

**Belcor Incorporated d/b/a Santa Cruz Care and Guidance Center and Consolidated Industries, Inc., and Hospital and Institutional Workers Union, Local 250, Service Employees International Union, AFL-CIO.** Case 32-CA-151 (formerly 20-CA-12465)

September 29, 1978

### DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On January 6, 1978, Administrative Law Judge Martin S. Bennett issued the attached Decision in the above-entitled proceeding, finding that Respondents had engaged in conduct violative of Section 8(a)(1) of the National Labor Relations Act, as amended, but that they had not violated Section 8(a)(3) of the Act by discharging employee Linda Thornton. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a reply brief.

By Order dated May 2, 1978, the National Labor Relations Board remanded the instant proceeding to the Administrative Law Judge for the purpose of preparing and issuing a supplemental decision setting forth resolutions of credibility of witnesses and containing new findings of fact, conclusions of law, and a recommended order in light thereof. On August 9, 1978, the Administrative Law Judge issued his Supplemental Decision, also attached hereto, in which he resolved the credibility of witnesses, made additional findings of fact, and reaffirmed his conclusions of law and recommended Order as made on January 6, 1978. Thereafter, the General Counsel filed exceptions to the Administrative Law Judge's Supplemental Decision and a brief in support of exceptions, and Respondent filed a reply brief.

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 entire record and the attached Decision and Supplemental Decision in light of all the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions 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 Respondents, Belcor Incorporated

d/b/a Santa Cruz Care and Guidance Center and Consolidated Industries, Inc., Santa Cruz, California, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

### DECISION

#### STATEMENT OF THE CASE

MARTIN S. BENNETT, Administrative Law Judge: This matter was heard at Santa Cruz, California, on July 28, 1977. The complaint, issued April 29 and later amended, based upon charges filed February 11 and April 28, 1977, by Hospital and Institutional Workers Union, Local 250, Service Employees International Union, AFL-CIO, herein the Union, alleges that Respondents, Belcor Incorporated d/b/a Santa Cruz Care and Guidance Center, herein Belcor, and Consolidated Industries, Inc., herein CII, have engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act. Briefs have been submitted by the General Counsel and Respondent.<sup>1</sup>

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

#### FINDINGS OF FACT

##### I. JURISDICTIONAL FINDINGS

Belcor Incorporated d/b/a Santa Cruz Care and Guidance Center is a California corporation operating a number of proprietary hospitals in the State of California, including a nursing care facility at Santa Cruz, California. It annually enjoys gross revenues in excess of \$250,000 and receives in excess of \$50,000 from the State of California's Medi-Cal program. I find that the operations of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

Hospital and Institutional Workers Union, Local 250, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. *Introduction; the Issues*

The complaint alleges that in October and November 1976, Respondent Belcor, by its Supervisor E. Dorris Chisolm, instructed employees to engage in surveillance of the union activities of employees. It further alleges that on or about February 3, 1977, Respondent Belcor discharged Linda Thornton because of her union or concerted activities. Respondent has disputed the supervisory status of Chisolm, and this is treated below.

The parties have stipulated that the Union filed a petition

<sup>1</sup> A motion by the General Counsel to correct the transcript in two minor respects is unopposed and is hereby granted.

for an election on September 30, 1976, in Case 20-RC-13795 and that a hearing was held on November 2 and 5, 1976. A Decision and Direction of Election was issued by the Regional Director on December 17, 1976, and this election was duly conducted at the Santa Cruz facility of Belcor on January 21, 1977. The tally of ballots disclosed 34 votes for the Union, 6 against, and 2 challenged ballots. A certification issued on January 31, 1977, for a unit including, basically, all employees employed at the nursing facility with the exclusion of registered nurses, office clericals, guards, and supervisors. Thornton was not in the unit. It may be noted at this point, and I so find, that in the representation case, Respondent stipulated that Chisolm was a supervisor for Belcor. There is no substantial contrary evidence herein.

