Valley Hospital, Ltd. *and* Health, Professional & Technical Employees Association, Local 707, Service Employees International Union, AFL–CIO. Case 31–CA–5375 (formerly 20–CA–10326)

October 7, 1976

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND PENELLO

On May 3, 1976, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel submitted the same brief that it had filed with the Administrative Law Judge, for the purpose of responding to Respondent's exceptions and for supporting the Administrative Law Judge's Decision.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as herein modified.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below, and hereby orders that the Respondent, Valley Hospital, Ltd., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1:

"1. Cease and desist from:

"(a) Enforcing its no-solicitation rule so as to prohibit its employees from soliciting on behalf of the Union or any other labor organization on hospital premises, other than immediate patient care areas, during employee nonworking time.

"(b) Discharging its employees for seeking and securing office with the Union or any other labor organization or otherwise engaging in union activities.

"(c) In any other manner interfering with its employees' exercise of their rights under Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

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

WE WILL NOT prohibit our employees from soliciting on behalf of Health, Professional & Technical Employees Association, Local 707, Service Employees International Union, AFL–CIO, or any other labor organization on hospital premises, other than immediate patient care areas during employee nonworking time.

WE WILL NOT discharge our employees for seeking or securing office with the above Union or any other labor organization or otherwise acting on its behalf.

WE WILL NOT in any other manner interfere with the right of our employees to form, join, or assist the above Union or any other labor organization, to bargain collectively through representatives of their choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of the above activities except as may be required by a contract between the Hospital and the representative of our employees.

Since the Board has determined that we discharged Norma Cleveland for the above reasons, WE WILL offer Norma Cleveland immediate and full reinstatement to her former job or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights and privileges.

WE WILL make Norma Cleveland whole for any loss of pay or other benefits she may have suffered by reason of our discriminatory discharge of her.

VALLEY HOSPITAL, LTD.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On January 20, 1976, I conducted a hearing at Las Vegas, Nevada, to try issues raised by a complaint issued on November 28, 1975, based upon a charge filed by Health, Professional & Technical Employees Association, Local 707, Service Employees International Union, AFL–CIO,[1] on

[1] Hereafter called the Union.

June 10, 1975, in Case 20–CA–10326.[2] The complaint was amended on Janaury 7, 1976.

The complaint, as amended, alleges that Valley Hospital, Ltd.,[3] violated Section 8(a)(1) of the National Labor Relations Act, as amended (hereafter called the Act), by discriminatory enforcement of a no-solicitation rule and Section 8(a)(1) and (3) of the Act by discharging Norma Cleveland for engaging in union activities.

The Hospital concedes it discharged Cleveland but contends Cleveland as a supervisor is not entitled to any protection under the Act; denies the Union is a labor organization within the meaning of the Act; denies discriminatory enforcement of its no-solicitation rule; and moves to dismiss the complaint on the ground the Union filed its charge in the wrong Region, in violation of the Board's Rules and Regulations, and to circumvent the Act.

The issues before me for decision are whether (1) the complaint should be dismissed because the Union filed its charge in the wrong Region; (2) the Union at times pertinent was a labor organization within the meaning of the Act; (3) Cleveland at times pertinent was a supervisor or an employee within the meaning of the Act; (4) the Hospital discharged Cleveland because she engaged in union activities and thereby violated the Act; and (5) the Hospital discriminatorily enforced its no-solicitation rule and thereby violated Section 8(a)(1) of the Act.

The parties appeared by counsel at the hearing and were afforded full opportunity to produce evidence,[4] examine and cross-examine witnesses, to argue, and to file briefs. Briefs have been received from the General Counsel and the Hospital.

Based upon my review of the entire record, observation of the witnesses, perusal of the briefs, and research, I enter the following:

Findings of Fact

I. JURISDICTION

The complaint alleged and the Hospital's answer admitted that at times pertinent the Hospital was an independent investor-owned proprietary institution offering medical care and services in Las Vegas, Nevada; that in the course and conduct of its business it annually purchased and received goods or services valued in excess of $50,000 directly from suppliers located outside the State of Nevada, and annually derived gross revenues in excess of $500,000. The complaint further alleged and the answer admitted that at times pertinent the Hospital was an employer engaged in commerce in a business affecting commerce and a health care institution within the meaning of Section 2(2), (6), (7), and (14) of the Act.

On the basis of the foregoing, I find at times pertinent the Hospital was an employer engaged in commerce in a business affecting commerce and a health care institution within the meaning of Section 2(2), (6), (7), and (14) of the Act.

