

A & D Davenport Transportation, Inc. and Sun-Fair Special Service Transportation, a Division of A & D Davenport Transportation, Inc. and Richard Warfield. Case 13-CA-18713

June 10, 1981

DECISION AND ORDER

On January 13, 1981, Administrative Law Judge Harold Bernard, Jr., issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

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,¹ and conclusions² of the Administrative Law

¹ 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), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We clarify, however, the chronology of events as reported by the Administrative Law Judge by finding, based on the credited testimony, that Davenport's order to the drivers to "get the hell off the premises" occurred *after* Montgomery had passed around the "questionnaire" and had responded to drivers' questions about it.

We also note, as a matter of clarification, that, in referring to G.C. Exh. 4—the letter sent by Respondent to the dischargees in July—the Administrative Law Judge clearly intended to also refer to G.C. Exh. 5, the actual "apology" statement that Montgomery required those wishing to return to sign.

² In addition to the reasons set forth by the Administrative Law Judge for finding the July letter and apology to be violative of Sec. 8(a)(1), we note that G.C. Exh. 5 (the "apology" statement) included an admission that the dischargee had in fact resigned, thus leaving the impression that he was waiving any right to contend that he had been discharged for engaging in protected concerted activity when, in fact, such activity was the reason for his termination. Requiring such an admission as a prerequisite to employment is an interference with employee rights guaranteed by Sec. 7. We shall amend the recommended Order accordingly.

We further observe that the unlawful character of Respondent's behavior in passing around the April 3 questionnaire is highlighted by the fact that, when one of the drivers asked if signing it would affect their jobs, Montgomery answered that he did not know, leaving the drivers in doubt as to whether they would be fired or otherwise adversely affected if they formally expressed their dissatisfaction with current terms and conditions of employment.

We reject Respondent's contention, made for the first time in its brief in its brief in support of exceptions to the Administrative Law Judge's Decision, that it is a health care institution and that therefore the drivers forfeited the protection of the Act by engaging in a concerted refusal to work without giving 10 days' notice pursuant to Sec. 8(g) of the Act. The strictures of Sec. 8(g) apply only to labor organizations as defined in Sec. 2(5). Here, the group (unaffiliated with any existing labor organization) was totally unstructured and was doing nothing more than presenting grievances; such a group is not a statutorily defined labor organization. *N.L.R.B. v. Long Beach Youth Center Inc.*, 591 F.2d 1276 (9th Cir. 1979); *Walker Methodist Residence and Health Care Center, Inc.*, 227 NLRB 1630, 1631 (1977). Further, the record here does not reveal a concerted refusal to work. While the drivers were apparently called in by employee Warfield, Montgomery made no effort to countermand Warfield's order, and did not order the assembled drivers to return to work. Consequently, the drivers could assume that Montgomery had no objection to discussing the grievances then and there. It being unnecessary to the disposition of the case, we express no opinion as to whether Respondent is a health care institution as defined in the Act.

Judge, as modified herein, and to adopt his recommended Order, as modified.³

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, and hereby orders that the Respondent, A & D Davenport Transportation, Inc. and Sun-Fair Special Service Transportation, a Division of A & D Davenport Transportation, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as modified:

1. Substitute the following for paragraph 1(b):

"(b) Requiring any employee, by signing a document, letter or otherwise, to admit that he resigned his job when in fact he or she had been discharged for engaging in protected concerted activities and requiring any employee to apologize for engaging in concerted activities seeking better working conditions, or to agree not to engage in such activities as a condition of employment."

2. Add the following to paragraph 2:

"(d) Notify the Regional Director for Region 13, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

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

³ The Administrative Law Judge inadvertently omitted from his recommended Order the requirement that Respondent notify the Regional Director as to what steps it has taken to comply with the Order. We shall amend the recommended Order to include such a provision.

Member Jenkins would compute the interest due on backpay in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice and to carry out its provisions.

WE WILL NOT require any employee, by signing a document or other means, to choose between engaging in concerted activities seeking better working conditions and discharge.

WE WILL NOT require any employee, by signing a document, letter or otherwise, to admit that he resigned his job when he or she in fact had been discharged for protected concerted activities, and we will not require employees to apologize for engaging in concerted activities seeking better working conditions or to agree not to engage in such activities as a condition of employment.