Belcor, Inc., d/b/a Santa Cruz Care and Guidance Center and Consolidated Industries, Inc., share the same office space and telephone number in Fresno, California. Clyde Dahlinger, the president of Belcor, and Dorris Chisolm, the administrator at Santa Cruz, possess business cards which are embossed with the words "Belcor, Inc." There is ample evidence of common labor relations and management. Indeed, Chisolm, no longer with these firms, consulted with Dahlinger on a number of personnel matters during her tenure as administrator. This included whether the alleged discriminatee, Thornton, should be granted a wage increase. Respondent has contended that Chisolm was an employee of CII, but the simple answer is that she actually hired and discharged employees at the Santa Cruz facility. This amply demonstrates that the two corporations are in fact a single integrated employer. The record demonstrates that from June 1976 until July 1977 Chisolm interviewed, hired, discharged, issued warnings to, and trained employees, including Thornton. As noted, at a representation hearing in November 1976, her status as a supervisor of Respondent Belcor was stipulated to by the parties. I find that at all times material herein she was a supervisor within the meaning of the Act in behalf of this integrated employer and particularly Belcor.

#### B. *Interference, Restraint, and Coercion*

Linda Thornton was hired as a medical records clerk at \$2.40 an hour on August 6, 1976, and was promoted 1 month later to billing clerk at a monthly salary of \$520 per month. In January 1977, she received a raise to \$550, which applied to all billing clerks for hospitals in the system. After 6 months, she was raised to \$565 per month. She testified that during October, when the Union was organizing, she learned about it from coworker Marcella Jones. She further testified that early in November, with Jones present, Chisolm told the two ladies that the Union was attempting to organize the hospital, that they should be on the alert, and if they heard anything to let her know about it. She further testified that early in December, again with Jones present, Chisolm stated that the Union was attempting to win an election in the hospital and that after Jones left the room Chisolm told her to be aware of the union activity and to advise her about everything that was going on in the facility. According to Thornton, she never made any reports to Chisolm about union activities in the hospital.

Jones, no longer in the employ of Respondent, worked

there from September 14, 1976, through May 21, 1977, when, on her own initiative, she quit the employ of Respondent. She, in effect, confirmed the testimony of Thornton about Chisolm telling them about the union activities in the facility. She attributed to Chisolm statements that she wanted to be kept informed of things going on in the facility with respect to the union campaign. She later testified that Chisolm told her that she wished to be advised of everything going on in the nursing facility concerning union activity.

Chisolm testified that Thornton and Jones were in her office and asked her about the Union in November and December. She recalled only that she told them they could not participate and that it would have to be on their own time. She denied that she ever asked them to gather information concerning union activities in the facility, although she conceded that she told them that a representation petition was pending. As noted, Thornton was not in the unit and neither was Jones. Jones was a record clerk and her duties were different from those of Thornton, but they shared an office and answered the telephone. Chisolm later testified that she just told the two ladies to be generally aware of what was going on in the hospital but did not mention the Union. Directly thereafter she testified, however, that she asked both ladies if there was any union information in the facility that Chisolm should see.

Chisolm was not an impressive witness and, indeed, on cross-examination was evasive. I credit the testimony of Thornton and Jones that Chisolm instructed them to report to her on union activities in the hospital and, in effect, further instructed them to conduct surveillance of union activities in the hospital, this within the meaning of Section 8(a)(1) of the Act.

#### C. *The Discharge of Linda Thornton*

Initially, it should be noted that Thornton had little, if anything, to do with the Union. She did express interest to Jones and another coworker about voting in favor of the Union, although she was not in the unit, but expressing her hope that the Union would win. Jones testified that she received a union card and informed Chisolm thereof; as noted, Jones was not terminated and quit on her own thereafter. Indeed, Jones volunteered to Chisolm that she intended to sign a union card. Jones attended union meetings but Thornton, according to Jones, never did. Jones also confirmed the fact, as Thornton testified, that Thornton refused to sign a card.

According to Chisolm, she was due to depart on her vacation late in November 1976. She spoke with Thornton on this occasion about not filing claims for patients under Medi-Cal which were to be filed, under the regulations, in the previous month. She estimated the loss to Respondent at \$1,800, but it otherwise appears at \$1,300. When she returned from her vacation, she contacted a local employment agency to find another bookkeeper. She interviewed a number of applicants until she hired the present bookkeeper, named Nixon, around the end of January.<sup>2</sup>

<sup>2</sup> As indicated, on January 1, 1977, a wage increase was granted to all billing clerks. Chisolm questioned whether this should be given to Thornton, but was instructed that it should be given to all bookkeepers and it would be unfair to deny it to Thornton.

