

West Lawrence Care Center Inc. and 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board

1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board and Morris Tuchman, Attorney for West Lawrence Care Center Inc. Cases 29-CA-14841, 29-CA-14895, and 29-CG-89

September 25, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On July 8, 1991, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent Employer and the Respondent Union filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order for the following reasons.

1. The judge found, and we agree, that the Respondent Employer violated Section 8(a)(5) and (1) by refusing to allow Local 1115's representatives to come onto its premises on May 3, 1990, and by removing union literature from a union bulletin board, and that it violated Section 8(a)(1) by threatening employees for wearing union buttons.² We likewise adopt the judge's finding that Respondent Local 1115 violated Section 8(g) by picketing without giving prior written notices.

2. Contrary to our dissenting colleague, we adopt the judge's finding that the Respondent Employer violated Section 8(a)(1) and (5) of the Act on May 2, 1990, when it engaged in surveillance and caused the removal of Respondent Local 1115 Business Agent Edith Lohlein from the nursing home premises.

The evidence reveals that on May 2, during the pendency of an election campaign resulting from a competing union's representation petition, Lohlein attended a grievance meeting on the first floor of the

¹The parties have excepted to the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

²In adopting the judge's 8(a)(1) finding based on the Respondent Employer's threat of disciplinary action to employees who refused to remove their "Vote 1115" buttons, we additionally rely on uncontradicted evidence of disparate treatment, i.e., that no similar threats or demands were directed at employees wearing "Vote management. We care." or "Vote 1199" buttons.

nursing home. After the meeting, Lohlein was heading toward the upper floors to distribute union buttons and visit with unit employees when she met Administrator Radzik, who told Lohlein that she did not belong on the premises and threatened to call the police to remove her. Lohlein ignored Radzik and proceeded to the upper floor nursing areas. Upstairs, Lohlein was followed by In-Service Director Bols and Assistant Nursing Director Garvin, who observed and listened while Lohlein conversed with shop stewards and union members. When Lohlein objected to Bols' and Garvin's standing next to her while she talked with union members, they responded that they had to listen to what she said. After approximately 40-90 minutes, the police arrived, found Lohlein talking with Shop Steward Marion Watkins, and escorted Lohlein down to the lobby and, after a brief conversation with Radzik, off the premises. At the time of this incident, Respondent Local 1115's bargaining agreement with the Employer was still in effect. It included a visitation clause which stated in pertinent part:

The Union Business Representative or the Union's designee, shall have admission to all properties covered by this Agreement to discharge his duties as representative of the Union. . . . The Union shall be permitted to conduct Union meetings on the premises.

The judge found that the visitation clause gave Respondent Local 1115 the right of access to the Respondent Employer's premises and was not limited to allowing only the discussion of grievances with management or employees. He rejected the Respondent Employer's assertion that Respondent Local 1115 Vice President Aldrich "basically agreed" by telephone to waive 1115's right to visit the facility except for purposes of grievance handling and, instead, found that such a conversation with Aldrich, if held, did not constitute a clear and unmistakable waiver of the Union's contract rights. Citing *RCA Del Caribe*, 262 NLRB 963 (1982), the judge further found no merit in the Respondent Employer's position that because it was obliged to maintain neutrality between the competing unions it could not honor the contract's access provisions. He accordingly concluded that the Respondent Employer's decision to abrogate the contract by barring Lohlein from visiting with employees at the facility on May 2, and calling the police to have her ejected, violated Section 8(a)(5) and (1). He further found that given Lohlein's lawful presence on May 2, the management's actions of following and monitoring her activities constituted surveillance in violation of Section 8(a)(1).

