

**Akron General Medical Center and Local No. 1014,  
United Rubber, Cork, Linoleum and Plastic  
Workers of America, AFL-CIO-CLC. Case 8-  
CA-10394**

September 30, 1977

**DECISION AND ORDER**

BY MEMBERS JENKINS, PENELLO, AND MURPHY

On June 23, 1977, Administrative Law Judge George Norman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering 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 record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge, and to modify his remedy<sup>2</sup> 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, Akron General Medical Center, Akron, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

<sup>1</sup> The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>2</sup> Interest on monetary awards mandated by this Decision is to be computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).

**APPENDIX**

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

WE WILL NOT refuse, or continue to refuse, to bargain collectively with Local No. 1014, United Rubber, Cork, Linoleum and Plastic Workers of

America, AFL-CIO-CLC, as the exclusive collective-bargaining representative of all employees in the unit, described below, by unilaterally changing the layoff and recall procedures described in article XVI of the collective-bargaining agreement, without first notifying Local No. 1014 of our intention to do so, or giving Local No. 1014 an opportunity to bargain regarding that subject. The bargaining unit is:

All employees of Akron General Medical Center, excluding personnel department employees, confidential secretaries, aide-occupational therapy, artist, case aide, chief clerk, computer operator, credit interviewers, dietary assistant, draftsman, electrophysiology technician, general accounting clerk, housekeeper, housemother, junior medical technologists, junior radiological technologist, junior secretary, key punch I, key punch II, maid instructor, medical records technician, medical technician, pharmacist assistant, physical therapist, physician's receptionist, physician's secretary, pulmonary technologist, recreational therapist, respiratory technologist, senior charge clerk, senior laundry employee, senior materials handling clerk, senior print clerk, senior radiologic technologist, senior secretary, staff nurse, training supervisor, unit leader, part-time employees working 20 hours or less per week, temporary employees, and oncall, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT schedule mandatory days off without pay for unit employees because they have joined, assisted, or favored the aforesaid Union, or engaged in other protected concerted activity for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT discharge or fail and refuse to reinstate any employee in consequence of his protected activity.

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

WE WILL make unit employees, listed above, whole for any loss of wages they have suffered by reason of the unlawful discrimination against them.

WE WILL offer to reinstate Ronald A. Arfons to his former job or, if that job no longer exists, to a substantially equivalent job, and make him whole, with interest, for any loss of pay resulting from his unlawful discharge.

All our employees are free to become or remain, or refrain from becoming or remaining, members of any labor organization, except to the extent that union membership may be required by a collective-bargaining agreement as a condition of continued employment as permitted by the proviso to Section 8(a)(3) of the Act.

AKRON GENERAL  
MEDICAL CENTER

DECISION

STATEMENT OF THE CASE

GEORGE NORMAN, Administrative Law Judge: This matter was heard at Akron, Ohio, on January 18 and 19, and February 1, 2, 15, and 16, 1977, upon a complaint issued by the Regional Director for Region 8, on October 8, 1976, based upon a charge filed on August 27, 1976, and an amended charge filed on October 6, 1976, by Local No. 1014, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (herein the Union).

The complaint alleges that the above-named Respondent (1) had unilaterally changed the layoff and recall procedures described in article XVI of the collective-bargaining agreement between Respondent and the Union without first notifying the Union of its intention to do so, or giving the Union an opportunity to bargain regarding such subject, thus refusing, and continuing to refuse, to bargain collectively with the Union as the exclusive bargaining representative of said employees; (2) reduced the work hours of many employees in the unit because said employees engaged in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection; and (3) discharged employee Ronald A. Arfons, and refuses to reinstate him to his former or substantially equivalent position of employment because he had, or Respondent believed he had, joined, assisted, or supported the Union, or engaged in other union activity, or concerted activities, for the purpose of collective bargaining. The complaint also alleges that Respondent's conduct constitutes unfair labor practices affecting commerce within the meaning of Sections 8(a)(1), (3), and (5), and 2(6) and (7) of the Act.

Respondent's answer denies the commission of the alleged unfair labor practices, but admits allegations of the complaint sufficient to justify the assertion of jurisdiction under current standards of the Board, and to support a finding that the Union is a labor organization within the meaning of the Act.

Upon the entire record in this case, including my observation of the witnesses, and upon consideration of the briefs,<sup>1</sup> I make the following:

<sup>1</sup> Briefs were filed by the General Counsel and the Union. Respondent did not file any brief.

<sup>2</sup> At the hearing the General Counsel moved to amend par. 7 of the complaint to include the two job classifications which were inadvertently omitted from the description of the unit. The motion to amend was granted, and the description was amended as follows:

FINDINGS OF FACT

I. JURISDICTION

Akron General Medical Center, an Ohio corporation with its principal place of business at 400 Wabash Avenue, Akron, Ohio, is engaged in the operation of a nonprofit hospital.

