

**Doctor's Community Hospital d/b/a/ Victor Valley Hospital and Karen Irene McClure. Case 31-CA-5461**

December 22, 1976

**DECISION AND ORDER**

**BY CHAIRMAN MURPHY AND MEMBERS  
FANNING AND JENKINS**

On May 11, 1976, Administrative Law Judge Bernard J. Seff issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a reply brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,<sup>1</sup> findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.<sup>2</sup>

**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, Doctor's Community Hospital d/b/a Victor Valley Hospital, Victorville, California, 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(c):

"(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activity for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities."

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

<sup>1</sup> We find merit in Respondent's exception to the Administrative Law Judge's partial denial of its motion to correct the transcript. In this regard, the transcript indicates that witness Osborn was asked by the General Counsel to give her opinion as to whether or not Karen McClure was a supervisor and Osborn replied: "I doubt she was a supervisor, yes." Respondent contends that the transcript inaccurately reflects Osborn's response and that in fact she replied: "I thought she was a supervisor, yes." Respondent's motion is unopposed and, in our opinion, no valid basis exists for not accepting the corrected version of Osborn's testimony, particularly

when this version is consistent with Osborn's overall testimony concerning the supervisory status of McClure. Accordingly, we hereby correct the transcript at p. 100, l. 11 to show Osborn's response to be: "I thought she was a supervisor, yes."

Our correction of the transcript removes part of the basis for the Administrative Law Judge's conclusion that Osborn was not a credible witness. However, we consider this to be too insubstantial to warrant a reversal of the Administrative Law Judge's credibility resolutions. In this respect, we note that in discrediting Osborn the Administrative Law Judge also relied on inconsistencies between Osborn's testimony at this hearing and her testimony in the previous representation hearing, as well as upon her demeanor as a witness while testifying. Additionally, we note that Osborn's testimony that McClure's letter had not in any way affected the decision not to reemploy her is inconsistent with Osborn's statement in her affidavit that "no one was considering McClure's reinstatement because of this letter." In such circumstances, we cannot conclude on the basis of relevant record evidence that the Administrative Law Judge's resolutions of credibility are incorrect. See *Standard Dry Wall Products Inc.*, 91 NLRB 544 (1950).

Moreover, as we view the record, the Administrative Law Judge's resolutions of credibility are not crucial to the determination of the issues inasmuch as the record evidence considered as a whole fully supports the conclusions that McClure was an employee and not a supervisor and that Respondent violated Sec. 8(a)(3) and (1) of the Act by refusing to rehire McClure because she would not forego her right to engage in union activities.

Chairman Murphy agrees that the record herein clearly establishes that McClure did not possess or exercise supervisory authority. *St. Rose de Lima Hospital, Inc.*, 223 NLRB 1511 (1976); and see her dissent in *Brattleboro Memorial Hospital*, 226 NLRB No. 148 (1976)

<sup>2</sup> In par. 1(a) of his recommended Order, the Administrative Law Judge uses the narrow cease-and-desist language, "in any like or related manner," rather than the broad injunctive language, "in any other manner," which the Board traditionally provides in cases involving serious 8(a)(3) discriminatory conduct. See *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (C.A. 4, 1941); *Electrical Fittings Corporation, a subsidiary of I-T-E Imperial Corporation*, 216 NLRB 1076 (1975). Accordingly, we shall notify the recommended Order to require the Respondent to cease and desist from in any other manner infringing upon employee rights. This change is also made in the revised notice.

**APPENDIX A**

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

After a hearing in which we participated and had a chance to give evidence, the National Labor Relations Board has found that we had committed certain unfair labor practices in violation of Section 8(a)(3) and (1) of the National Labor Relations Act and has ordered us to post this notice. We intend to abide by the following:

The National Labor Relations Act gives all employees the following rights:

- To organize themselves
- To form, join, or support unions
- To bargain as a group through a representative they choose
- To act together for collective bargaining or other mutual aid or protection
- To refrain from any or all such activities.