Around February 2, according to Chisolm, and this is uncontroverted, a conservator for the funds of some of the patients contacted her. Chisolm claims that she worked all that day, that evening, and the following day to find out where the discrepancies were and that there were many; she then decided to terminate Thornton. She also claimed that she worked for a 32-hour period to ascertain the nature of the discrepancies.

On February 3, she called in Thornton and told her she was not doing the job and was being terminated. Thornton asked if she could stay another week, and Chisolm declined because of her poor performance. In essence, Chisolm had intended to replace Thornton, but the phone call from the conservator, Young, triggered the incident.

To sum up, there is no evidence that Respondent had any knowledge of any union activity on the part of Thornton, and, indeed, the record so demonstrates. She chose not to sign a union card and never attended the union meeting; as indicated, she was not in the bargaining unit. Jones informed Chisolm of her intention to sign a card, never mentioning Thornton, and Jones was not discharged. Stated otherwise, Jones was a dedicated union supporter, informed Chisolm that she intended to sign a union card, did sign a card and was not discharged. In view of the foregoing, I find that the evidence does not preponderate in favor of the position of the General Counsel as to the discharge of Thornton.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

#### CONCLUSIONS OF LAW

1. Belcor Incorporated d/b/a Santa Cruz Care and Guidance Center and Consolidated Industries, Inc., are employers within the meaning of Section 2(2) of the Act.

2. Hospital and Institutional Workers Union, Local 250, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By directing employees to engage in surveillance of union activities and report same to Respondents, Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. Respondent has not otherwise engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

#### THE REMEDY

Having found that Respondents have engaged in unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

#### ORDER<sup>3</sup>

The Respondents, Belcor Incorporated d/b/a Santa Cruz Care and Guidance Center and Consolidated Industries, Inc., Santa Cruz, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Instructing employees to engage in surveillance of union activities and report same to management.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed under Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which is deemed necessary to effectuate the policies of the Act:

(a) Post at its premises at Santa Cruz, California, copies of the notice attached hereto and marked "Appendix."<sup>4</sup> Copies of said notice, on forms provided by the Regional Director for Region 32, shall, after being duly signed by Respondents, be posted by them immediately upon receipt thereof and maintained for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply therewith.

<sup>3</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.

<sup>4</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."

#### APPENDIX

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

WE WILL NOT direct employees to engage in surveillance of the union activities of employees on behalf of Hospital and Institutional Workers Union, Local 250, Service Employees International Union, AFL-CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

All of our employees are free to become or remain members of the above-named or any other labor organization.

BELCOR INCORPORATED D/B/A SANTA CRUZ CARE  
AND GUIDANCE CENTER

CONSOLIDATED INDUSTRIES, INC.

## SUPPLEMENTAL DECISION

MARTIN S. BENNETT, Administrative Law Judge: On January 6, 1978, I issued a Decision in this matter wherein I concluded that Respondents had engaged in conduct violative of Section 8(a)(1) of the Act but that they had not violated Section 8(a)(3) thereof by discharging employee Linda Thornton. On May 2, 1978, the Board remanded this matter to me for the purpose of preparing a Supplemental Decision resolving credibility as to conversations allegedly held on February 2 and 3, 1977, between Thornton and her supervisor, Dorris Chisolm, and also containing new findings of fact, conclusions of law, and a recommended Order. Thereafter, *sua sponte*, the General Counsel submitted a brief to me concerning this issue. I issued an Order according the parties an opportunity to respond thereto, and a reply brief has been submitted by Respondent.

Initially, it may be noted that Respondent objects to the filing of this *sua sponte* brief on the basis that the Rules and Regulations of the Board do not provide for such a filing. Respondent therefore asks that I disregard such brief.<sup>1</sup> In any event, Respondent then continued to treat with the issue at hand.

## FINDINGS OF FACT

Respondent has stated, consistent with my initial treatment of the matter, that credibility resolutions were unnecessary. Nevertheless, the Board has directed me to make such resolutions and I deem this to be binding upon me. Consistent therewith, I approach the issue of the credibility resolutions *de novo*.

Not treated in the initial Decision was the fact that this was a nursing care facility devoted to the care of mental patients; this is undisputed. As previously noted, the Union substantially won an election held on January 21, and Thornton was not discharged until February 3, 1977.