Annually, in the course and conduct of its business operations, Respondent derives gross revenues in excess of \$250,000, from the operation of its hospital, and receives supplies valued in excess of \$50,000, transported to its facility in interstate commerce directly from places outside the State of Ohio.

Respondent admits, and I find, that it is now, and has been, since the effective date of the Health Care Amendment to the Act, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Unilateral Change in Hours of Employment*

On April 1, 1973, Respondent voluntarily recognized the Akron General Medical Center Employees Labor Union as the exclusive collective-bargaining representative of its employees in the unit described as follows:

All employees of Akron General Medical Center, excluding Personnel Department employees, Confidential Secretaries, Aide-Occupational Therapy, Artist, Case Aide, Chief Clerk, Computer Operator, Credit Interviewer, Dietary Assistant, Draftsman, Electrophysiology Technician, General Accounting Clerk, Housekeeper, Housemother, Junior Secretary, Key Punch I, Key Punch II, Maid Instructor, Medical Records, Technician, Medical Technician, Pharmacist Assistant, Physical Therapist, Physician's Receptionist, Physician's Secretary, Pulmonary Technologist, Recreational Therapist, Respiratory Technologist, Senior Charge Clerk, Senior Laundry Employee, Senior Materials Handling Clerk, Senior Print Clerk, Senior Radiologic Technologist, Senior Secretary, Staff Nurse, Training Supervisor, Unit Leader, part time employees working 20 hours or less per week, temporary employees and oncall, professional employees, guards and supervisors as defined in the Act.<sup>2</sup>

On or about May 16, 1973, the parties entered into a collective-bargaining agreement covering the employees in the above-described unit. The agreement was in effect from April 1, 1973, through April 1, 1976, and was extended by the parties until July 15, 1976.

After the word "Housemother," the words "Junior Medical Technologists," and "Junior Radiological Technologist," were inserted. In addition, the comma was deleted after the words "Medical Records."

On April 7, 1976, the Akron General Medical Center Employees Labor Union became affiliated with the United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC. On June 11, 1976, a majority of the employees of Respondent in the unit described above, in Case 8-RM-748, designated and selected the international union as their representative for the purpose of collective bargaining with Respondent; and on June 18, 1976, the international union was certified as the exclusive collective-bargaining representative of the employees in the above unit. On July 1, 1976, Local No. 1014, was created for the purpose of representing the employees in the above-described unit, and since that time, Respondent has recognized Local No. 1014, as the exclusive collective-bargaining representative of its employees in said unit described above.

On July 15, 1976, Respondent and the Union entered into an agreement to extend the duration of the collective-bargaining agreement described above through July 31, 1976. Article XVI of that agreement contains provisions for reducing hours of bargaining unit employees should it be necessary to do so.

On or about August 16, 1976, while negotiations for a new contract were in process, Respondent unilaterally reduced the hours of bargaining unit personnel by 1 day, without regard to the procedures contained in article XVI of the collective-bargaining agreement. At no time did Respondent negotiate with the Union concerning the manner in which the hours would be reduced, and, indeed, failed to even inform the Union of its plan to reduce the hours of the employees in the unit prior to its implementation.<sup>3</sup>

Respondent's Executive Director James M. Reynolds sent the following memo, dated July 30, 1976, to all employees:<sup>4</sup>

As you may know, the Administration and the Union have not yet reached agreement on a new contract. The

<sup>3</sup> Art. XVI of the collective-bargaining agreement has been in successive collective-bargaining agreements between the parties since 1969. It provides as follows:

#### ARTICLE XVI

##### Lay-Off and Recall

Section 1. When reduction of the working force within a department becomes necessary, because of lack of work, lay-offs shall proceed in the following order:

(a) All temporary employees within the job classification shall be laid off first;

(b) All probationary employees within the job classification shall be laid off next;

(c) All part-time employees shall be laid off in the inverse order of their seniority;

(d) All semi-full-time employees shall be laid off in the inverse order of their bargaining unit seniority;

(e) If further reduction in the working force is required, lay-off of the full-time employees in that department shall be made within the job classification in the inverse order of their bargaining unit seniority;

(f) Lay-offs of full-time employees shall be made rather than the reduction of any full-time employee's hours below forty (40) in a work week provided that part-time jobs which the operational needs of the Medical Center requires shall be maintained and filled in accord with the provisions of this Section;

extension of the old contract will expire at midnight, July 31st. As a consequence, there will be no contract after midnight on Saturday.

We have advised the Union that we intend to preserve, until future notification, employee benefits though there is no contract. This means that your insurance, tuition assistance, grievance procedure, and similar employee benefits will remain in full force and effect on a day-to-day basis until such time as the Medical center advises the Union of the contrary. Negotiations will continue next week at times that are yet to be decided, based on the availability of each side.

