Youngstown Hospital Association, South Unit and Service Employees International Union, Local 627, AFL–CIO. Case 8–CA–9067

January 26, 1976

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS JENKINS AND PENELLO

On October 10, 1975, Administrative Law Judge Eugene George Goslee issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting 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 brief and has decided to affirm the rulings, findings,[1] 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 Respondent, Youngstown Hospital Association, South Unit, Youngstown, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] 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.

DECISION

STATEMENT OF THE CASE

EUGENE GEORGE GOSLEE: Administrative Law Judge: This case came on to be heard before me on August 26, 1975, at Youngstown, Ohio, upon a complaint [1] issued by the General Counsel of the National Labor Relations Board and an answer filed by Youngstown Hospital Association, South Unit, hereinafter sometimes called the Respondent. The issues raised by the pleadings relate to whether or not the Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act by interrogating and threatening its employees because of their union activities, and by discharging and otherwise discriminating against Richard J. Dunlap because of his activities and assistance to the Union.

Upon the entire record in this proceeding, having observed the testimony and demeanor of the witnesses, and having duly considered the briefs submitted by the General Counsel and the Respondent, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. COMMERCE, JURISDICTION, AND LABOR ORGANIZATION

As amended at the hearing, the complaint alleges, the answer admits, and I find that (1) the Respondent operates a nonprofit hospital at Youngstown, Ohio; (2) its gross revenues and purchases of supplies in interstate commerce are sufficient to satisfy the standards for the assertion of jurisdiction; and (3) the Respondent is an employer within the meaning of Section 2(2) of the Act and engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The complaint also alleges, the answer admits, and I find that Service Employees International Union, Local 627, AFL–CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

The sequence of events in this case is short and concise, there is little contest concerning the facts, and the resolution turns largely on the Respondent's motives for its acts and course of conduct. At times material here the Union was attempting to organize the Respondent's office clerical employees and certain others in technical classifications. On September 19, 1974,[2] Dunlap attended a union meeting at the home of employee Mary Ann Fox and obtained authorization cards which he subsequently distributed to other employees in the office clerical staff. Late in October the Respondent's accounts manager, Richard D. Stoy, was informed by his assistant, Vince Traino, that Dunlap was passing out union cards. On October 23 and 24, Stoy called all of the employees in the business and credit offices, totalling approximately 24 individuals, into an office and interrogated them as to whether they had been approached about signing a card for the Union. Stoy kept notes of the interrogations, which were subsequently typed and turned over to Bernard F. Hunt, the Respondent's director of fiscal affairs and assistant treasurer. On October 25, Dunlap was called to a meeting with Stoy and Hunt. Hunt stated that it had come to his attention that Dunlap was passing out union cards and encouraging employees to sign them. Hunt asked if Dunlap was passing out cards during working hours, and in response to Dunlap's negative reply, Hunt threatened to fire him if he was using Hospital time for this purpose. Hunt then gave Dunlap a lecture on the disadvantages of unionism, and told Dunlap that not a word of the meeting was to be repeated outside the office.

On October 29, Stoy called Dunlap at his home and told him that he need not report to work that night because

[1] The complaint in this case was issued on June 13, 1975, upon a charge filed on April 3, 1975, and duly served on the Respondent on April 8, 1975

[2] All dates hereinafter are in 1974, unless specified to the contrary.

there had been a cutback. Stoy further informed Dunlap that he might possibly be recalled to work in January or February 1975. Following this telephone conversation, Dunlap called the Union's business representative, Kenneth E. Lewis, and informed him of the meeting with Hunt on October 25, and Stoy's notice of Dunlap's termination. On November 4, the Union filed the first of a series of unfair labor practice charges.

The foregoing findings are based on a composite of the testimony of the General Counsel's and the Respondent's witnesses. To the extent of variations in the versions of events and circumstances presented, I have credited the General Counsel's witnesses. Except to the extent their testimony is corroborated by other witnesses or documentary evidence, I have discredited the Respondent's witnesses because of their demeanor and the inconsistencies and contradictions of their testimony. In addition to these reasons, I have found the Respondent's witnesses unreliable because of their supposed inability to recall even the most rudimentary aspects of the Respondent's operations, including dates of crucial events and the existence or nonexistence of any employment rule prohibiting employees from discussing nonwork matters during working hours.