WE WILL NOT discharge any employee because he engaged in concerted activities seeking better working conditions.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the National Labor Relations Act.

WE WILL offer Richard Warfield, William Butler, Louis Larkin, Bobby Bracy, Wardell Madison, Henry Davis, and Michael Taylor immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without loss of seniority or other rights and privileges, and WE WILL make each of them whole, with interest, for any loss of earnings suffered by reason of our unlawful discrimination against them.

A & D DAVENPORT TRANSPORTATION INC. AND SUN-FAIR SPECIAL SERVICE TRANSPORTATION, A DIVISION OF A & D DAVENPORT TRANSPORTATION, INC.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD, JR., Administrative Law Judge: A hearing was held on November 6, 7, 8, and 9, 1979, in Chicago, Illinois, on the complaint allegations that Respondent terminated employees because they engaged in protected concerted activities thereby violating Section 8(a)(1) of the Act. Respondent's answer denied any violation of the Act and asserts that the employees voluntarily quit their employment.

Upon the entire record, including my observation of the witnesses, and a consideration of the parties' briefs, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Respondent admits, the record shows, and I find that Respondent, an Illinois corporation engaged, *inter alia*, in the transportation of handicapped, ambulatory, or medically infirmed persons to and from treatment centers and their residences, is an employer engaged in commerce within the meaning of the Act. President Dorothy Dav-

enport and Roy Montgomery, general manager, are admittedly agents of Respondent.

II. THE UNFAIR LABOR PRACTICES

The credited testimony¹ shows as follows:

The April 3 Meeting

On April 3, Respondent's 11 medi-car drivers returned to base around noon in response to a call over their radios to ". . . return to base"; an unusual call given its timing in midday when the record shows that there were many deliveries or transporting of patients yet to be completed. It is in serious dispute who gave the command, but I find it very unlikely that Respondent's general manager, Roy Montgomery, or its dispatcher Richard Jones would make such a call and thereby willingly risk a severe disruption in essential medical-patient services, especially since the record is devoid of any emergency warranting such a move. Moreover, as will be further evident, there is no indication that Montgomery made such a call as part of any plan to retaliate against the drivers because of an earlier talk that morning with driver Richard Warfield, wherein Warfield had registered requests with Montgomery for improved pay, hospitalization, and other benefits on behalf of the drivers. In fact, the record shows numerous prior contacts between the drivers and Montgomery between November 1978 and April 1979 (and among the drivers themselves) without a trace of resentment or objection to such discussions on the part of Montgomery or any other Respondent representative. I note also that driver Nixon Goldsby testified, without denial by Warfield, that Warfield had telephoned him the night before with a message that Warfield might call the men to base next day if he were unsuccessful in efforts to secure improved benefits from Montgomery. The fact that Warfield also had a meeting that same evening he called Goldsby with four other drivers on the same subject of his proposed efforts the next day with Montgomery is consistent with the view that the drivers were responding to a not unexpected directive by Warfield.

As the drivers pulled into base, parked, and then entered the lounge, it is alleged that their vehicle keys were taken from them, a further disputed occurrence, and one wherein, for essentially the same reasons as noted above, there is little reasonable basis on which to make such a finding. Suffice it to say that such an allegation flies in the face of earlier events, which show no resentment, anger, animus, or displeasure by Respondent towards the drivers' action, to that point in events at least, as would in any way explain such a move. Were Respondent bent on retaliating for the return to base conduct alone, it is inescapable in my view that it would have taken the simple step earlier of countermanding Warfield's order, admittedly heard by Montgomery, Jones, and a secretary in the office who recognized War-

¹ All testimony has been weighed carefully. The following is a composite based on both credibility and, where conflicts arose which are not resolvable on the basis of testimonial demeanor, the inherent likelihoods or certainties as shown by admitted or known events.

field's voice when the order was given. No such countermanning effort was made. Furthermore, the fact that Montgomery, in an introduction-like gesture told the then-assembled drivers that "Mr. Warfield is your spokesman. I guess he wants to say something," suggests the view that Respondent did not angrily take the drivers' keys as they entered the meeting, but in fact, assumed a wait-and-see, not inhospitable attitude towards unfolding events.