Administration intends for the Medical Center to continue its operations "business as usual" even though we are without a contract.

If you have any specific questions of this matter, direct your questions to your supervisor and they, in turn, will direct the questions to me.

Thank you for your loyal service and dedication to patient care.

/s/ James M. Reynolds

On August 5, 1976, the president of the Union notified the personnel director of Respondent of the Union's intent to strike 10 days from service of that notice. The 10-day period would end at midnight, Sunday, August 15, 1976. Thereafter, by decision of the Executive Board of the Union, on August 14, 1976, the Union at a union meeting announced its intention not to conduct a strike to members 6 hours prior to the strike deadline of midnight, August 15, 1976, and posted a notice to employees informing them of this action. In addition, the employer was orally notified by the Union of its decision not to carry out the earlier notice conduct.

(g) Part-time and semi-full-time positions in a department shall be filled by full-time employees who would otherwise be laid off from that department, in the direct order of their bargaining unit seniority in accord with their qualifications, skill, ability, and experience to perform the work required satisfactorily and efficiently. Employees shall be given a two week notice for non-emergency layoff.

Section 2. Employees laid off in a department shall be recalled to available vacant jobs in that department on the basis of the direct order of their bargaining unit seniority as follows:

(a) Full-time employees shall be recalled first to fill both full-time and part-time positions.

(b) Semi-full-time employees shall be recalled within a department to available vacancies.

(c) Part-time personnel shall then be recalled.

Section 3. Employees being recalled to work after lay-off shall be notified by the Medical Center by registered mail sent to each employee's last known address with a copy to the Union office and the employee shall have five (5) days, exclusive of Saturdays, Sundays, and holidays, from the date of mailing within which to report to work. An employee's seniority shall be terminated if he fails to report to work within the said period unless his failure to do so is due to reasons beyond his control. It shall be the responsibility of each employee to keep the Medical Center informed of his current correct address and telephone number if any.

<sup>4</sup> G.C. Exh. 5.

In anticipation of the strike, Respondent, by letter dated August 10, 1976, addressed the following to all doctors who exercise privileges at Respondent's hospital:<sup>5</sup>

Akron General Medical Center/400 Wabash Avenue,  
Akron, Ohio 44307/(216) 384-6000

August 10, 1976

Dear Doctor:

On Thursday, 5 August 1976 the Medical Center received an official "Ten Day Strike Notice" from Local #1014 of the United Rubber Workers, representing approximately 1,000 of our non-professional personnel.

The notice indicated there would be a stike effective at 12:01 a.m. 16 August 1976.

The immediate concern of Administration was, of course, the health and welfare of the hospitalized patients of AGMC as of 12:01 a.m. on that date. Certainly there would be no way we could assure quality nursing care, protection, food, clothing and other services to over 500 patients if approximately 1,000 of our personnel go out on strike. Administration decided we could provide excellent care to approximately 250 patients if they were concentrated in a centralized area of the Medical Center.

As of 1:00 p.m. on 10 August 1976, I was notified that there was not significant progress being made in our negotiations with the URW and we should begin our preparation to reduce our operations with our primary concern being the health and welfare of our hospitalized patients and emergency patients coming to the Emergency Department.

The procedure put into operation at 2:00 p.m. on 10 August is as follows:

1. Elective admissions are terminated until further notice.
2. Emergency patients only would be admitted through the Emergency Department.
3. Maternity patients would be admitted until the Maternity Nursing Unit is closed.
4. Heart catherization patients already scheduled through 13 August would be accepted.
5. On 11 August the 1600 and 3600 Nursing Units would be closed.
6. On 12 August the 4400 and 5400 Nursing Units would be closed.
7. On 13 August the 4300 and 5300 Nursing Units would be closed.
8. On 14 August the 1700 and 2600 Nursing Units would be closed.
9. From 10 August through 15 August patients on the 6400 Psychiatry Nursing Unit would be discharged or transferred to 6100.

<sup>5</sup> Resp. Exh. 1.

10. The closing of additional nursing units and other facilities would be evaluated after 16 August by the Board of Trustees, Medical Staff and Administration.

11. All Departments of the Medical Center have plans to provide services to a reduced number of patients.

12. Beds are available at other area hospitals to physicians and their patients.

13. Physicians who do not have privileges at other hospitals should call AGMC Administration 384-6550 and the Excutive Director will, in a matter of minutes, arrange temporary privileges at the designated hospitals.

14. Patients who are annoyed by our reduction in service should be told the steps taken were necessary to protect the life and well-being of the hospitalized patients.

We sincerely hope that negotiations will result in a settlement by 12:01 a.m. 16 August 1976 and that we can immediately begin opening nursing units and admitting patients.