Contrary to our dissenting colleague's argument that the visitation clause of the contract limits Respondent 1115's access to matters of contract administration, we

find it clear from the above-quoted language that the clause permits 1115 broad access to conduct any union business, including union meetings on the premises. Indeed, the Respondent itself recognized that the contract permitted access for organizational purposes. In this regard, we note that the Respondent sought to persuade Local 1115 not to exercise its contract right to enter the premises for organizational purposes.³ Precedent clearly holds that a negotiated access provision for union agents that places no restriction on the scope of such access does not permit an employer, acting unilaterally, to attempt to restrict access solely to grievance or contract administration purposes. See *Gilliam Candy Co.*, 282 NLRB 624 (1987); *American Commercial Lines*, 291 NLRB 1066, 1070-1072 (1988). Nor may an employer obtain authority for such action by placing its own limiting gloss on the provision—especially a gloss conflict with the provision's plain meaning. See *Harvey's Wagon Wheel*, 236 NLRB 1670, 1677 (1988).

The dissent's reference to a neutrality policy is in fact premised on the Respondent Employer's claim, rejected by the judge, that Respondent Local 1115 had agreed to waive its right to visit the facility for any purpose other than grievance handling. We decline to join in our colleague's position that the contract's access provision can be truncated by the Respondent Employer's purportedly mutually agreed to, but in fact unilaterally imposed, policy of neutrality. As the judge recognized, the Board in *RCA Del Caribe* established that strict neutrality is not the sole concern where an incumbent union is challenged by a rival labor organization, and that the parties to an established bargaining relationship must be required to continue to meet their full bargaining obligations under Section 8(a)(5) and (1). To the extent that our colleague seeks to require such "neutrality" in derogation of contractual terms, he implicitly challenges the Board's position in *RCA Del Caribe*.

Accordingly, we adopt the judge's May 2 violation findings in their entirety.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, West Lawrence Care Center Inc., Far Rockaway, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order, and the Respondent, 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board, Far Rockaway, New York, its officers,

³Because there is no indication of any historical limitation on Local 1115's right of access to the Respondent's facility, we find irrelevant the purpose of Lohlein's visit to the upper floors. We also note that the Respondent's surveillance impeded Lohlein from engaging in whatever had been her intended business.

agents, and representatives, shall take the action set forth in the Order.

MEMBER OVIATT, concurring and dissenting in part.

I concur in my colleague's decision to find that the Respondent Employer violated Section 8(a)(5) and (1) of the Act by refusing to allow Local 1115's representative to come onto its premises on May 3, 1990, to talk to employees as required by the collective-bargaining agreement and by removing union literature from a union bulletin board provided pursuant to the contract. I further agree that the Respondent Employer violated Section 8(a)(1) by threatening employees with loss of contractual benefits and by threatening employees for wearing union buttons. Lastly, I concur in the finding that Respondent Local 1115 violated Section 8(g) by picketing the Employer's nursing home without providing the required written notice. I disagree, however, that the Respondent Employer committed any unfair labor practices by its actions on May 2, 1990.

The alleged unfair labor practices occurred during an election campaign between incumbent Local 1115 and its rival, Local 1199. The Employer established a policy of neutrality during the election which prohibited union representatives from electioneering on the nursing home premises. On May 2, Local 1115 Business Agent Lohlein attended a grievance meeting at the nursing home. During a break in the meeting, Lohlein wandered through the facility electioneering and handing out Local 1115 buttons. Lohlein ignored management's requests to leave the premises. The record does not support a finding that Lohlein was engaged in administering the collective-bargaining agreement. Management officials followed Lohlein and listened to her conversations with employees. Lohlein left the facility after the police arrived pursuant to the Employer's request. My colleagues find that the Employer's ejection of Lohlein from the facility violated Section 8(a)(5) and (1), and that the Employer's following Lohlein and listening to her conversations violated Section 8(a)(1).

I find that although Lohlein validly entered the Employer's premises pursuant to the collective-bargaining agreement to adjust a grievance, the nature of her presence changed once she began roaming the facility to engage in electioneering.¹ Lohlein's electioneering was unrelated to any contractual right of access² and was

¹The majority contends that the Employer's surveillance prevented Lohlein from engaging in union business. The record is devoid, however, of any evidence to substantiate this assertion. Lohlein began electioneering as soon as she left the grievance meeting, and there is no testimony that she would have engaged in union business of contract administration in the absence of the Employer surveillance.