This posture towards the employees' obvious intentions to secure better pay, insurance benefits, and the like changed drastically during the course of the meeting, which lasted about an hour or so. Warfield, who had informed Montgomery earlier that morning privately that he was spokesman for the drivers and that they wanted better pay, repeated the request. Montgomery, also in a repeat of earlier comments to Warfield explained that Respondent had no money available for such purpose but that if Public Aid, an Illinois public service department, gave Respondent an increase that employees would then get a raise. During the meeting, Montgomery also stated that he had insurance forms on his desk but could not start such benefit until Respondent received more money.

As discussion on the employees' requests and Montgomery's responses ensued, Respondent's president, Dorothy Davenport, moved from her office next door, where she could overhear the conversation closer to the lounge and where she could then see events firsthand. She recalls Warfield saying that maybe the whole company should march downtown, that such might benefit the whole company, a reference to the idea that Public Aid might thereby be pressured into increasing payments for Respondent's services with a resultant increase in money available for wage increases. Concurrent with the talk going on, Montgomery was receiving calls from agency clientele asking about his intentions with regard to scheduled pickups and deliveries of patients, and—as discussion reached greater stages of intensity—Montgomery sketched out a petition-like questionnaire directing all employees who "want to work under the present working conditions" to sign in one place [below] and "All those who do not agree with the above statement," [to sign at another place.] (G.C. Exh. 2) Before this was passed around, Montgomery testified further that he told employees that Respondent was operating "in the red," to which Warfield responded that "If we could not get it then we will have to go, see?" At that point, Davenport came into the lounge further and said "no." When Warfield continued that no one would drive a car out, she said she would do so, and told the drivers to "get the hell off the premises." Montgomery further testified that about this time during a call from a client, he was asked about the "strike business" and told the caller he would get back to him later. During a second telephone call about an 11:30 pickup that had not been made, Montgomery told the caller, from a neighborhood Public Aid office, that he had a "labor dispute" and returned to the meeting. At this point, Montgomery's own testimony is that, "There seemed to be a split thing there but it looked like there were some who wanted to *strike* and some who did not want to *strike*." (Emphasis supplied.)

Alleging as a reason for doing so that he did not know who wanted to work and who did not, he handed the petition-questionnaire (G.C. Exh. 2) to Montgomery to be passed around for signing. Driver Wardell Madison questioned Montgomery whether signing the form would affect his employment, whether he would be fired, to which Montgomery merely replied he would have to think about it. Driver Willie Williams testified he heard Warfield say that they were doing "this" to show Springfield that they meant business and not to hurt him, and that Montgomery said he did not condone or agree with a strike. Williams added that during the meeting, he heard Warfield say that "they (Respondent) could not hire anyone to take their places." According to driver Wardell Madison, after the Petition-questionnaire (G.C. Exh. 2) was signed, Montgomery told the drivers, "you can all leave now." When Madison stated that he had a patient, Davenport came in, took his keys and others, and told him not to worry about it. The seven drivers who had signed the petition questionnaire in the section provided for those who did not agree with the statement contained thereon (that they wanted to work under present conditions) left the premises. The others, Williams, Armstrong, Goldsby, and King, remained and performed driving duties that afternoon to complete uncancelled deliveries.

At that point in time, alleging that the seven drivers had "voluntarily" walked outside, and were not discharged, Montgomery testified nevertheless he considered that the seven had lost their jobs by quitting, because "They physically walked out," and pulled their timecards the next morning, April 4. For their part, the seven drivers, after first assembling in a parking lot and then visiting a police station to see how they could get their jobs back, met at driver Butler's home and decided they were not "up to a strike." The following morning, at 5:30, April 4, all seven showed up at Respondent's office doorway in uniform and ready for work. They learned that their timecards had been pulled and that "There was no work for them." I credit the Charging Party's version that the men asked for their jobs back,² and the record shows that, notwithstanding that request, the men were told by Davenport who arrived shortly afterward with the police, in response to a request by driver Bracy for his job, that "You do not work here anymore." Montgomery admitted that during this encounter Warfield stated that it was Montgomery who told the men to *strike* in order to exert pressure from Public Aid for an increase, and that Montgomery said he could not condone a strike, but could not stop it either. Montgomery also testified in response to my question why he did not consider that the men had returned to work on April 4 that it was because they had only come as far "as his doorway." In response to a further question, he admitted hiring two new employees for work the following week or so, although, except for drivers

² I agree with the General Counsel's position that the list of "grievances" shown to Montgomery by the men, who had prepared it at the suggestion of local police, did in no way amount to a precondition behind the offer to return to work. It was not suggested to be such by them and does not outweigh their obvious desire for employment.