WE WILL NOT require nonsupervisory employees to refrain from joining, forming, or supporting unions.

WE WILL NOT condition employment or reemployment of our employees on their giving up support for a labor organization or otherwise engaging in concerted activities for mutual benefit.

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

WE WILL offer to reemploy Karen McClure as a charge nurse and WE WILL make her whole for any loss of pay and benefits suffered because of our discrimination against her with interest at 6 percent per annum.

DOCTOR'S COMMUNITY  
HOSPITAL D/B/A  
VICTOR VALLEY HOSPITAL

## DECISION

### STATEMENT OF THE CASE

BERNARD J. SEFF, Administrative Law Judge: This case was heard by me in San Bernardino, California, on February 24, 1976, based on a charge filed on July 15, 1975. The complaint was issued on December 12, 1975, and alleges that Respondent refused to rehire Karen McClure in violation of Section 8(a)(3) and (1) of the Act. Respondent admits certain allegations of the complaint but denies the commission of any unfair labor practices. While admitting that it refused to hire McClure on January 24, 1975, it claims that she is a supervisor and is therefore beyond the protection of the Act.

### Issue

The main issue presented is whether or not McClure was a supervisor within the definition of Section 2(11) of the Act.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF RESPONDENT

Respondent, a California corporation with its offices and principal place of business located in Victorville, California, is engaged in the operation of a nonprofit hospital. In the course and conduct of its business operations, it annually purchases and receives goods or services valued in excess of \$5,000 from sellers or suppliers located within the State of California, which sellers or suppliers received such goods in substantially the same form directly from outside the State of California. Respondent, in the course and conduct of its business operations, annually derives gross revenues in excess of \$250,000. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

I find that Teamsters Local 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

### Background

On January 7, 1975, the Regional Director for Region 31 issued a Decision and Order in *Doctor's Community Hospital of Victor Valley, d/b/a/ Victor Valley Hospital*, Case 31-RC-2979, in which he found inappropriate a unit limited to registered nurses. The Regional Director found it unnecessary to reach the issue of the supervisory status of the shift supervisors and the charge nurses since he found the requested unit inappropriate. The Board reversed this decision 220 NLRB 977 (1975), and found that shift supervisors must be excluded from the unit as supervisory personnel, but the charge nurses do not possess supervisory authority and must be included in the unit. The Board explained its decision as follows (at 978):

The shift supervisors evaluate employees' performances, make recommendations for wage increases and discipline, effectively recommend hiring and firing of employees under their immediate supervision, can call in or send home employees, and can issue oral or written reprimands. Accordingly, we find that these employees must be excluded from the unit as supervisors.

There are about 15 charge nurses responsible for the total care of the patient and the unit to which the charge nurse is assigned. The director of nursing services testified that the shift supervisor is the immediate supervisor of the charge nurse and serves at a supervisory level between the charge nurse and the director. Normally, if a charge nurse has a problem with an employee under her immediate direction, the charge nurse discusses this with the shift supervisor who makes an independent investigation of the complaints. The shift supervisor, not the charge nurse, is expected to prepare a written evaluation of an employee under the charge nurse but she may consult with the charge nurse who may make an oral recommendation. A shift supervisor is present on each shift and, in the event the shift supervisor is on vacation, a "relief supervisor," who is not a charge nurse, routinely performs her duties. One charge nurse testified that during her 3-1/2 year experience as a charge nurse, she had never filled out any employee time schedules, had never reassigned an employee if there was a vacant spot to be filled, did not possess the independent authority to call in personnel in the event that there was an absence, did not have 24-hour responsibility for the floor staffing, did not go to department head meetings, and did not evaluate personnel in writing. Based upon the above facts, we find the charge nurses do not possess supervisory authority within the meaning of Section 2(11) of the Act.