²My colleagues contend that the contract permitted access for organizational purposes. The contract permits the union agent to "discharge his duties as representative of the Union" and to "conduct union meetings on the premises." I cannot interpret the contract in a vacuum. I find that this refers to the Union's role as bargaining

in violation of the Employer's prohibition regarding union agents' electioneering activities.³ At that point, Lohlein was no longer present as the employees' collective-bargaining agent administering a contract, and her entitlement to access to the Employer's premises ceased. Accordingly, I find that the Employer was permitted to ask Lohlein to leave the premises once she ceased engaging in her collective-bargaining representative duties.

Because I find no violation for denying Lohlein access to the facility for electioneering purposes, I also find that the Employer did not engage in unlawful surveillance by observing Lohlein following her unjustified, unprotected refusal to leave the premises.

representative and contract administrator for the unit employees, not as an organization engaged in a contested election with a rival union. I further find, contrary to my colleagues, that the Employer's attempt to establish ground rules on neutrality was not an admission that Local 1115 had the right of access for electioneering. Indeed, my colleagues have not explained to my satisfaction how the Employer could lawfully permit campaigning by one rival union without also permitting the other union access. That would surely stretch the contract language.

³My colleagues contend that I am requiring neutrality in derogation of contractual terms, contrary to Board precedent as expressed in *RCA Del Caribe*, 262 NLRB 963 (1982). In that case, the Board found that an employer did not violate the Act by continuing to bargain and executing a contract with the incumbent union during the course of an election campaign involving a rival union. The Board held that "preservation of the status quo through an employer's continued bargaining with an incumbent is the better way to approximate employer neutrality." *Id.* at 965. My position is consistent with *RCA Del Caribe* because I would require maintenance of the status quo, which I find does not include access for electioneering purposes.

Katie Parkin, Esq. and *Brian Quinn, Esq.*, for the General Counsel.

Morris Tuchman, Esq., for the Employer.

Richard Greenspan, Esq., for the Union.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in New York, New York, on February 13 and April 17, 1991.

The charges in Cases 29-CA-14841 and 29-CA-14895 were filed by Local 1115 on May 7 and 9, 1990. A consolidated complaint based on those charges was issued by the Regional Director on July 31, 1990. In substance, that complaint alleged:

1. That from on or about May 2, 1990, the Company, notwithstanding provisions in its contract with Local 1115, has unilaterally refused to allow Local 1115 representatives to have access to its facility for the purpose of communicating with employees with respect to the enforcement of the existing collective-bargaining agreement.

2. That on or about May 2 and 3, 1990, the Company's agents engaged in surveillance of Local 1115's agents when they visited the Employer's faculty.

3. That on or about May 2 and 3, 1990, the Company, by its agents, threatened employees with loss of contractual benefits including insurance benefits.

4. That on or about May 15, 1990, company agents threatened employees if they wore Local 1115 insignia.

5. That on or about May 21, 1990, the Company unilaterally removed Local 1115 literature from a bulletin board which that Union had been permitted to use in the past.

The Charge in Case 29-CG-89 was filed on May 16, 1990, and the complaint in that case was issued on June 29, 1990. That complaint alleged that the Union, on May 15, 1990, engaged in picketing without first having given the notices required by Section 8(g) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

It is admitted, and I find, that West Lawrence Care Center Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it is a health care institution within the meaning of Section 2(14) of the Act. It is also conceded, and I find, that Local 1115 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The CA Cases*

For a number of years Local 1115 has had a collective-bargaining relationship with the United Care Facilities Association of which West Lawrence is a member. An agreement was made on October 18, 1988, which ran from April 1, 1986, to March 30, 1990. Thereafter, that agreement was renewed for a term to run from July 1, 1989, to June 30, 1993. The economic terms for the renewed contract were submitted to interest arbitration and those terms were established in an award which issued on November 20, 1989. In essence, the basic terms of the 1986 to 1989 contract were retained but the award provided for wage and benefit increases over a 3-year period with an option for a reopening for the 4th and final year of the contract.