II. LABOR ORGANIZATION

In late 1974[5] the Service Employees International Union launched an organizational drive among hospitals in the Las Vegas area, including the Hospital. The organizers distributed leaflets at the hospitals, contacted employees of the hospitals to solicit their support, and conducted meetings of such employees. Norma Cleveland, the alleged discriminatee here, became an active supporter of the Union early in its campaign and, following the grant of a charter to the Union by the International organization on October 18, became the Union's first president.

The charter makes the Union subject to the International organization's constitution and bylaws. Those documents require the Union to represent its members for the purpose of bargaining collectively with their employers concerning wages, hours, and working conditions.

Cleveland's testimony is uncontradicted (and is credited) that the Union solicited authorizations and membership applications from hospital employees in the Las Vegas area for the purpose of bargaining collectively on behalf of those employee-members with their employers concerning rates of pay, wages, hours, and working conditions; the record further establishes the Union filed petitions with the Board for certification as the exclusive collective-bargaining representative of such employees.

Based upon the foregoing, I find and conclude at times pertinent the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Enforcement of The No-Solicitation Rule and the Cleveland Discharge*

Norma Cleveland was employed by the Hospital as a head nurse on June 6, 1973. Her starting salary was $935 a month. She normally worked a 40-hour week on the day shift. She was terminated by the Hospital on December 21. At that time she was earning $1,050 a month, having received two pay increases during the term of her employment.

As heretofore noted, Cleveland was active in the Union's organization campaign, personally securing signatures to approximately 150 union membership applications/authorizations.

At all times during the campaign the Hospital had in effect the following rule: "Solicitation of any kind, the collection of funds, group congregating or participation in any activity other than hospital business shall not be carried out on hospital time without special permission from the executive director."

During the campaign Cleveland chaired union meetings of hospital employees, including employees and an admit-

[2] The charge was filed in Region 20, it was transferred to Region 31 on June 13, 1975, and renumbered Case 31–CA–5375

[3] Hereafter called the Hospital

[4] By agreement I held the record open pending receipt of the record in Case 31–RC–3060, the representation proceeding involving the parties That record has been received and reviewed I do not require any further evidence, therefore, the record is closed

[5] Read 1974 after all date references omitting the year

ted supervisor [6] of the Hospital, at which she solicited and secured employee signatures to union membership application/authorizations.

In the midst of the campaign (on December 4), Cleveland was called to a conference with Charles Showalter and Mildred Filling at Showalter's office.[7] Showalter advised Cleveland he had been informed she was soliciting employees on behalf of the Union; that such solicitation was in violation of the Hospital's no-solicitation rule; that such solicitation would not be tolerated; and that such activity on her part was inconsistent with her position as a head nurse. Cleveland denied the alleged solicitations and demanded to know who her accusers were. Filling stated that information was confidential. Showalter thanked Cleveland for coming in for the conference and Cleveland left the office.

Cleveland's testimony that she did not solicit any hospital employees at other than breaktimes is uncontradicted and is credited. Cleveland's testimony that the Hospital permitted an employee to solicit sales of Avon products in the presence of a supervisor and permitted a supervisor to solicit contributions for a Christmas gift for Filling on hospital premises during working hours is likewise uncontradicted and credited.

Not long thereafter, in mid-December, Showalter secured concrete evidence concerning Cleveland's leading role in the Union, i.e., copy of a petition filed with the Board by the Union seeking certification as the collective-bargaining representative of a unit of employees at another hospital containing the signature of Cleveland as president of the Union.

On December 21 Showalter called Cleveland into his office and, in the presence of Filling, advised Cleveland he had evidence she was the president of the Union. He then stated it was not in the Hospital's best interests to have an employee it believed a part of the management team (a supervisor) serving in a dual capacity, i.e., as a representative of the Hospital and a representative of the Union. He informed Cleveland she was discharged and handed her a final paycheck. Cleveland, Filling, and Showalter exchanged mutual regrets and Cleveland left the hospital.

A few days later (on December 24) Showalter posted a notice to employees at the Hospital advising them the Hospital discharged Cleveland to avoid subjecting itself to the charge of attempting to influence the Union by retaining a union officer in its employ in a supervisory position.