The above recital, covering as it does this Respondent's operations, provides a clear indication of the Board's evaluation of the position held by Charge Nurse Karen McClure who is the Charging Party in the instant case.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. Respondent's Motion To Correct the Transcript

On March 12, 1976, I received a motion to correct transcript. The record in this matter was closed on February 24, 1976. The motion sets forth two requested corrections:

(1) The reporter made a mistake in pagination. The first 58 pages are correctly numbered but the next page after 58 is numbered 57 and the pages thereafter are numbered consecutively through and including 125. The record therefore shows that a mistake was made and I grant Respondent's motion on this point.

(2) The transcript on corrected page 100, line 11, reads as follows: "I doubt she was a supervisor, yes." The Employer moves that all testimony on said line be deleted and corrected to read: "I thought she was a supervisor, yes." The record does not reflect a different answer from the one reported in the transcript and for this reason I deny Respondent's motion on point (2). Note also that Respondent's counsel did not object on the record when witness Osborn made the statement as recorded by the reporter.

#### B. McClure's Testimony Concerning her Duties as a Charge Nurse

A composite of McClure's testimony as to her duties shows the following: She never evaluated the performance of other employees (written evaluations were made by her supervisor); she never made recommendations for wage increase or discipline; she never effectively recommended hiring and firing employees; she did not call in or send home employees; she never issued oral or written reprimands; when she was sick or could not report for duty she always called her supervisor who replaced her; when a problem came up with an employee she would discuss this with the supervisor who would then handle it; on only one occasion she was asked by Miss Gill, the director of nurses, to show a prospective new employee, Gayle Raymond, around the OB department, which took about 5 minutes, and upon being asked if she thought Raymond would work out in the OB department she replied that Raymond seemed interested and she thought Raymond would make a good employee; she spent almost all of her working time handling patient care; she was an hourly employee and was paid overtime when she worked longer than her shift hours (all of Respondent's supervisors are on salary basis and do not receive overtime pay); whenever there was no work in the obstetrical department she would be assigned to a different area of the Hospital by her supervisor; she was never told by the management of the Hospital that it considered her to be a supervisor; on occasions when she was absent her duties were performed by Valerie Cox, who is a licensed vocational nurse.

While McClure spent almost all of her worktime in patient care, she also had the responsibility for a number of routine functions. For example, she had the authority to order day-to-day supplies but these supplies were ordered from a standardized inventory list. If other supplies not of a routine nature were needed, McClure was required to secure permission from her supervisor before such equip-

ment could be ordered. If any unusual circumstances developed in the OB department, it was McClure's responsibility to report them to her supervisor. When she needed help in her department, she would call her supervisor who would arrange to have another nurse sent to help out. Unlike other supervisors she was required to punch a clock when she reported to work. McClure kept her street clothing in a separate area from that provided for the supervisors. McClure played no part in the adjustment of employee grievances. She did not evaluate other employees or make recommendations for wage increases or discipline. She had no authority to authorize overtime. McClure never transferred an employee from her department or reassigned an employee from one department to another on a temporary basis. McClure was never involved in the discharge of any employee. She did not attend supervisory meetings. McClure never hired or rejected an employee for employment. With respect to the incident involving prospective employee Raymond, which event occurred in the fall of 1974, McClure was asked by the director of nurses to speak with a prospective employee whom the director was considering for employment in the obstetrical department. McClure spent approximately 5 minutes with the employee touring the department. Subsequently McClure orally told the director of nurses that she (McClure) "thought that the employee would make a good employee and that Raymond was interested in her job." From the above it appears that McClure, at most, escorted the prospective employee through the department at the director's request. As a further point it should be noted that McClure apparently was not asked to test or evaluate the employee in any detailed manner; thus, it is clear that McClure's opinion was offered extemporaneously and not based upon any significant evaluation of the employees' nursing skills. The employee was later hired. During her entire employment, McClure on no other occasion interviewed prospective employees. The Board has held that sporadic exercise of hiring or firing is insufficient to render an employee a supervisor within the meaning of the Act. See *Cast-A-Stone Products Company*, 198 NLRB 484 (1972). It is clear that the above description of the Raymond incident does not warrant the conclusion that McClure had even "sporadic" hiring authority.