Pursuant to the collective-bargaining agreement in effect between Local 1115 and the Employer as of May 1990, there was a grievance/arbitration procedure. There also was, at article 5, a provision reading as follows:

The Union Business Representative or the Union's designee, shall have admission to all properties covered by this Agreement to discharge his duties as representative of the Union. The Employer shall make available to the Union locked glass enclosed bulletin boards in the establishment for Union notices. The Union shall be permitted to conduct Union meetings on the Employer's premise.

At some time unknown to me, an election petition was filed by another union, District 1199. After a hearing, the Regional Director, ordered that an election take place amongst certain employees of the Company. That election

was scheduled to take place on May 17, 1990. Before the election was held, the Employer filed a request for review and that apparently was granted by the Board on or about May 16, 1990. As a result, although the election was held, the ballots were impounded. As far as I know, no further action has taken place with respect to the representation case and no certification has issued.

Maurice Radzik, the Employer's administrator, asserts that sometime in April 1990, an employee supporter of District 1199 asked that District 1199 have equal access to the facility as did the incumbent Union, Local 1115. Radzik claims that as a consequence, he called up Raul Aldrich, Local 1115's secretary-treasurer and discussed ground rules for visitations by that union's representatives. He testified that he told Aldrich that he had no problem with visits for handling grievances but that he did not want union representatives engaged in election campaigning on the premises. According to Radzik, when he told Aldrich of the Company's position, Aldrich "basically agreed." Thus, in conclusionary language and without eliciting testimony as to Aldrich's actual response, the Company asserts that Local 1115 agreed to limit its contractual visitation rights solely to grievances.

On May 2, 1990, Edith Lohlein, a business representative of Local 1115, visited the facility for the purpose of discussing an employee's seniority grievance. While in the first floor office of Carla Fria (the director of nursing) a factual issue arose which required Fria to look for and get some documentary information. At this point, Lohlein left the office with the intention of using the extra time to visit with employees, hand out union buttons and do some electioneering. However, before getting very far, Radzik confronted her and told her that she did not belong on the premises. When Lohlein ignored him and continued to go into the building, he threatened to call the police. When she still ignored him, various supervisors followed Lohlein around the building. When Lohlein told Garvin (assistant director of nurses) and Bols (the in-service director) that she did not appreciate management standing next to her while she spoke to union members, they said that they had to watch her and listen to what she said.

At some point during Lohlein's visit, and while she was conversing on the fourth floor with Shop Steward Marion Watkins, the police arrived and escorted Lohlein down to the lobby. After insisting that she vacate the premises, Lohlein eventually did so. According to Lohlein, before leaving, Radzik told Marion Watkins not to talk with her (Lohlein), and said that the Company's contract with Local 1115 was null and void.

Radzik's version of the events on May 2 is only slightly different. He acknowledged that Lohlein visited the facility because she had to discuss a grievance with Carla Fria. He claims that during the interim period when Fria was obtaining some information, he received reports that Lohlein was going through the building and engaging in campaigning. According to Radzik, he told her to leave and when she refused, he called the police to get her out. He also states that on this date, Lohlein asked him whether the Company was going to make its contractual payments to Local 1115's funds and whether it intended to pay the wage increases that were supposed to go into effect on July 1, 1990. Radzik testified that he told Lohlein, in the presence of employees, that if Local 1115 won the election, the payments would be

made, but that neither the fund contributions nor the wage increase would be paid if Local 1115 lost the election.

Lohlein again visited the facility on May 3, 1990, to allay any fears that the employees might have had that the benefits in the Local 1115 contract were going to be cancelled by the Company. On this occasion, Radzik again called the police and caused Lohlein to be ejected from the building.¹

The election commenced at 6 a.m. on May 17, 1990. At about 12:45 p.m. Lohlein entered the facility and went to speak with employees Marion Watkins, Carrie Cobb, and Gladys Harrison. Shortly thereafter, Radzik approached the group, told Lohlein to leave, and told the three employees that they had to take off their "Vote 1115" buttons or be punched out. This was viewed by the three employees as a threat of discharge. Radzik acknowledges that he made the statement and concedes that "punching out an employee" would, at a minimum, be construed as a suspension.