In response to the Union's petition for certification, as the exclusive collective-bargaining representative of the Hospital's registered nurses, filed that same month (December), the Hospital alleged the petition should be dismissed on the ground the Union's showing of interest was tainted by Cleveland's solicitation of employee authorizations which formed that showing; in its brief in support of that position the Hospital stated, *inter alia:*

> . . . there is no dispute that Norma Cleveland, who was employed by Valley Hospital as a Head Nurse, initiated the formation of Petitioner Union, was active in securing a charter from the Service Employees International Union, was elected the first President of Petitioner Union once it was formed and holds that position to the present date. There is also no dispute that Norma Cleveland since September 1974, and continuing to the present date, has openly and aggressively solicited on behalf of the Petitioner Union.
>
> . . . Ms Cleveland was discharged by Valley Hospital on December 21, 1974 because of her solicitation of employees on behalf of Petitioner and because of her misrepresentation concerning her efforts on behalf of the Union and her official status with the Petitioner Union.

After an exhaustive analysis of the testimony and exhibits submitted by the parties in the representation proceeding [8] concerning the issue of whether Cleveland, eight other head nurses, and their replacements (the head nurses only worked the day shift 5 days a week; the hospital was manned 24 hours a day, 7 days a week) were supervisors, the Board found they were not.

B. *Review of the Head Nurse Issue*

The Hospital seeks to relitigate before me the issue of whether Cleveland, the other eight head nurses, and the staff nurses who replace them when they are off duty were correctly determined by the Board to be employees rather than supervisors.

In its analysis the Board found that the Hospital at times pertinent employed 78 registered nurses, namely: 61 staff nurses, 9 head nurses, 7 administrative nurses, and the director of nursing (Filling), and that Filling and the 7 administrative nurses were supervisors within the meaning of the Act, while the others (head nurses and staff nurses) were not. The Board entered further findings that one or more of the administrative nurses were on duty 24 hours a day, 7 days a week; in the absence of one of them the absentee was normally replaced by another administrative nurse; the nine head nurses were normally on duty one shift per day (the day shift) 5 days per week; the head nurses were replaced by a staff nurse on the three shifts 2 days a week and two shifts 5 days a week when the head nurses were not there; while the head nurses (and the staff nurses who assumed their functions during their absence) routinely performed some work of a supervisory nature (assigning work, ordering supplies, occasionally issuing corrections and reprimands, etc.), they spent the overwhelming proportion of their time providing professional treatment to the patients, and whatever supervisory authority they exercised was incidental to their professional activities; and they were employees rather than supervisors as these terms are defined in the Act.

The only evidence the Hospital offered before me (other

[6] Administrative Nurse Lena Scotton, as found in *Valley Hospital, Ltd*, 220 NLRB 1339 (1975).

[7] It was conceded and I find that at times pertinent Showalter was the Hospital's executive director, Filling was the Hospital's director of nursing services, and both were supervisors and agents of the Hospital acting on its behalf within the meaning of the Act. Prior to the interview Filling received reports of Cleveland's prominent role in the Union, and employee reports that Cleveland solicited them to support the Union at the Hospital.

[8] There were 6 days of hearing (February 11, 12, 13, 14, 26, and 27, 1975), 790 pages of transcript, and 86 pages of exhibits, plus documents, the Board's initial Decision issued on October 16, 1975, is reported at 200 NLRB 1339, it was later modified on December 23, 1975 (in respects not pertinent to the head nurse supervisory issue) at 221 NLRB 1239.

than the record in the RC proceeding) to refute the above findings and conclusions was testimony by Amos Chiarappa that while he was employed as a head nurse at the Hospital (from the month prior to the Hospital's opening in November 1971 to June 1972 he discharged a nurses aide, after securing approval therefor from Filling.

That testimony was weakened by the unrefuted testimony of Billy Knowles, a unit clerk at the Hospital between January 1972 and October 1975. Knowles testified that in early 1972, which immediately followed the opening of the Hospital, there was only one floor in use at the Hospital and only a few head nurses and/or administrative supervisors.

The issue here is whether Cleveland and other registered nurses who functioned as head nurses were employees or supervisors *at the time of the campaign.* I find Chiarappa's testimony both too fragmentary and remote in time to warrant a different result from that reached by the Board in the representation proceeding.

The balance of the Hospital's presentation before me consisted of arguments based on evidence introduced at the representation proceeding that the Board erred in its conclusion that Cleveland, the other eight head nurses, and their replacements were employees rather than supervisors within the meaning of the Act.

The Hospital cites testimony at the representation proceeding by D. Grubbs, a head nurse at the Hospital between April 1972 and September 1972, that she evaluated employee performance, warned two employees regarding coming in late, and authorized the transfer of employees in her department to another department as evidence Cleveland and others who functioned as head nurses were supervisors. This testimony also deals with head nurses' conduct *in the early days of the Hospital;* it is further clear these actions occupied but a small portion of the time Grubbs spent performing her professional duties [9] and may readily be characterized, as the Board did, as incidental to her professional duty performance.