Dunlap was first employed by the Respondent February 1972, as a telephone collector on the evening shift with an initial schedule of 28 hours per week. In July 1973, Dunlap's hours were increased to 30-1/2 per week, and he continued on this schedule until his termination on October 29. Dunlap was told at the time of his hire that it was the Respondent's policy to transfer night collectors to the day shift when vacancies occurred, and for a 13-week period in 1973 Dunlap was assigned on a full-time basis on the day shift as a replacement for an employee on maternity leave. The record also reflects that on August 7, 1973, Stoy recommended Dunlap for a pay increase, with the supporting comment, "Mr. Dunlap is doing a fine job and is an asset to the Credit Department."

In the regular course of his duties as a collector, Dunlap was responsible for the collection of outpatient accounts in the alphabetized series A through I. He called outpatients to request payment of their accounts, requested social security and insurance information, typed and mailed statements and forms, and traced outpatients who had moved. Dunlap spent the majority of his time on outpatient accounts, but also processed inpatient accounts not reached by the day collectors, and answered all incoming telephone calls to the credit office.

As found above, Dunlap called the Union on October 29 and informed Lewis of his termination and his previous meeting with Hunt and Stoy on October 25. Lewis called Esson, the Respondent's executive director, and threatened to file a charge with the Board unless Dunlap was reinstated. Esson claimed to have no knowledge of Dunlap's discharge, but on the following day, Stoy called Dunlap and requested him to come to the office at the North Side unit at 11 a.m. the next day to see what could be worked out. After Stoy's call, Dunlap reported the conversation to Lewis and requested that Lewis accompany him the next day. Lewis called Stoy, but Stoy refused the request that Lewis be present at the meeting.

Dunlap met on the following day with Esson, Hunt, and Stoy. Esson explained that he was not aware that Dunlap had been called in concerning his union activities and was not aware of his discharge. Stoy stated that there was a vacancy in the credit office, because of the discharge of day collector Karen White on October 28, and then presented from Dunlap's personnel file a reprimand dated November 16, 1973. Dunlap acknowledged that he had signed the reprimand because he had failed to call in on a day when he did not report for duty. This was followed by some general conversation, after which Dunlap informed Esson that he was not satisfied with the explanation that he had been laid off and intended to go to the union hall.

On November 8, Dunlap received another call from Stoy, who instructed him to report to work at 4:30 on November 11. Dunlap complied and returned to work on a schedule of 13-1/2 hours per week. Shortly after his return to work Dunlap noticed that the Karen White vacancy had been posted, and he asked his supervisor, Vince Traino, to put his name down for the job. At Stoy's instruction, Dunlap filled out an application, and he was interviewed by Stoy on November 18. During the course of the interview Stoy told Dunlap that he was too loud on the telephone and too slow on some accounts. On November 27, the Respondent filled the Karen White vacancy for a full-time day collector with a new employee, Cathy Carrocce.

On April 4, 1975, the Respondent posted another vacancy in the credit office, as a result of the departure of employee Noreen Kisko, a collector on the day shift. Dunlap applied for the position and was interviewed by Stoy. According to the testimony of Traino, Stoy told Dunlap that he was too loud and did not get along well with employees during his previous temporary assignment on the day shift. As of the date of the hearing in this matter, the Kisko vacancy had not been filled.

As concerns the allegations of interrogation, it is the Respondent's contention that the interviews of the employees were privileged because of reports that Dunlap and Mary Ann Fox were soliciting on hospital time. Traino testified that in mid-October he had complaints from employees, not further identified in the record, that Dunlap and Fox had solicited them to sign cards on working time and were "bugging" employees to join the Union. There is no room for doubt on this record that the Respondent's agents were fully aware of the participation of Dunlap and Fox in the organizing campaign, but I reject the Respondent's hearing evidence that complaints from other employees about the use of hospital time triggered the interrogations. Stoy was questioned extensively on the interrogations, and from his answers and the notes he maintained of the interviews it is obvious that the matter of whether employees had been solicited on working time was not in issue. In most instances the press of Stoy's questions was whether or not the employee had been contacted about the Union, and in the event of an affirmative reply the employee was asked to identify the person who had made the contact. In addition, none of the employees were appraised of the alleged reason for the interrogation, and none were advised that reprisals would not be visited upon them because of their answers.

