lawson, Okoye, and Webb whole for any wage and benefit losses they may have suffered over the period extending from the date they were discharged to the date the Hospital ceased operations, with the losses and interest thereon computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977);⁸ to establish a preferential hiring list containing the names of Canter, Lawson, Okoye, and Webb in their respective job categories and give first preference to those employees in the event it resumes operations; and to send letters to its employees notifying them of the Board's Order and its compliance therewith.

On the basis of the foregoing findings of fact, conclu-

⁷ See cases cited in fn. 6.

⁸ See, generally, *Isis Plumbing and Heating Co.*, 138 NLRB 716 (1962).

sions of law, and the entire record, and pursuant to Section 10(c) of the Act, I therefore shall recommend the issuance of the following:

ORDER ⁹

The Respondent, Bel Air Chateau Hospital, Inc., d/b/a University Heights Hospital, Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with closure of the Hospital in the event they file claims with the California Department of Industrial Relations against the Hospital for overdue, unpaid wages for services rendered.

(b) Discharging employees for filing such claims.

(c) Otherwise interfering with, restraining, or coercing

employees in the exercise of their rights under Section 7 of the Act.

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

(a) Make Sharon Canter, Jean Lawson, Elizabeth Okoye, and Sundae Webb whole for any wage and benefit losses they may have suffered as a result of their unlawful discharges in the manner provided in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the National Labor Relations Board agents, for examination and copying, all records necessary to determine the amount of the payments due under this Order.

(c) Establish a preferential recall list containing the names of Sharon Canter, Jean Lawson, Elizabeth Okoye, and Sundae Webb and, in the event the Hospital resumes operations, give first preference to those employees in recall to their respective job categories.

(d) Send letters to employees notifying them of this Order and the Hospital's compliance therewith.

(e) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps the Hospital has taken to comply herewith.

⁹ 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.