The Hospital next complains that Cleveland, while testifying at the representation proceeding, either denied or failed to recall alleged incidents wherein she approved leaves of absence for employees, evaluated employee performance, and terminated employees while employed as a head nurse at Southern Nevada Memorial Hospital between November 8, 1971, and June 3, 1973. Citing personnel records produced by the Hospital at the representation proceeding containing Cleveland's signature to approvals of leaves of absence, employee evaluations, and termination notices, the Hospital attempts to impeach Cleveland's refusal to concede she performed these functions at Southern Nevada Memorial Hospital.

Whatever duties Cleveland performed while employed at Southern Nevada Memorial Hospital, Cleveland not only denied their performance (thereby frustrating the Hospital's attempt to establish their performance at her former employment), such evidence is irrelevant to the issue of whether Cleveland exercised supervisory functions while employed at Valley Hospital.

[9] Cleveland testified without contradiction 85 percent of her time was spent on patient services

The Hospital next recites the job description of head nurses introduced at the representation proceeding and evidence the head nurses' rate of pay exceeded that of staff nurses but was less than the rate paid the seven administrative nurses as evidence the head nurses at Valley Hospital were supervisors. Such evidence begs the question; a job description prepared by management stating that head nurses shall exercise supervisory functions and the fact three classifications of registered nurses (the director of nursing, administrative nurses, and head nurses) are paid more than the staff nurses does not establish that head nurses are supervisors; the determination of that question turns on what functions the head nurses *actually performed.*

The Hospital finally recites evidence produced at the representation hearing (primarily the testimony of Cleveland, Head Nurse Bonnie Cantrell, and Filling) concerning the functions employees classified as head nurse (and their replacements) performed at Valley Hospital. That evidence establishes (as the Board found in its Decision in the representation case) head nurses and their replacements assigned work to other employees, made out work schedules, issued corrections to other employees when they did their work improperly (which might also be classified as reprimands), and ordered supplies, etc. The testimony of Cleveland and Cantrell further establishes, however, that the head nurses did not hire and fire employees, authorize overtime or time off, and spent the overwhelming proportion of their time performing professional patient services. The Hospital renews its contention that Cleveland discharged staff nurse Barbara Von Urquidy despite the Board's finding (with which I concur) that Filling overruled Cleveland's suggestion that Von Urquidy was incompetent and did not discharge her until several months later.

Based on my review of all the evidence concerning this issue, including the record in the representation proceeding, I find the preponderance of the evidence supports the finding and conclusion by the Board that head nurses and their replacements [10] spend most of their time performing professional services (taking care of patients) and only an incidental portion of their time in the routine performance of what might be classified as quasi-supervisory duties.

I therefore find and conclude at times pertinent Norma Cleveland was an employee within the meaning of the Act.

C. *Analysis and Conclusions*

1. The alleged 8(a)(1) violation

Findings have been entered that at times pertinent the Hospital had in effect a rule prohibiting solicitation of any kind "on hospital time." Findings have also been entered that on December 4 Showalter warned Cleveland her solicitation of employees to support the Union at the Hospital was in violation of that rule and would not be tolerated.

[10] It is evident that staff nurses perform the functions ascribed to head nurses most of the time the Hospital is in operation; they staff the nine head nurse positions during two of the three shifts the Hospital is in operation Monday through Friday and all three shifts the Hospital is in operation on Saturday and Sunday; yet the Hospital does not seriously contend the staff nurses (known as "charge nurses" while so functioning) are supervisors. Such a contention would make supervisors out of over half the registered nurses employed at the Hospital.

The Hospital failed to sponsor any evidence to contradict Cleveland's testimony (which I credit) that all the employee solicitation on behalf of the Union she performed at the Hospital was done on employee breaktime and that solicitation for causes other than union support (for Avon products and a Christmas gift for the head of the nursing staff) were conducted freely on the Hospital's premises on working time both by and in the presence of admitted supervisory employees.

On the basis of the foregoing, I find and conclude that on December 4 the Hospital by Showalter discriminatorily enforced the Hospital's no-solicitation rule against legitimate union solicitation (on breaktime) while condoning such solicitation for other purposes on working time and thereby violated Section 8(a)(1) of the Act.

2. The Cleveland discharge

The evidence clearly establishes Cleveland was not discharged for any lapse in efficiency or misconduct; as counsel for the Hospital stated in his brief in the representation proceeding, Cleveland was discharged because she solicited the Hospital's employees on behalf of the Union and because she was an officer of the Union. Showalter's remarks to Cleveland at the December 21 discharge interview confirm that statement by the Hospital's counsel, as does the employee notice Showalter posted on December 24.