I similarly reject the Respondent's contention that Dunlap was not threatened by Hunt at the meeting on October

25. Dunlap admitted that he passed out union cards at the time of the 4:30 p.m. shift change, and also admitted that his activities took place within 2 to 3 minutes while the day-shift employees were still on the clock. In spite of the admission, I reject the Respondent's argument that Dunlap was simply warned against using hospital time for union activities. Although the Respondent appears to contend that it maintains a rule prohibiting employees from using worktime for any nonwork related purpose, the record is devoid of any evidence to support the contention. If the Respondent had such a rule, it accomplished a remarkably effective effort to keep it secret and from the knowledge of both its managers and employees. There is a plentitude of evidence in the record that employees used hospital time for a variety of personal reasons, including minor commercial enterprises, and did so in a fashion which could not escape the attention of its agents. The record also clearly establishes that while Dunlap was threatened about violation of the alleged rule, Mary Ann Fox was ignored, even though the Respondent contends the interrogations were equally prompted by her solicitation on hospital time. The threat to Dunlap was a threat to discharge because of his union activities, not a warning of abuse of a nonexistent rule.

The Respondent's defense to the termination of Dunlap, and his subsequent reduction in hours after recall, is predicated on an alleged change in its method of collecting unpaid accounts. According to the testimony of Traino and Hunt, the Respondent decided, at some vague time between August and October, to purge its accounts. This effort had been periodically undertaken in the past, but Respondent contends that in 1974 it was started earlier in the year to permit better adjustment of accounts in preparation for year-end financial reporting. The effect of the purge was to transfer some unpaid accounts to collection agencies and to cancel others, particularly small unpaid welfare accounts. The result, as argued by the Respondent, was to reduce the work available to Dunlap, and since Dunlap was a part-time employee on the evening shift, he was selected for termination. As to Dunlap's recall, which the record reflects transpired within a week of the filing of an unfair labor practice charge, the Respondent sought to prove that some accounts were overlooked in the purge, and some work became available for Dunlap on outpatient accounts.

I reject the Respondent's defense as a device fabricated of whole cloth, but with gaps in the seams. According to the Respondent's evidence the purge was extensive, cancelling out a large percentage of unpaid outpatient accounts, and some inpatient accounts. The Respondent employs a total of 117 employees in fiscal services, and approximately 12 are involved in collections. Dunlap, whose regularly assigned duties were devoted to outpatient accounts in the alphabetized series A through I, was the sole employee terminated and reduced in hours of work because of the purge. On the day preceeding Dunlap's termination, the Respondent discharged Karen White, and that adequate work was available for Dunlap is clearly evinced by the hire of employee Carrocce as a full-time day collector. The Respondent posted a further vacancy for a full-time day collector in April 1975, but Dunlap continued to work on a schedule of 13-1/2 hours per week. Although the Respondent contends that Dunlap was not qualified to work on inpatient accounts on the day shift, for reasons related below, I find that the contention is devoid of supporting proof. Finally, the record discloses that both before and after Dunlap's recall on November 11, work he normally performed was transferred to employees on the day shift, including an employee who was not classified as a collector.

In addition to the allegation that Dunlap was discriminated against by his termination and reduction in hours after recall, the complaint alleges that the Respondent violated Section 8(a)(3) by failing to offer him available full-time employment. There is adequate proof to support the allegation.

I find on the credited testimony of Dunlap, that it is the Respondent's policy to transfer part-time night collectors to full-time day collectors when vacancies occur, and Dunlap was informed of this policy at the time of initial hire. After the date of Dunlap's termination on October 29, the Respondent had three vacancies for full-time employees on the day shift, two collectors and a so-called social worker. Dunlap specifically applied for both jobs, but was given real consideration for none.

The Respondent argues that the day collectors are primarily involved with inpatient accounts, and Dunlap was not qualified for this work. Like its other defenses, the proof does not support the argument. The day-shift employees are also responsible for outpatient accounts, J through Z. Moreover, Dunlap had worked for 13 weeks on the day shift, processing inpatient as well as outpatient accounts, and on the credited evidence in this record I find that his performance was satisfactory.

The Respondent's witnesses testified that Dunlap was not selected to fill either of the vacancies for a full-time collector because he was too loud on the telephone, too slow in collecting accounts, and unable to get along with other employees during his temporary assignment on the day shift. Dunlap admitted that he received a reprimand in November 1973, and also admitted that on the occasion of the reprimand Stoy, without identifying the source of any complaint, told him that he was too loud on the telephone. Traino was the principle witness concerning Dunlap's alleged inadequacies and adverse personal attributes. Traino testified that Dunlap had not performed the job well while temporarily assigned to the day shift, and that he spent too much time on his accounts. He also testified that other employees, whom he did not identify, complained Dunlap spent too much time on his accounts and could not get along with the other employees. Traino also admitted, however, that he could recall no specific instance when he spoke to Dunlap about his alleged incompetence or other work-related defects. In the light of this record evidence, I find, as I did in the instance of the alleged no-solicitation rule, that Dunlap's supposed inadequacies as an employee were deeply buried in the Respondent's corporate conscience, and disentombed only when need required a convenient pretext.