B. Discussion

The Employer's contract with Local 1115 gives that Union the right of access to the Employer's premises. Moreover, this right is not limited solely for the purpose of discussing grievances either with management or with employees. Further, pursuant to contract, the Union has been given access to a bulletin board on company premises for the purpose of notifying employees of union business.

The Company asserts that its decision not to honor the access provisions of the contract was motivated by its desire to maintain neutrality between the two unions that were competing in the election to be held on May 17, 1990. It also asserts that in a telephone conversation between Radzik and Aldrich, the Union agreed to waive its right to visit the facility except for purposes of grievance handling. In the latter respect, Radzik's testimony that Aldrich "basically agreed," is not viewed by me as constituting a clear and unmistakable waiver of the Union's contractual rights.

In *RCA Del Caribe, Inc.*, 262 NLRB 963 (1982), the Board held that an employer need not maintain strict neutrality where there is a competing labor organization seeking to represent employees already represented by an incumbent union. The Board concluded that in such circumstances the "price to the stability of collective bargaining relationships" outweighed the benefits of strict neutrality, despite the inherent advantage enjoyed by an incumbent union. The Board also concluded that in addition to requiring an employer to process grievances under the existing contract, as required by *Shea Chemical Corp.*, 121 NLRB 1027 (1958), the employer was required to bargain and execute a new contract with an incumbent union if an agreement was reached. The Board stated:

For the foregoing reasons, we have determined that the mere filing of a representation petition by an outside, challenging union will no longer require or permit an employer to withdraw from bargaining or executing

¹ Marion Watkins, a Local 1115 shop steward, testified that the discussion with Radzik about the contributions and the July raise took place on May 3 instead of May 2. Her testimony was that Radzik said that Local 1115 was not the union in there anymore; that he wasn't going to pay any welfare fund or wage increases due in July; and that "whatever happened, happened after everything was over in court."

a contract with an incumbent union. Under this rule an employer will not violate Section 8(a)(2) by postpetition negotiations or execution of a contract with an incumbent, but an employer will violate Section 8(a)(5) by withdrawing from bargaining based solely on the fact that a petition has been filed by an outside union. [Citations omitted.]²

It is my opinion that the Company's decision to abrogate provisions of the collective-bargaining agreement by its actions of barring Lohlein from visiting with employees at the facility on May 2 and 3, 1990 (and calling the police to have her ejected), constituted a violation of Section 8(a)(1) and (5) of the Act. *Tom's Ford*, 253 NLRB 888, 893 (1980). I also conclude that the evidence establishes that after the election was held on May 17, 1990, the Company removed union notices from the bulletin board reserved for union use pursuant to the collective-bargaining agreement. This too, I conclude was a unilateral modification of the existing contract and violation of Section 8(a)(1) and (5) of the Act.

The uncontroverted testimony of Lohlein shows that when she visited the facility on May 2, 1990, management personnel followed her around and stood alongside her when she spoke with employees. When Lohlein asked them to go away, they refused and insisted on listening in on Lohlein's conversations with employees. Given Lohlein's lawful presence at the facility pursuant to the collective-bargaining agreement, I conclude that the actions of the Company's supervisors in this respect constituted unlawful surveillance in violation of Section 8(a)(1) of the Act.³

There is no disagreement that on May 17, 1990, Radzik told several employees to remove "Vote 1115" buttons on pain of disciplinary action. In my opinion, this also constituted a violation of Section 8(a)(1) of the Act as an employer may not prohibit employees from wearing union insignia in the work place absent some legitimate business concern or absent a showing that such badges, buttons, or insignia contain messages that are vulgar, obscene, or otherwise offensive. *NLRB v. Malta Construction Co.*, 806 F.2d 1009 (11th Cir. 1986); *Cannon Industries*, 291 NLRB 632 (1988); *Page Avjet Corp.*, 275 NLRB 773 (1985); *Albertson's Inc.*, 272 NLRB 865 (1984); *Dixie Machine Rebuilders*, 248 NLRB 881, 882 (1980).