I am well aware that in treating with the 8(a)(1) aspect of the case I found that Chisolm was evasive. It does not perforce follow that she was evasive as to other matters in the case.

Thornton testified that she had a conversation with her superior, Chisolm, on the day before her discharge on February 3, and that no one else was present. She claimed that she asked Chisolm if there was some question about the bookwork she was doing. Chisolm allegedly replied that Thornton was not a good bookkeeper because "you don't tell me everything." Thornton then allegedly asked if there was something specific that she had not told her. Chisolm replied that there were "things that have happened in this hospital that you haven't told me about." The conversation ended at this point.

Thornton further testified that the office in which she worked was separated from the rest of the facility by locked doors. She and her coworker Jones, who is discussed in the original Decision, decided whether persons could enter the wards. If there were any questions, they consulted Chisolm. Individuals whom she did not know would enter these doors through keys in their possession. She conceded that

Chisolm had asked her about unauthorized persons entering the wards.

Thornton conceded that in approximately mid-November 1976 Respondent lost approximately \$1,300 because of her tardiness in submitting the appropriate forms, identified herein as MC-170, to the State of California. Chisolm placed this amount at \$1,800. Indeed, Thornton conceded that Chisolm mentioned this dereliction upon her part at the time of her discharge. She further conceded that in mid-November, at the request of Chisolm, she provided the latter with a list of the patients and the amounts of money lost. She further conceded that one Hickey of the local Community Health Center went through the doors into the wards whenever he chose and, further, that Chisolm had told her, "Be careful - who goes through the doors."

Approaching the testimony of Chisolm, it is interesting and significant that she left the employ of Respondent on July 15 but testified herein on July 28. Chisolm testified uncontrovertedly that she spoke with Thornton and coworker Jones about representatives of an organization from a local college entering the premises; this organization is identified only as "Psychiatric Inmates Rights Collective."

Apparently, the trigger incident resulted from the following. Chisolm testified uncontrovertedly, and I find, that most of the patients of this institution came from Monterey County. She testified, and I further find, that one Bruce Young, who is a conservator of persons and funds, telephoned her and advised that there was a problem with her bookkeeper and the funds of the patients; the bookkeeper was Thornton.

Chisolm testified, and this is not controverted, that on or about February 2, she had occasion to examine the Medi-Cal account in particular because it was very much out of balance. Thornton had asked for assistance in balancing this. Chisolm testified uncontrovertedly that she worked all that day and evening and again the following day to find out what the discrepancies were; there were many, and she concluded that Thornton was wasting her own time as well as the time of Chisolm and she then decided to terminate her. She cited as an example that there were bills in the records which ostensibly had been billed when actually they had not been and were still on the desk of Thornton. These are the Medi-Cal charges referred to above. In essence, Chisolm put in approximately 32 hours to verify this.

It was at this point that she summoned Thornton to her office, told her she was a failure as a bookkeeper, and had to terminate her. As previously noted in the original Decision, Chisolm denied the request of Thornton to work another week.

The record does indicate that Respondent, through Chisolm, had previously hired another bookkeeper, Nixon, who was training in another nearby facility of Respondent's and is the current bookkeeper at the instant facility.

Chisolm uncontrovertedly testified, and I find, that she told Thornton at the time of her termination that she was a competent records clerk under supervision and that if she had constant supervision she might prove to be a competent bookkeeper. I note at this point that although Chisolm identified Young as complaining about the office work at this facility, the General Counsel did not see fit to bring in Young to testify or challenge the testimony of Chisolm as to

<sup>1</sup> I have read both briefs. Even if this contention of Respondent is correct, the findings reached below would be unchanged.

what Young had claimed, although it was the call of Young that precipitated the checking of the records by Chisolm.

There is also testimony from Chisolm, uncontroverted, that she had contacted a named employment agency in Santa Cruz before this time to find a replacement for Thornton. Pursuant thereto, she interviewed at least a dozen applicants and ultimately employed Nixon, as stated above, after a period of training at another facility. No one from the agency was brought in to testify.

I find on the testimony of Chisolm, which I credit, that Thornton was guilty of incompetence in her work and made substantial errors therein as cited above. I therefore credit the testimony of Chisolm, as stated, and find that Thornton was discharged for cause; namely the reasons advanced by Chisolm.

I accordingly reaffirm the conclusions of law heretofore made, as well as the Order set forth in the original Decision.