I therefore find and conclude, based on the foregoing, that the Hospital by Showalter discharged Cleveland on December 21 because of her union activities and thereby violated Section 8(a)(1) and (3) of the Act.

D. *The Misfiled Charge Issue*

The attorneys for the Union are located in San Francisco. They filed the charge in this case on June 10, 1975, at the San Francisco office of the Board (Region 20). On the same day Region 20 dispatched a letter to the Hospital notifying it of the filing of the charge, enclosing a copy of the charge, and offering the Hospital an opportunity to rebut or refute the allegations contained therein. Three days later (on June 13, 1975) the General Counsel issued an order at Washington, D.C., transferring the case from Region 20 to Region 31.

On June 16, 1975, the Hospital, the Union's attorney, and the Union were advised by letter of the transfer and directed to contact Region 31, which is located in Los Angeles, concerning further investigation and proceedings on the charge.

On June 23, 1975, counsel for the Hospital filed a motion with Region 20 requesting dismissal of the charge on the ground the charge was not filed by the Union with the proper Region within 6 months of the date Cleveland was discharged (December 21), and that motion is before me for decision.

Section 102.10 of the Board's Rules and Regulations provides a charge shall be filed with the Region in which the alleged unfair labor practice occurred. Section 10(b) of the Act provides no complaint shall issue based upon any charge filed more than 6 months after the occurrence of the act alleged to constitute the unfair labor practice. It is clear in the instant case that the alleged unfair labor practice occurred in Region 31 and that the charge was filed with Region 20 *and transferred to Region 31 within less than 6 months after the date Cleveland was discharged.*

It is further clear (from the short span of time between the date the charge was filed and the date it was transferred) the parties were contacted *by representatives of Region 31* in the investigation of the charge and therefore no prejudice to the Hospital resulted from the transfer.

I therefore deny the Hospital's motion to dismiss the complaint.

Conclusions of Law

1. At all times pertinent the Hospital was an employer engaged in commerce in a business affecting commerce and a health care institution within the meaning of Section 2(2), (6), (7), and (14) of the Act.
2. At all times pertinent the Union was a labor organization within the meaning of Section 2(5) of the Act.
3. At all times pertinent Showalter and Filling were supervisors and agents of the Hospital acting on its behalf within the meaning of Section 2(11) and (13) of the Act.
4. The Hospital violated Section 8(a)(1) of the Act by its discriminatory enforcement of its no-solicitation rule on December 4, 1974.
5. The Hospital violated Section 8(a)(1) and (3) of the Act by discharging Norma Cleveland on December 21, 1974, because of her union activities.
6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Hospital engaged in unfair labor practices in violation of the Act, I shall recommend it be ordered to cease and desist therefrom and take affirmative action necessary to effectuate the policies of the Act, including, *inter alia,* to reinstate Norma Cleveland to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights and privileges, and to make Cleveland whole for any loss of earnings she may have suffered because of her unlawful discharge by paying to her the earnings she would have received between the date she was discharged and the date she is reinstated, with computation of such pay on a quarterly basis (with appropriate deductions for interim earnings) and interest on the sum due at the rate of 6 percent per annum. *F. W. Woolworth Company,* 90 NLRB 289 (1950); *Isis Plumbing & Heating Co.,* 138 NLRB 716 (1962).

On the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I recommend the issuance of the following recommended:

ORDER [11]

Respondent, Valley Hospital, Ltd., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Enforcing its no-solicitation rule so as to prohibit its employees from soliciting their fellows during their off-duty time at the Hospital on behalf of the Union or any other labor organization.

(b) In any other manner interfering with its employees' exercise of their rights under Section 7 of the Act.

(c) Discharging its employees for engaging in solicitation on behalf of the Union on their free time on or off the Hospital's premises or for seeking and securing office with the Union or otherwise engaging in union activities.

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

(a) Offer Norma Cleveland reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges.

(b) Make Norma Cleveland whole for any loss of earnings she may have suffered as a result of her discriminatory discharge in the manner set forth above in the section of this Decision entitled "The Remedy."

(c) Preserve and make available to the Board or its agents all payroll and other records necessary to compute the backpay due to Norma Cleveland in the manner set forth in "The Remedy" section of this Decision.

(d) Post at its Las Vegas, Nevada, facilities copies of the attached notice marked "Appendix." [12] Copies of said notice, on forms provided by the Regional Director for Region 31, after being signed by an authorized representative of the Hospital, shall be posted by Respondent immediately upon receipt thereof, and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Hospital to insure that such notices are not altered, defaced, or covered by any other material.

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

[11] 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.

[12] 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"