In summary, I find and conclude that the Respondent interrogated its employees, including Dunlap, in violation of Section 8(a)(1) of the Act, and that its threat to dis-

charge Dunlap because of his union activities also violated Section 8(a)(1). I further find and conclude that by terminating Dunlap on October 29, reducing his hours of employment upon his recall on November 11, and by refusing to employ Dunlap as a full-time collector on the day shift, the Respondent violated Section 8(a)(3) of the Act.

II. THE REMEDY

Having found that the Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, I shall recommend that it cease and desist therefrom, and take certain affirmative action to remedy the unfair labor practices and effectuate the policies of the Act. I have found and concluded above that the Respondent unlawfully discriminated against Richard J. Dunlap by discharging him on October 29, 1974, reducing his hours upon recall to employment on November 11, 1974, and denying him employment as a full-time collector on the day shift. Accordingly, by way of affirmative relief, I shall recommend that the Respondent offer immediate employment to Dunlap in the classification of a full-time collector on the day shift, discharging if necessary any employee hired on or after November 27, 1974, with all seniority rights and privileges Dunlap would have enjoyed in the absence of discrimination, or, if that job no longer exists, to a substantially equivalent position. I shall further recommend that the Respondent make Richard J. Dunlap whole for any loss of earnings he may have suffered by reason of his discharge on October 29, 1974, the reduction in his hours of work on and after November 11, 1974, and the Respondent's refusal to employ him as a full-time collector on and after November 27, 1974, by payment to him of the sum of money he would have earned from the dates of the three acts of discrimination, less net earnings, if any, during each period. Backpay and interest shall be computed in the manner prescribed in *F. W. Woolworth Company,* 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.,* 138 NLRB 716 (1962).

In view of the nature of the Respondent's unfair labor practices as found herein, I shall also recommend that the Respondent cease and desist from infringing in any other manner on the rights of its employees guaranteed by Section 7 of the Act.

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

Conclusions of Law

1. The Respondent, Youngstown Hospital Association, South Unit, is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, Service Employees International Union, Local 627, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating and threatening its employees concerning their union activities, the Respondent has violated Section 8(a)(1) of the Act; and by discharging, reducing the hours of employment, and refusing to hire Richard J. Dunlap, the Respondent has violated Section 8(a)(3) and (1) of the Act.

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

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

ORDER [3]

The Respondent, Youngstown Hospital Association, South Unit, Youngstown, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating or threatening its employees because of their union activities or contacts.

(b) Discharging, reducing the hours of employment, or refusing to hire employees for available positions because of their union activities, sympathies, or interests.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

2. Take the following affirmative actions to remedy the unfair labor practices and to effectuate the policies of the Act:

(a) Offer immediate and full employment to Richard J. Dunlap as a full-time collector on the day shift, discharging if necessary any employee in that classification hired on or after November 27, 1974, or if such job no longer exists, to a substantially equivalent position, according Dunlap all seniority and other rights and privileges he would have enjoyed in the absence of the Respondent's discrimination against him, and make Dunlap whole for any loss of earnings in the manner prescribed in the "Remedy" portion of this decision.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and compute the amounts of backpay due under the terms of this Order.

(c) Post at its place of business at Youngstown, Ohio, copies of the attached notice marked "Appendix." [4] Copies of the notice on forms to be provided by the Regional Director for Region 8, after being duly signed by the Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by

[3] 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

[4] In the event that the Board's 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"

it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

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

WE WILL NOT interrogate or threaten our employees concerning their union activities or contacts.

WE WILL NOT discharge, reduce the hours of employment, or refuse to hire employees for available positions because of their union activities, sympathies, or interests.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer immediate and full employment to Richard J. Dunlap as a full-time collector on the day shift, discharging if necessary, any employee in that classification hired on or after November 27, 1974, or if such job no longer exists, to a substantially equivalent position, according him all seniority and other rights and privileges he would have enjoyed except for our discrimination, and WE WILL make Richard J. Dunlap whole for any loss of earnings he may have suffered by reason of his discharge, reduction in hours, and the failure to employ him as a full-time collector.

YOUNGSTOWN HOSPITAL ASSOCIATION SOUTH UNIT