Finally, the evidence establishes to my satisfaction that on May 2 or 3 1990, the Employer told employees, in effect, that pending the outcome of the election, it was not going to contribute moneys to the Union's welfare fund and would not put into effect the contractually required July 1990 wage increase. The Company in its brief argues that such statements merely constituted a clear recitation of the law. Unfortunately that is not the case. As noted above, *RCA Del Caribe*, supra, requires a company to continue in effect the terms of an existing collective-bargaining agreement during the pendency of a representation proceeding. Such a contract

²*Shea Chemical* was overruled to the extent that it held that an employer faced with an election petition by a rival union was required to cease bargaining with the incumbent union for a new contract.

³I view *Hoschton Garment Co.*, 279 NLRB 565 (1986), as being distinguishable. In that case union agents who were subjected to surveillance while attempting to speak to a company's employees were trespassers on the Company's property.

(or any succeeding contract), becomes null and void pursuant to Section 8(d) of the Act, only on an intervening Board certification following an election. Accordingly, the statements attributed to Radzik are construed as threats to withhold existing contractual benefits in violation of Section 8(a)(1) of the Act.

C. The 8(g) Allegation

Section 8(g) states:

A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of section 8(d) of this Act. . . . The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

On May 15, 1990, three representatives of Local 1115 walked outside the Employer's facility for about 30 to 45 minutes wearing signs stating:

Management is unfair to its workers.
Support us in our stand.
1115 Joint Board.

There is no dispute about the Respondent's status as a health care facility. Nor is there any dispute about the fact that the Union did not send any of the notices required by Section 8(g) of the Act.

Local 1115's contention is that because the picketing was of such a limited duration, the alleged violation should be considered de minimus. While the picketing did not go on for more than 45 minutes, I cannot say that this constituted a de minimus action, especially as there was no assurance given that there would not be any recurrences. Therefore and also in accord with the Board's decision in *Hospital Employees District 1199*, 256 NLRB 74 (1981), I must reject this defense.

The Union's second line of defense is that the picketing was in response to the Employer's "serious and flagrant" violations of the Act. It argues that although no such defense is explicated in the statute, it may be inferred that Congress did not intend to prevent a union from being able to respond immediately (and without requiring a 10-day notice) to an employer's serious violations of the Act.

In *Council's Center for Problems of Living*, 289 NLRB 1122 at fn. 3 (1988), the Board held that a union did not violate the Act where, in a strike to protest the Employer's unfair labor practices (the mass discharge of 17 employees) the union may not have fully complied with the notice requirements of Section 8(g). The Board applied to Section 8(g) the rationale of *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956), wherein the Supreme Court excused a union's failure to file the notices required in Section 8(d) because of the

strikers' protest against the employer's serious unfair labor practices.⁴

On the other hand, the Second Circuit Court of Appeals expressed a contrary view when the above-cited case was presented on appeal. Thus, in *NLRB v. Mental Health Council*, 897 F.2d 1238 (2d Cir. 1990), the court stated:

In enacting section 8(g) in 1974, long after *Mastro Plastics* was decided, Congress did not include any exception for unfair labor practice strikes. The Senate and House reports, however, indicate that the exception fashioned in *Mastro Plastics* for section 8(d) should also be applied to the section 8(g) ten day notice requirement. . . . Again we are somewhat hesitant to give this legislative history effect, because it not so much guides interpretation of ambiguous wording in the statute, but rather creates a significant exception. We do not find it so clear, as the drafters of the Senate report did, that the exception should, or was meant to, apply in the section 8(g) context. Although section 8(d) notice is designed to equalize bargaining power during collective bargaining negotiations by preventing "quickie strikes," . . . section 8(g) notice is not designed to protect the interests of either employers or employees. Section 8(g) notice protects the interests of third parties for whom an unanticipated work stoppage may be a life-or-death matter. We are reluctant to conclude that the full Congress intended to sacrifice the safety of the sick or dying to help labor organizations at health care institutions avoid a ten-day delay in going on strike.

In sum, the two notice requirements serve very different purposes, and we see no reason to assume that an exception to one should automatically transfer to the other. Nevertheless, because the parties did not brief this issue and because its resolution is not necessary to our holding today, we do not base our decision on these grounds.