Your cooperation during these difficult days will be greatly appreciated. Let me reiterate once again, what we have attempted to do is to assure the hospitalized patient and emergency patient that our available resources will be directed to their care.

Sincerely,

/s/ James M. Reynolds

James M. Reynolds  
Executive Director

Upon receiving notification that the strike would not take place at midnight on August 15 as scheduled, Respondent, by letter dated August 16, 1976, sent the following followup letter to the doctors who practice at the hospital:<sup>6</sup>

AGMC

MEDICAL STAFF UNDATE

August 16, 1976 — 5:00 p.m.

Dear Doctor:

The Medical Center is preparing to reopen the closed nursing units and is gearing for full resumption of services as soon as possible. Thank you for your cooperation during these difficult days.

We are aware that the possibility exists that we may close down again. We want to serve you and your patients to the best of our ability.

The "ten-bed available" policy in Emergency will still exist until all units are open again. The Medical

<sup>6</sup> Res. Exh. 2.

Center is following the reopening plan presented by Herbert E. Croft, M.D., Chief of Staff.

We will be notifying ambulance companies that we are now accepting emergency cases.

It is our prime objective to open the operating room as soon as possible and surgical patients will have admission preference.

James H. Reynolds  
Executive Director

Herbert E. Croft, M.D.  
Chief of Staff

Respondent claims that as a result of the Union's 10-day notice to strike it had to reduce its normal patient census from about 503 to approximately 300 patients. It also contended that it had incurred a gross loss of revenue of about \$309,000, and thus, unilaterally imposed a mandatory leave of absence days policy beginning on about August 16, 1976, to recoup the losses.

There is no dispute that Respondent unilaterally instituted this policy without first notifying the Union, or providing the Union with an opportunity to bargain

<sup>7</sup> By memorandum dated October 20, 1976, addressed to all bargaining unit employees, subject, contract negotiations, James M. Reynolds, on behalf of Respondent, sent the following:

October 20, 1976

TO: ALL BARGAINING UNIT EMPLOYEES

Re: Contract Negotiations

On behalf of the entire Administration and the Board of Trustees, I want to thank each employee working in the bargaining unit covered by the U.R.W. for the fine work you have been doing this year under most trying and unsettled circumstances. Negotiations for renewal of the contract began more than eight months ago and no agreement has been reached. The last extension of the contract expired July 31, and you have worked without a contract on a day-to-day basis since that time. There has been a lot of scare talk and rumors that you have no rights or protection while you are working without a contract. These statements are entirely untrue. The Union and our employees have been informed on several occasions that even though there is no contract presently in effect, we will continue to abide by the terms and provisions of the previous agreement until further notice. To date, we have notified the Union that we will no longer honor the Union shop and Check-off of Union Dues. Grievances are being processed through the Second Step and it has been tentatively agreed that, following negotiations, the Medical Center and the Union will meet as often as necessary and process grievances unresolved under the old contract through all Steps including arbitration, and to resolve them as soon as possible.

Shortly after the strike was cancelled by the Union, a temporary lack of work situation existed because of the reduction in patient census brought about by the strike threat. Hours were reduced in work units where necessary by the scheduling of one day off for employees affected by the work shortage. Many others voluntarily took time off and by thus sharing the work, lay-offs were prevented. While this action was charged by the Union as an Unfair Labor Practice and a complaint filed by the N.L.R.B. on a technicality, prompt action was required and was initiated by the Administration in the best interest of the employees, the Medical Center, and patient care. All other provisions of the agreement have remained, and continue to remain, in effect for the protection, security, and benefit of all bargaining unit employees. Any statements or rumors to the contrary are untrue and no provisions or terms will be changed or abandoned without notification to the Union. If you have any question about your rights or your job, please do not hesitate to communicate with your supervisor, and if he or she cannot answer your questions, they will be forwarded to the Personnel Department where you will get an answer. Please be assured that no

regarding that subject. The policy affected bargaining unit members almost exclusively. Thus, registered nurses, who like bargaining unit employees, are involved in direct patient care, were offered a voluntary day off, but those who refused it continued to work as surplus help. In addition, the nursing department reduced the impact on registered nurses by not calling in part-time help. There is no evidence that bargaining unit personnel were given these considerations.

Respondent's Executive Director, James M. Reynolds, testified that in his judgment, if the reduction-in-hours policy had been applied only to temporary and part-time employees, about 200 to 300 people, the same savings result would have been accomplished.<sup>7</sup> The policy was discontinued after the employees affected had taken off the 1 day mandatorily.<sup>8</sup>

#### B. *The Discharge of Ronald A. Arfons*

Arfons was hired on June 23, 1976, as a probationary employee in Respondent's laundry facility. He continued in the employ of Respondent until August 20, 1976, when he was discharged. Arfons was discharged on the last day

employee's rights are impaired in even the slightest extent by the fact that we are working without a contract.