Butler and Davis, he did not rehire the remaining employees among the seven because, "by walking off, they had quit their jobs, and it was my privilege to hire or rehire who I wanted to do the job for me."

On April 10, the drivers again appeared at Respondent's office in uniform and were told by Montgomery that if they wanted their paychecks they would have to turn in their uniforms, and the drivers did so. The record shows that the men were paid their entire pay through Tuesday, April 3.

Analysis

It is fundamental that employees are protected from employer reprisals for engaging in concerted activity which seeks to improve their working conditions. The fact that on April 3, the seven drivers were so engaged in this case is beyond question. For Respondent, through Montgomery, to view the drivers' concerted conduct on April 3 as tantamount to a voluntary mass quitting is unreasonable in the extreme, and Respondent's reasons for doing so can spring from only one source, hostility towards the seven drivers because of their concerted activity. The record, as indicated, is barren of any suggestion that the seven drivers were quitting on April 3; certainly the petition-questionnaire does not admit of such an interpretation in this context of events. In the first place, nowhere does it appear on the petition-questionnaire (G.C. Exh. 2) that the signers were evidencing anything more than what they "want[ed]" and clearly it does not state that if they did not "want" present conditions that they were intent on quitting. In the second place, Montgomery himself, considered that the seven drivers, far from abandoning their jobs voluntarily, i.e., quitting, were withholding their services from Respondent in order to secure improvements in their working conditions in the form of better wages, i.e., that they were engaging in a strike—the classic kind of protected concerted conduct under the Act. The term "strike" in reference to the drivers' plans was frequently used during these events. That Respondent chose to effect the termination of the seven drivers by characterizing them as having quit does not alter the fact that the employees were given the clear impression by both Davenport—who ordered the men off the premises after they had signed the petition-questionnaire (G.C. Exh. 2), and had indicated an intention to walk off—by the fact that their keys were taken in the course of the meeting, and by Montgomery, who also told the men to leave, that they had been discharged.

The General Counsel's observation that at no time did Respondent simply request the men to return to work is also relevant in this regard, as is the fact that driver Wardell Madison's statement that there was a patient waiting to be delivered—a statement akin to asking whether he should complete the delivery—and certainly showing a willingness to work—was met with a response indicating no interest in his or any of the seven employees doing the driving. It is clear from these circumstances that Respondent's efforts to characterize the conduct of the seven drivers who signed (G.C. Exh. 7) in the space afforded those "who do not want to work under the present working condition" as having quit

manifested an intent to retaliate against them for their indicated lack of satisfaction with present working conditions coupled this time with the anticipation by Respondent that, as its own witnesses' testimony establishes, a strike could possibly occur unless it moved to improve employees' pay. There is no other basis in the record for explaining Respondent's actions towards the seven employees than this, and I find the seven employees, Richard Warfield, William Butler, Louis Larkin, Bobby Bracy, Wardell Madison, Henry Davis, and Michael Taylor, were unlawfully discharged because of such protected concerted activity at the conclusion of the April 3 meeting in violation of Section 8(a)(1) of the Act. *Ridgeway Trucking Company*, 243 NLRB 1048 (1979); *Bolsa Drainage, Inc.*, 242 NLRB 728 (1979); and *Cone Brothers Contracting Company*, 135 NLRB 108 (1962). That the termination occurred prior to the departure of the seven from Respondent's premises is proven by Davenport's ordering them off the property during the meeting; Montgomery's directive that they leave; the drivers' keys to their assigned vehicles being taken from them; the absence of any request by Respondent that employees continue working until day's end when the circumstances did not require an interpretation that a strike then and there was underway—as contrasted with only an anticipated possible walkout; and finally, Respondent's further relieving the drivers of their duties by rejecting Madison's offer to complete delivery of a patient waiting in Respondent's vehicle in the yard. For Respondent to force matters even to the point where it incurred numerous trip cancellations without trying to either suggest a further meeting at the close of business, or another way to negotiate the situation away from the showdown context it created, strongly suggests further that Respondent's conduct was motivated by animus towards the employees compelling a decision to sever them from employment regardless of cost. The events following April 3, described fully above, substantiate the finding that the employees were discharged as of that date and need no further elaboration.