In my opinion, I do not have to reach the issue of whether the *Mastro Plastics* doctrine should apply to 8(g) cases. Even assuming that it did, I do not believe that the Employer's unfair labor practices were either flagrant or serious enough to excuse the failure by Local 1115 to file the required notices. At most, there were a few unfair labor practices committed by the Employer during the period shortly before and after the election. Accordingly, I conclude, based on the facts in this particular case, that Local 1115 has violated Section 8(g) of the Act.

CONCLUSIONS OF LAW

1. West Lawrence Care Center Inc. is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is a health care institution within the meaning of Section 2(14) of the Act.

2. By refusing to allow representatives of Local 1115 to come onto its premises to talk to employees as required

⁴As to employers which are not health care institutions, Sec. 8(d), among other things, requires that a union having a contract with an employer must, prior to or after the termination date of its contract, meet certain notice requirements before terminating the contract and engaging in a strike.

under its collective-bargaining agreement, the Company has violated Section 8(a)(1) and (5) of the Act.

3. By engaging in surveillance of union agents as they talked to its employees, the Company has violated Section 8(a)(1) of the Act.

4. By threatening employees with the loss of benefits contained in its contract with Local 1115, the Company has violated Section 8(a)(1) of the Act.

5. By telling employees to remove union buttons and threatening them with discipline if they failed to do so, the Company has violated Section 8(a)(1) of the Act.

6. By unilaterally removing union literature from a bulletin board which, pursuant to contract, was reserved for the use of Local 1115, the Company has violated Section 8(a)(1) and (5) of the Act.

7. 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board is a labor organization within the meaning of Section 2(5) of the Act.

8. By picketing at the Employer's facility on May 15, 1990, without first giving 10 days' written notice to West Lawrence Care Center Inc., and to the Federal Mediation and Conciliation Service, Local 1115 has violated Section 8(g) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

A. The Respondent, West Lawrence Care Center Inc., Far Rockaway, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to allow representatives of Local 1115 to come onto its premises to talk to employees as required under its collective-bargaining agreement.

(b) Engaging in surveillance of union agents as they talk to its employees.

(c) Threatening employees with the loss of benefits contained in its contract with Local 1115.

(d) Telling employees to remove union buttons and threatening them with discipline if they fail to do so.

(e) Unilaterally removing union literature from a bulletin board which, pursuant to contract, is reserved for the use of Local 1115.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

⁵If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Post at its facility in Far Rockaway, New York, copies of the attached notice marked "Appendix A."⁶ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

B. The Respondent, 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board, Far Rockaway, New York, its officers, agents, and representatives, shall

1. Cease and desist from picketing, striking, or engaging in any other concerted refusal to work at the premises of West Lawrence Care Center Inc., or any other health care institution, without first giving not less than 10 days' written notice to them and to the Federal Mediation and Conciliation Service.

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

(a) Post at its facility in Westbury, New York, copies of the attached notice marked "Appendix B."⁷ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by Local 1115's authorized representative, shall be posted by Local 1115 immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Local 1115 to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by West Lawrence Care Center Inc., if willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Local 1115 has taken to comply.

⁶If 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."

⁷See fn. 6 above.

APPENDIX A

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to allow representatives of Local 1115 to come onto our premises to talk to employees in accordance with the terms of our collective-bargaining agreement with that Union.

WE WILL NOT engage in surveillance of union agents as they talk to our employees.

WE WILL NOT threaten our employees with the loss of benefits which are contained in our contract with Local 1115.

WE WILL NOT tell our employees to remove union buttons and threaten them with discipline if they fail to do so.

WE WILL NOT unilaterally remove union literature from a bulletin board which, pursuant to our contract with Local 1115, is reserved for their use.

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

WEST LAWRENCE CARE CENTER INC.

APPENDIX B

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT engage in any strike, picketing, or other concerted refusal to work at the premises of West Lawrence Care Center Inc., or any other health care institution, without notifying in writing, West Lawrence Care Center Inc. or such other health care institution, and the Federal Mediation and Conciliation Service, not less than 10 days prior to such action, of that intention.

1115 NURSING HOME AND HOSPITAL EMPLOYEES UNION, A DIVISION OF 1115 JOINT BOARD