The Union has been saying that the Medical Center will not agree to a Union Shop clause in the new contract because the Medical Center is trying to force a strike in order to get out of paying wages retro-actively to April 1 of this year. As you know, the Medical Center's offer to the Union on wages for the first year is 28 cents across the board, which will be retro-active back to April 1 of this year, but that the retro-activity would be withdrawn if there was a strike. Obviously, when that offer was made, nobody could know that we would be working this long without a contract. Consequently, the amount of retro-active pay, if the Union accepts the Medical Center's offer, is quite large. The amount of that retro-activity can easily be estimated by all of you when you realize that each employee that has worked full-time since April 1 would be entitled to over \$300 in retro-active pay if we were to sign an agreement now. Obviously, that amount increases with each week that passes. However, we have made it very clear to the Union's negotiating committee that retro-activity is still a part of our offer and that it will be paid if the Union accepts the offer.

There is a very simple reason why we will not agree to a Union Shop clause. We believe that each employee should have the freedom of choice to decide whether or not he or she wants to join the Union. The Employees' Association went for four years without a Union Shop clause. In the last two years of its existence, there was a Union Shop clause and many of you were involved in endless controversy regarding Association matters, particularly dues increases.

The Medical Center recognizes your right to join the Union if you want to, however, we also respect your right not to join if you do not want to join. If every member of the bargaining unit joins the Union, that is fine with the Medical Center, so long as it is your decision to join and that you are not forced to join against your will. We believe that this will give you a better Union and better service. Historically, it has been proven that where the Union has a captive membership that is required to pay dues, it is not apt to be as responsive to the wishes and needs of the membership. We believe that if you have the right to be a non-member of the Union, its leaders will have to work a lot better for you in order to persuade you to exercise your voluntary right to join.

Very truly yours,

/s/ James M. Reynolds

James M. Reynolds  
Executive Director

<sup>8</sup> Some unit employees volunteered and did take mandatory days off scheduled for others to spare the others the loss of the day's work and pay.

of his probationary period of 60 days. Respondent listed the reasons for Arfons' discharge as follows:<sup>9</sup>

Ronald Arfons started to work in the Laundry Department on June 23, 1976, as a porter.

June 29, 1976: Ronald Arfons was talked to about his work not being up to standard, and at that time was asked if he understood his job. His reply was that he knew his job.

July 8, 1976: Ronald Arfons was again talked to about failing to maintain acceptable work standards, and was asked again if he understood his job. He stated that he did understand his job.

July 20, 1976: Ronald Arfons was talked to about cleaning behind the washers, which he had been instructed to do, and he had failed to clean the lint traps of both dryers, overhead lights and pipes.

July 26, 1976: Ronald Arfons complained of the lint and dust in the department. He said that he couldn't breathe. Suggested he gets out if he can't stand it. He then stated that he hit his finger on a door by X-ray, he was sent to personnel health was off work for 2-1/2 days. It appears that this employee is a very unhappy employee in his job, because he cannot seem to submit to the authority that is over him, and doesn't want to humble himself to being a cleanup man.

August 12, 1976: Ronald Arfons again complained about the dust in the department, and wanted to transfer into delivery but his request was refused because he would still be in the dust, and it would not have benefited the operation of the department to transfer him into the sorting and delivery area. He tried to transfer before but Ann Brown has not gotten back to us as yet.

Note: Ronald Arfons in the last fifty some days has had to (two written by hand) accidents in the hospital that have been due to carelessness and not watching what he was doing. It is not conducive to good employment and health practices to have a careless and undisciplined employee in a department where the safety of others are involved. It is not likely that this employee will be a happy and productive employee for the laundry department at the Medical Center.

Arfons' supervisor, Vernon Troyer, testified that Arfons was discharged for failing to maintain standards of work and for not following instructions. He further testified that Arfons was informed of this by telephone (Pamela Vaughn, a union steward from another department was also on the phone extension, and William T. McRae, the union steward in Arfons' department, and Bill Troglen, the assistant laundry manager, were present in the office). Troyer's testimony controverts that of Arfons, Vaughn, and McRae. The latter three testified that Troyer informed Arfons that he was terminated because of a cutback in personnel attributed to the hospital's temporary financial setback. The testimony of Vaughn and McRae is that Troyer made it clear that Arfons was not terminated because of his work performance. Both Troyer and Troglen

testified that Arfons was given oral warnings, but there is no record of either oral or written warnings after the 30-day learning period, although Troyer admitted that it is his normal practice to document such warnings. Arfons testified that he had never received a reprimand either oral or written and that he had been praised for his work as late as early August. McRae testified that he also heard Arfons being praised for his good work.