McClure also gave routine directions to new and experienced nursing personnel in the obstetrical department relating to patient care. The Board has stated, in determining whether head nurses are supervisors within the meaning of the Act, that it has "carefully avoided applying the definition of supervisor as a health care professional who gives direction to other employees in the exercise of professional judgment, which direction is incidental to the professional's treatment of patients and thus is not the exercise of supervisory authority in the interest of the employer." See *Valley Hospital Ltd.*, 220 NLRB 1339 (1975); *Woodland Park Hospital, Inc.*, Case 36-RC-3079, (May 16, 1973, unpublished in bound volumes), review denied June 22, 1973; *Diversified Health Services Inc. d/b/a/ Convalescent Center of Honolulu*, 180 NLRB 461 (1969); *New Fern Restorium*, 175 NLRB 871 (1969). The Board considered the status of "charge nurses" in *Pikeville Investors, Inc., d/b/a Mountain Manor Nursing Home*, 204

NLRB 425, 426 (1973). The charge nurses in question, however, were LPN's and not registered nurses and, furthermore, the Board found that they did not exercise authority over the aides and orderlies. Their directions "are of a routine nature and follow established procedures." All matters respecting personnel actions were handled independently by the director of nursing.

Most recently the Board again held that charge nurses were not supervisors for the following reasons: (1) Their duties are fundamentally limited to providing routine patient care; (2) they have no authority to hire and fire or discipline employees; (3) directions given to aides are routine or connected to patient care. See *Pinecrest Convalescent Home, Inc.*, 222 NLRB 13 (1976).

In accord with the *Pinecrest* case is *Meharry Medical College*, 219 NLRB 488, 490 (1975), wherein the charge nurses were performing duties similar to those in *Pinecrest* and thus were not exercising "any real supervisory authority on behalf of management over employees." The "charge nurses" were analogized to the classification of "lead persons."

A comparison of the types of duties which distinguish "head nurses" from "charge nurses" is found in *The Presbyterian Medical Center*, 218 NLRB 1266, 1267-68 (1975). When "charge nurses" have been found to exercise similar authority to that of the head nurses, the Board has found charge nurses to be supervisors. See *Gnaden Huetten Memorial Hospital, Inc.*, 219 NLRB 235 (1975). In this case charge nurses exercised parallel authority to the head nurses on different shifts: (1) Performed administrative and supervisory functions (about 80 percent of their work); (2) recommended discipline and personnel transfers; (3) recommended work assignments; (4) trained newly assigned aides; (5) recommended time off, vacations, etc.; (6) attended management training sessions; (7) received an extra 10 cents an hour; (8) directed work of the staff nurses and personnel and (9) evaluated performance of other nurses and employees. See also *Newton-Wellesley Hospital*, 219 NLRB 699, 701 (1975).

In conjunction with the above duties, McClure also revised the procedures manual used in the obstetrical department. McClure considered her revisions to be a compilation of standard procedures used in other hospitals, and, in fact, McClure based her revisions upon a manual which she had obtained from another hospital. McClure's revisions were subject to the approval of her supervisor, and her supervisor made changes in the manual after McClure submitted it to her. On the last page of the text, the manual states "The charge nurses [are] directly responsible to the supervisor."

It is clear from the above that McClure's duties did not encompass any of the supervisory indicia enumerated in Section 2(11) of the Act. The isolated instance when McClure was asked her opinion of a prospective employee does not warrant a different conclusion. Furthermore, the exercise of professional judgment incidental to patient care does not change the conclusion that McClure's position was nonsupervisory. Accordingly, as an employee, McClure was entitled to the full protection of the Act. See *Victor Valley Hospital, supra*, and the cases cited therein.