The General Counsel alleges further that the petition-questionnaire (G.C. Exh. 2), and a later "rehirement" letter (G.C. Exh. 4) containing an apology for employees to sign, together with an assurance to obey Respondent's instructions—mailed to employees in July 1979 as part of an alleged offer of reinstatement, amount to violations of Section 8(a)(1) because employees are, in effect, made to choose between exercising their rights under Section 7 of the Act or facing termination (or a denial of reemployment). It is clear that the document (G.C. Exh. 2) was used as a tool to bring to light those employees who intended to adhere to efforts to seek improvements in their working conditions or this certainly was the impression created, and that those employees were discharged. Respondent thereby created the impression that in order to continue employment employees must forgo engaging in protected concerted activities else their employment would be in serious jeopardy. Regarding the "rehirement" letter, it is axiomatic that employees may not be required to either apologize for exercising Section 7 rights or in effect agree to refrain from such activities as

a price for their continued employment, and this document plainly seeks such a surrender of rights. In addition, the rehirement letter (G.C. Exh. 4) contains impermissible preconditions for reemployment and therefore, does not constitute a valid offer of reinstatement such as would toll backpay. For these reasons, I find that by using these documents (G.C. Exhs. 2 and 4) Respondent has further violated Section 8(a)(1) of the Act, *Bell Burglar Alarms, Inc.*, 245 NLRB 990 (1979); *726 Seventeenth Inc., t/a Sans Souci Restaurant*, 235 NLRB 604, 606 (1978); and *Don Pizzolato, Inc.*, 249 NLRB 953 (1980), and cases cited therein.

CONCLUSIONS OF LAW

1. Respondent A & D Davenport Transportation, Inc. and Sun-Fair Special Service Transportation, a Division of A & D Davenport Transportation, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By requiring employees, as a condition of continued employment or reemployment, to sign documents where-in employees forgo the right to engage in walkouts or other protected concerted activities seeking to improve working conditions, and employees apologize for doing so in the past, Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

3. By discharging employees Richard Warfield, William Butler, Louis Larkin, Bobby Bracy, Wardell Madison, Henry Davis, and Michael Taylor on April 3, 1979, because of their protected concerted activities, Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

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

THE REMEDY

Having found that Respondent violated Section 8(a)(1) of the Act, Respondent shall be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully discharged Richard Warfield, William Butler, Louis Larkin, Bobby Bracy, Wardell Madison, Henry Davis, and Michael Taylor, the Order will provide that Respondent offer to each of them immediate and full reinstatement to their former jobs or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their rights and privileges, and to make each of them whole for any loss of earnings they may have suffered as a result of the discrimination against them by payment to them of a sum equal to that which each normally would have earned, absent the discrimination, from the dates of their discharges to the dates of Respondent's offers of reinstatement, with backpay and interest computed in accordance with the Board's established standards set forth in *F. W. Woolworth Company*,³ and *Florida Steel Corporation*.⁴

³ 90 NLRB 289 (1950).

⁴ 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

As Respondent's conduct found unlawful herein demonstrates "a general disregard for the employees' fundamental statutory rights," a broad remedy is warranted.⁵

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

ORDER⁶

The Respondent, A & D Davenport Transportation, Inc. and Sun-Fair Special Service Transportation, a Division of A & D Davenport Transportation, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Requiring any employee, by signing a document or other means, to choose between engaging in concerted activities seeking better working conditions and discharge.

(b) Requiring any employee, by signing a document, letter, or otherwise, to apologize for engaging in concerted activities seeking better working conditions and to agree not to engage in such activities as a condition of employment.

(c) Discharging employees because they engaged in concerted activities seeking better working conditions.

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

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

(a) Offer Richard Warfield, William Butler, Louis Larkin, Bobby Bracy, Wardell Madison, Henry Davis, and Michael Taylor immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges, and make each whole for any loss of earnings with interest thereon to be computed according to the formula described above in the section 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, time-cards, 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 Chicago, Illinois, location, copies of the attached notice marked, "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60

⁵ *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

⁶ 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.

⁷ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Re-

spondent to insure that the notices are not altered, defaced, or covered by any other material.