The record shows that Arfons was engaged in extensive union activity. On or about August 12, 1976, Arfons informed Troglen, the assistant laundry supervisor, that as soon as his probationary period expired he would be the alternate union steward. Prior to that discussion with Troglen, Arfons discussed with fellow employees whether or not they should resign from the Union and persuaded several of them not to resign.

Arfons also advised employees not to cross the picket line if the Union engaged in strike activity. The conversations that Arfons had with fellow employees about the Union were often within the close proximity of Troyer, or Troglen, or both. Arfons' union campaign took place at a time when Respondent, in a letter dated August 11, 1976, addressed to all employees, from James M. Reynolds, executive director, instructed the employees how to resign from the Union.

During the first part of August, Arfons and Troyer had a conversation in Troyer's office in which Troyer told Arfons that the Union was not worth joining, and "that the union president, Loretta Rogers, was totally incompetent." Arfons responded that Troyer could have that opinion if he wanted, but Arfons didn't believe it. Arfons stated further that he believed in the Union and if the Union would have a strike, he would honor the picket line.

#### IV. DISCUSSION AND CONCLUSIONS

##### A. *The Unilateral Change*

Although Respondent contends that the reduction of hours for bargaining unit employees was economically motivated in view of the impending strike, which in fact never occurred, Respondent admitted that the same result could have been achieved by reducing the hours of only the temporary and part-time employees. Notwithstanding, economic motivation does not excuse Respondent from its obligation to give prior notification to the Union concerning the change, or to negotiate concerning the reduction of hours provisions that were in effect in collective-bargaining agreements since 1969. In *Amoco Chemicals Corporation*, 211 NLRB 618 (1974), the Board held that economic motivation does not justify a refusal to bargain over a reduction of hours, even though there was no allegation or finding that the reduction in hours was carried out in a discriminatory manner. The Board ordered a monetary remedy in that case. In footnote 2, on page 618, the majority of the Board (Member Kennedy dissenting) said:

Members Kennedy also states that a monetary remedy is unwarranted in this case. He states that it is difficult to perceive how bargaining over the reduction

<sup>9</sup> G. C. Exh. 11.

in hours would have changed matters. However, if the Union is deprived of any opportunity to bargain, and to militate against the reductions, there is no way to tell what might have happened. Here, the Union could have agreed to layoffs of transfers to other operations of the parent corporation, or to implement some other proposal. Neither the Union nor the employees, who were not the wrongdoers in this case, should suffer from the speculation of what might have happened.

Even assuming that Respondent's unilateral action was motivated by good-faith economic considerations, this alone did not relieve Respondent of its obligation to bargain over its decision to reduce the hours of the unit employees. *The Weston and Brooker Company*, 154 NLRB 747 (1965). The reduction in hours was implemented without regard to the established conditions of employment as reflected in the procedures contained in article XVI of the contract, *supra*, and in the face of Respondent's assurances to the Union and the unit employees, during the negotiations, that it would continue to abide by the expired agreement.

Such conduct on the part of Respondent is a violation of Section 8(a)(1) and (5) of the Act. Moreover, the application of that policy almost exclusively to bargaining unit employees, while other employees similarly situated such as nurses and part-time employees remained unaffected, constitutes inherent discrimination in violation of Section 8(a)(1) and (3) of the Act. See *N.L.R.B. v. Katz, et al*, 369 U.S. 736 (1962); *Boland Marine and Manufacturing Company, Inc.*, 225 NLRB 824 (1976); and *The Radio Officers' Union of the Commercial Telegraphers Union, AFL v. N.L.R.B.*, 347 U.S. 17 (1954). For discriminatory intent and union animus, also see *Akron General Medical Center*, 226 NLRB 953 (1976).

#### B. *The Discharge of Arfons*

Ronald A. Arfons was discharged by Respondent on the last day of his 60-day probationary period. Respondent had knowledge that Arfons was to become a union member and alternate union steward upon the termination of his probationary period. That Arfons engaged in extensive union activity during his probationary period is undisputed. Supervisor Troyer was told by Arfons that he was in support of the Union in response to Troyer's attempt to dissuade Arfons from joining the Union. Arfons, Vaughn, and McRae were all credible witnesses. Their testimony was consistent and forthright. To the extent that their testimony conflicts with that of Supervisors Troyer and Troglen, I credit the former and not the latter testimony. Troyer testified that he fired Arfons for "failing to maintain standards of work and not following instructions the way he was told to, and so on and so forth." It would seem that he would have been terminated on the spot, for the insubordination he was allegedly guilty of, rather than on the last day of his probationary period. Mr. Troyer also testified that Arfons failed to clean certain areas of the floors from the time he started until he was terminated. He also said as to "cleaning of equipment, there was places that he had never even begun to clean up, even after we had pointed out to him on numerous

occasions." When asked if Arfons was told about the things that he was doing wrong prior to the day of his discharge, Troyer answered, "I told him on several occasions that he wasn't coming up to standards, and I had asked him to correct it." Again, it would seem that Mr. Troyer would have pointed out specifically and simply to Arfons that he hadn't cleaned certain areas of the floor and certain equipment from the first day that he was hired. There is no evidence that he ever told Arfons the latter.