### C. *The Facts Surrounding Respondent's Refusal To Reemploy McClure*

McClure first came to work for the Hospital as an RN on July 18, 1973. On January 24, 1975, McClure was discharged by the Hospital's director of nurses, Bonnie Gill, and the hospital administrator, Wayne Whitesides. The reasons for the discharge were insubordination and refusal to perform assigned work.

Charges were filed with the National Labor Relations Board alleging that her discharge was unlawful. In answer to these charges the Hospital's position was that (1) McClure had been a statutory supervisor and (2) the charges were without merit. The Regional Director dismissed the charges as being without merit. Subsequently, in early April 1975, McClure telephoned the Hospital's personnel coordinator, Vivian Osborn, and asked for a meeting to talk about the discharge. The record shows that, before agreeing to meet with McClure, Osborn telephoned the Hospital's labor counsel, Al Klein, and asked for advice regarding McClure's request. Klein advised Osborn to meet with McClure. He further advised Osborn to discover McClure's feelings about the possibility of rehire, but expressly instructed Osborn to explain that (1) McClure would be considered for rehire to no position other than that as a statutory supervisor, and (2) McClure, if rehired, would have to assume the Hospital's attitude towards employee organizing. The meeting requested by McClure took place on April 10, 1975, at Barney's Restaurant in Apple Valley, California, and lasted approximately 1-1/2 hours.

It is significant to note that in the meeting held between McClure and Osborn in Barney's Restaurant, which took place on April 10, among other things, it was emphasized to McClure that she was to "maintain a low profile." McClure testified without refutation that Osborn told her that "she would have to maintain a low profile on union activity. She was not to campaign actively for the Union." Thus it can be seen that the motivation behind the decision not to reemploy McClure was directly related to conditioning her reemployment on her relinquishment of further activity on behalf of the Union. The unrefuted quotation appearing, *supra*, clinches the matter that the decision as to whether or not to employ her depended entirely on her giving up her union activities, which facts were communicated to her by Osborn on April 10. It is not controverted that McClure wrote her letter on April 14 and distributed it on April 15.

Couple these facts with the repeated statements of Osborn to McClure that she could only be rehired as a supervisor, even though it was understood by both women that McClure was being considered for reemployment to her old job and that her duties would be the same as they were while she was employed as the charge nurse. If she had always been a supervisor endowed with the same duties and responsibilities, it was clearly unnecessary to rehire her as a "supervisor." The insistence on her agreeing to come back only as a "statutory supervisor" is a transparent device to preclude any liability under Board law for either what had occurred in the past or what might happen in the future.

#### D. *Credibility of the Witnesses*

The General Counsel presented his case through the testimony of Karen McClure. Her recital of the events she described was given in a forthright, consistent, and honest manner and her demeanor made a favorable impression on me. I find McClure to be a credible witness.

Respondent counsel offered his defense through one witness, Vivian Osborn. There were certain obvious inconsistencies in her testimony. The transcript recites the following colloquy:

The General Counsel asked her,

Q. Now, at that time will you give us your opinion as to whether or not McClure was a supervisor at the hospital.

A. I doubt she was a supervisor, yes.

Elsewhere in the transcript Osborn expressed the opinion that McClure was a supervisor. Furthermore, in the representation proceeding<sup>1</sup> in the course of an exchange between the Hearing Officer and Osborn, she testified that her duties encompassed the right to hire or fire or to recommend hiring or firing. Her answer further was to the effect that she had such authority and she specifically stated that she had the authority to hire all hospital personnel. At the hearing in the instant case, she testified that she did not have the power to hire in the nursing department without the approval of the director of nursing. Later, on cross-examination, she admitted that she had the authority to hire nursing personnel and played a role in the hiring process within the nursing department. Furthermore, in a sworn statement given to a Board agent on August 4, 1975, Osborn stated:

At the meeting in Los Angeles the question of McClure's reinstatement never came up. A copy of the letter was passed around without comment, but it was apparent that no one was considering McClure's reinstatement *because of this letter*. [Emphasis supplied.]

Osborn then testified that the statement given to the Board agent was true. Based on the above, the General Counsel in his brief stated that "Osborn should not be credited in any respect as to a material matter where her testimony is at variance with McClure's testimony." I agree.

#### Concluding Findings and Analysis

The main thrust of Respondent's position is: (1) McClure is a supervisor and as such she is precluded from the protection of the Act; (2) her discharge was decided upon on April 14 before McClure wrote her letter to the employees dated and distributed on April 15. (McClure's letter is included in the record as Appendix B.) Thus, according to Respondent, its refusal to rehire her had nothing to do with union or concerted activities.

(1) I have found, after an exhaustive appraisal of her duties, that McClure was not a supervisor within the meaning of Section 2(11) of the Act. Similarly, the Board

found in the case involving the same Respondent, *Victor Valley Hospital, supra*, 220 NLRB at 978, that "charge nurses do not possess supervisory authority within the meaning of Section 2(11) of the Act and they were therefore included in the unit found appropriate and eligible and did participate in the election.

(2) Respondent knew that prior to McClure's discharge she had proselytized for the nurses union and that she had appeared as a witness in the Board "R" case. The record also shows that McClure was involved in May 1974 in the circulation of a petition among the hospital employees requesting an increase in wages. In fact, McClure testified credibly that she presented this petition to the hospital board and, as a result, the employees did get an 8-percent increase.

According to further testimony, McClure was asked on direct examination by the General Counsel if she knew why the Hospital was considering rehiring her; she answered:

Yes, she [Osborn] said the reason for the rehiring was to show good faith on the part of the hospital, . . . they were trying to work with the employees and they thought this would be a bonus before the election to show that they did want to cooperate with the employees and that this would *kine* [sic] of help the situation.

During McClure's discussion with Osborn about her rehire, Osborn said:

I would be considered management level and that as such I would have to, you know, use the management thinking and I would have to maintain a low profile on the union activities. I was not to campaign actively for the Union. I was just to maintain a low profile.

On or about April 15, the hospital board and its attorneys were scheduled to hold a business meeting and Osborn thought the matter of McClure's rehire might come up at that meeting. McClure kept in touch with Osborn from April 10 on, concerning her chance of getting her job back. On or about April 14, in a phone conversation with Osborn, McClure thought Osborn was abrupt with her and she felt that her hopes for reemployment were dashed. She was discouraged and frustrated and wrote the letter (G.C. Exh. 4-Appendix B) which concludes as follows:

I miss all of you and think of you often and do hope that things will come out for the best for everyone at Victor Valley. For your future job security do think about your union vote and do vote. Remember it is a secret ballot. Nobody will know how you voted except you . . . .

The letter was dated April 15, 1975, and was distributed on the morning of April 15. That morning McClure spoke to Osborn, who told her that she (Osborn) had seen the letter and that it had been given to her by Ms. Gill and that she was noticeably upset and felt that any chance of talking her (Gill) into rehiring McClure "had gone down the drain." After the meeting of the hospital board, McClure phoned

<sup>1</sup> *Victor Valley Hospital, supra*

Osborn, who told her that no action had been taken to rehire her but that Director of Nurses Gill told her that she (Gill) had thrown down McClure's letter and said "See, this is why we can't hire Karen McClure. We just can't trust her." Gill then allegedly said one of the attorneys present said "Could you rehire Karen McClure and work with her," and "they were almost unanimous, I guess, in saying no, that because of this letter there was no way they could rehire me."

It appears clear from the undisputed testimony of McClure that the reason why she was not rehired was because of her past union activity and because of her letter of April 15. The General Counsel concludes a section of his brief as follows:

The Board and the Courts have long held that refusing to rehire employees because of past union activity violates Section 8(a)(3) and (1) of the Act. See, e.g., *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177 (1941); *John Hancock Mutual Life Insurance Co.*, 92 NLRB 122, enfd. 191 F.2d 483, 484-486 (C.A.D.C., 1951); *Federal Copper and Aluminum Co.*, 193 NLRB 819; *Central American Airways*, 204 NLRB 161.