Troyer's testimony conflicted with his and Troglen's written reasons for Arfons' discharge. When asked if one of the reasons for Arfons' discharge was that he complained to Troyer on several occasions about the lint and dust in the air (listed twice in the reasons for discharge written by them) his answer was, "No." Troyer admitted that he gave Arfons no written warnings (only oral warnings) and did not document any of the warnings, although he admitted he documented oral warnings anytime he talked to an employee "as a rule, but in this particular case, I did not." Supervisor Troyer was not consistent, straightforward, nor candid in his testimony, and therefore, I do not credit him. Similarly, I do not credit Supervisor Troglen. Supervisor Troglen, on a number of occasions, stated that he did not recall certain matters including conversations he had with counsel for the General Counsel during the investigation of the instant case. For example, the following is excerpted from the transcript of testimony of Mr. Troglen while being cross-examined by counsel for the General Counsel:

Q. (By Mr. Ross) Do you recall during our meeting, me asking you why Ron Arfons was discharged?

A. I don't remember the specific questions, but I am sure I told you the same answer that I told these gentlemen here, he was terminated because he was a probationary employee and an unsatisfactory employee.

\* \* \* \* \*

Q. (By Mr. Ross) Isn't it in fact true that during the investigation you told me you never gave Mr. Arfons any warnings, nor did you have any input into Mr. Troyer giving Mr. Arfons any warnings?

A. No, I recall no such statement like that.

\* \* \* \* \*

Q. And you did tell me during the investigation that numerous employees had resigned from the Union; didn't you?

THE WITNESS: If I stated it—I don't recall making that statement, but maybe I did. I don't know.

Q. Then, didn't you describe to me the campaign that was going on in the laundry with respect to employees resigning from the Union?

THE WITNESS: I don't recall what you are talking about. I don't understand the question specifically.

\* \* \* \* \*

Q. (By Mr. Ross) How many did you tell me wanted to resign during the course of the investigation, now that you recall that you did hear that?

A. I have no idea what I told you.

In addition to the memory lapses, Mr. Troglen's testimony was inconsistent. In sum, I do not credit his testimony.

The list of reasons for Arfons' discharge prepared by Troyer and Troglen in two instances listed Arfons' complaint about the lint and dust in the laundry. The presence of lint and dust may affect the health of all the employees who are subjected to it, and therefore, the presence of it is of concern to all the employees. A complaint concerning the atmosphere in the place of employment is a complaint about "conditions of employment," and is therefore a protected activity, and, indeed, concerted activity even absent a showing that other employees joined in the complaint. There is no evidence that fellow employees disavowed the substance of the complaint, thus raising the presumption of implied consent resulting in the activity being concerted activity within the meaning of the Act. *Alleluia Cushion Co., Inc.*, 221 NLRB 999 (1975). Even though that case involved the filing of a complaint with the California OSHA Office, I see no distinction between that case and the instant case where the employee complained to the employer rather than to a governmental agency. As in *Alleluia*, the complainant herein sought to compel Respondent to comply with standards concerning occupational safety. While his own personal health may have been one motivation, it is clear from the nature of the complaint that Arfons' object encompassed the well-being of his fellow employees as well and, therefore, should not be considered any less concerted activity than was found by the Board in *Alleluia*. See *Air Surrey Corporation*, 229 NLRB 1064 (1977).

#### CONCLUSIONS OF LAW

1. The Respondent, Akron General Medical Center, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local No. 1014, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to bargain collectively with Local No. 1014, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, as the exclusive bargaining representative of all the employees in the unit described above in unilaterally changing the layoff and recall provisions described in article XVI of the collective-bargaining agreement without first notifying Local No. 1014 of its intention to do so, or giving Local No. 1014 an opportunity to bargain regarding this subject, Respondent violated Section 8(a)(5) and (1) of the Act.

4. By unilaterally requiring employees to take mandatory leave of absence days without pay, Respondent has

engaged in, and is engaging in, unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

5. By unilaterally requiring bargaining unit employees to take mandatory leave of absence days without pay, while other employees similarly situated were not so required, Respondent's action was inherently discriminatory in violation of Section 8(a)(3) and (1) of the Act.

6. By discharging Ronald A. Arfons because he engaged in union activity, Respondent has discriminated against him and has engaged in, and is engaging in, unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

7. By discharging Ronald A. Arfons because he engaged in protected concerted activity, Respondent interfered with, restrained, and coerced him in the exercise of his rights protected by the Act, and engaged in an unfair labor practice in violation of Section 8(a)(1) of the Act.