It is also clear that when Respondent conditioned McClure's reemployment upon her using "management thinking . . . maintaining a low profile on the union activity . . . and not campaigning actively for the Union," this also violated the Act. The Board in *Sports Coach Corporation of America*, 203 NLRB 145 (1973), stated the law governing this aspect of the instant case as "conditioning reemployment upon abandonment of support for the Union constituted a clear violation of Section 8(a)(3) and (1) of the Act." I so find. Even though this last finding is not based on a specific allegation in the complaint, "It is a well established principle that a material issue which has been fairly tried should be decided by the Board regardless of whether it has been specifically pleaded." See *American Boiler Manufacturing Association v. N.L.R.B.*, 366 F.2d 815, 821 (C.A. 8, 1966), and the cases cited therein. This issue was fairly tried and fully litigated before me in the hearing involving the instant case.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III above, occurring in connection with the operations of the Employer described in section I above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

<sup>2</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

#### V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action found necessary to effectuate the policies of the Act.

Having that Respondent discriminatorily refused to reemploy McClure because of her union activities, I find that Respondent thereby violated Section 8(a)(3) and (1) of the Act. I shall recommend that she be reemployed with backpay to be computed on a quarterly basis as provided in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with 6-percent interest per annum as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the basis of 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<sup>2</sup>

The Respondent, Doctor's Community Hospital d/b/a Victor Valley Hospital, Victorville, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Requiring nonsupervisory employees to refrain from joining, forming, or supporting unions.

(b) Conditioning employment or reemployment of our employees upon giving up their support for a labor organization or otherwise engaging in concerted activities for their mutual benefit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activity for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities.

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

(a) Offer Karen McClure reemployment to her former position as a charge nurse or, if such position is not available, to a substantially equivalent position and make her whole for any loss of earnings she may have suffered by reason of the discrimination against her, in the manner set forth in the section of this Decision entitled "The Remedy."

(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 the amount of backpay due under the terms of this Order.

(c) Post at its hospital located in Victorville, California, copies of the attached notice marked "Appendix A."<sup>3</sup>

<sup>3</sup> 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

Copies of said notice, on forms provided by the Regional Director for Region 31, after having been signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof and 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.

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

to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX B

April 15, 1975

ATTENTION VICTOR VALLEY HOSPITAL EMPLOYEES

Dear Friends and Former Fellow Employees,

As you know I was fired from my job three months ago for refusal to take O.B. call. This was the only reason I was fired. I took this position because management would not correct overtime pay for one employee in my department.

It has been hinted that there are more sinister reasons for my firing. This is completely untrue. All you people that have known me for the past year and a half, know I am

incapable of giving an obscene gesture or using hurtful language to management personnel.

We turned to the union for support because none was forthcoming from management. All we really are saying is we want job security. Extreme examples of this are Mrs. Duke and Mrs. Estrada, among others, who were long term loyal employees, cut back to two days a week with no warning.

Since I left Victor Valley Hospital employ I have stayed away not wishing to bother management in anyway. But, alas, they can not leave me alone. This Thursday, April 17th at 10:30 a.m. in the Human Resource Development office on Mojave Drive, there will be an open hearing. The Hospital management personnel are responsible for this learning and they are going to try and take my unemployment benefits away from me. I was fired—why they want to continue to harrass [sic] me is beyond my comprehension. Trudy Shoemaker even went so far as to say I was suing the hospital. Again this is not true. All I want is to be left alone.

I miss all of you and think of you often and do hope that things will come out for the best for everyone at Victor Valley. For your future job security do think about your union vote and do vote. Remember it is a secret ballot. Nobody will know how you voted except you. Best wishes to all of you.

Sincerely yours,  
/s/ Karen McClure  
Karen McClure

[From G.C. Exh. 4.]