#### THE REMEDY

Inasmuch as Respondent violated Section 8(a)(1) and (5) of the Act by its unilateral action, the remedy should be that all those employees affected by such unlawful action be made whole for any loss of pay resulting from that action. The identification of the employees affected is a matter for compliance.<sup>10</sup> Therefore, I shall recommend that Respondent make whole those employees who were either required to take mandatory leave of absence days without pay, by assignment, or by having been asked to volunteer for such a reduction in hours, or were otherwise denied work opportunities, including but not limited to those employees whose scheduled overtime was canceled as a result of the unilateral implementation of the reduction-in-hours policy.

I also find that Ronald A. Arfons was discharged because of his union activities in violation of Section 8(a)(1) and (3) of the Act. I find that the reasons given by Respondent for Arfons' discharge are pretextual. In addition, I find that although there was no specific allegation that Arfons was discharged because of his having engaged in protected concerted activity in violation of Section 8(a)(1) of the Act, the matter was fully litigated and, therefore, I find such conduct on the part of Respondent to be in violation of Section 8(a)(1) of the Act. The General Counsel is allowed considerable leeway in amplifying or expanding certain details not specifically set forth in the complaint if they accord with the general substance of the complaint. As long as those details are fully litigated and offer no element of surprise to Respondent, they are usually held to be a proper basis for an unfair labor practice finding. Only when the General Counsel attempts to prove, or the Administrative Law Judge makes a finding of an entirely new cause of action or violation not covered in the complaint has the Board rejected such offer of proof or findings. *Curtiss Wright Corporation v. N.L.R.B.*, 347 F.2d 61 (C.A. 3, 1965); *Stokeley-Bordo Company*, 130 NLRB 869, 872-873 (1961). I shall recommend that Respondent be ordered to offer reinstatement to Ronald A. Arfons to his former or

employees, but by no means all of them, were identified at the hearing. The remaining affected employees must be identified at the compliance stage.

<sup>10</sup> Although the General Counsel subpoenaed the records of Respondent in order to identify the employees affected, the records produced by Respondent were either incomplete or inadequate. Certain of the affected

substantially equivalent position, without prejudice to his seniority or other rights or privileges, and that he be made whole for any loss of earnings sustained by reason of the discrimination against him together with interest at the rate of 6 percent per annum in accordance with *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *F. W. Woolworth Company*, 90 NLRB 289 (1950).

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record in this case, I hereby issue the following recommended:

#### ORDER<sup>11</sup>

The Respondent, Akron General Medical Center, Akron, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local No. 1014, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, as the exclusive bargaining representative of all the employees in the unit described below, in unilaterally changing the layoff and recall procedures described in article XVI of the collective-bargaining agreement, without first notifying Local No. 1014, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, of its intention to do so, or giving Local No. 1014, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, an opportunity to bargain regarding such subject.

All employees of Akron General Medical Center, excluding Personnel Department employees, Confidential Secretaries, Aide-Occupational Therapy, Artist, Case Aide, Chief Clerk, Computer Operator, Credit Interviewer, Dietary Assistant, Draftsman, Electrophysiology Technician, General Accounting Clerk, Housekeeper, Housemother, Junior Medical Technologists, Junior Radiological Technologist, Junior Secretary, Key Punch I, Key Punch II, Maid Instructor, Medical Records Technician, Medical Technician, Pharmacist Assistant, Physical Therapist, Physician's Receptionist, Physician's Secretary, Pulmonary Technologist, Recreational Therapist, Respiratory Technologist, Senior Charge Clerk, Senior Laundry Employee, Senior Materials Handling Clerk, Senior Print Clerk, Senior Radiologic Technologist, Senior Secretary, Staff Nurse, Training Supervisor, Unit Leader, part time employees working 20 hours or less per week, temporary employees and oncall, professional employees, guards and supervisors as defined in the Act.

<sup>11</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.

(b) Reducing, or continuing to reduce, the work hours of its employees in the unit described above.

(c) Interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

(d) Discriminating against employees by layoff, discharge, or in any other manner, because its employees joined, aided, or supported a labor organization, or engaged in other protected concerted activities.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer Ronald A. Arfons immediate and full reinstatement to his former position, or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay or other benefits suffered by reason of the discrimination against him in the manner described above in the section entitled "The Remedy."

(b) Make whole all employees in the unit for any loss of earnings sustained by them by reason of the implementation of the mandatory leave of absence days without pay policy in the manner provided in "The Remedy."

(c) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records relevant and necessary to determine the amounts of money due under the terms of this recommended Order.

(d) Post at its Akron, Ohio, place of business, copies of the attached notice marked "Appendix."<sup>12</sup> Copies of said notice on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's authorized representative, shall be posted by it 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 Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

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

<sup>12</sup> In the event the Board's Order is enforced by a Judgment of the 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."