

Yale New Haven Hospital and Yale New Haven Hospital Police Benevolent Association. Case 34-CA-4830

October 27, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On June 12, 1992, Administrative Law Judge David S. Davidson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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 brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Yale New Haven Hospital, New Haven, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent has excepted to some of 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), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

John S. F. Gross, Esq., for the General Counsel.
Ernest J. Collazo, Esq. (Carmody and Collazo), of New York, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

DAVID S. DAVIDSON, Administrative Law Judge. This case was tried in Hartford, Connecticut, on January 27 and 31 and February 6, 1992. The charge was filed on July 17, 1990, and the complaint issued on August 31, 1990.¹ The complaint, as amended at the hearing, alleges that Respondent violated Section 8(a)(1) and (3) of the Act by forming committees to address employee complaints and grievances, promising its employees increased wages, benefits, and improved terms and conditions of employment, threatening its employees with unspecified reprisals, informing employees that it would more strictly enforce rules, and imposing more onerous and rigorous terms and conditions of employment on

¹ All dates which follow are in 1990 unless otherwise indicated.

its employees in order to discourage them from engaging in union and protected concerted activity.

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

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Connecticut corporation, operates a hospital in New Haven, Connecticut, providing medical and professional care services to the public. It annually derives gross revenues in excess of \$250,000, and purchases and receives products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Connecticut. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, and the Respondent denies, that Yale New Haven Police Benevolent Association (Union) is a labor organization within the meaning of Section 2(5) of the Act. In the Regional Director's Decision and Direction of Election in *Yale New Haven Hospital*, Case 34-RC-971, dated June 19, 1990, he rejected Respondent's contention that the Union was not a labor organization within the meaning of the Act, stating:

The record demonstrates that the Petitioner is a newly formed unaffiliated institution in which employees participate and which exists for the purpose of representing the Employer's employees in negotiating with the Employer over wages, hours and conditions of employment. Although at the time of the hearing the Petitioner had no constitution or bylaws, it is well established that such structural formalities are not prerequisites to labor organization status within the broad meaning given that phrase in Section 2(5). *Yale University*, 184 NLRB 860 (1960); *Butler Mfg. Co.*, 167 NLRB 308 (1967).

Respondent contends that the Regional Director's finding should be rejected on the record in this case. I find otherwise. After some initial discussions with a fellow employee in late April, Mustafa Salahuddin, a security officer employed by Respondent, met with Carlos Perez President of the Yale Police Benevolent Association. Salahuddin told Perez that he wanted to start a union for the security employees. Perez told him to find out how serious the employees were about having a union, and Salahuddin obtained the signatures of a number of employees on a petition. Perez then prepared a number of authorization cards which he gave to Salahuddin.² After a number of security employees signed them, Salahuddin returned them to Perez. An attorney then filed a representation petition in the name of the Yale New

² Initially Perez prepared the cards showing the Union's name as Yale Police Benevolent Association. He inserted the word "Hospital" after Salahuddin told him that it had to be included, but the words "New Haven" did not appear on the cards.

Haven Hospital Police Benevolent Association on May 21. Thereafter the Union held several meetings at the hall of the Yale Police Benevolent Association. At one of them officers were appointed. Notices of the meetings were sent to Respondent's security employees by mail. One of the notices identified Perez as an advisor to the Union, and another identified the officers of the Union. All were signed by Salahuddin as president or acting president of the Union. No meetings were held after the representation election held on July 19 which the Union lost.

Respondent contends that the Union is nothing more than Salahuddin's personal project, because Salahuddin took it on himself to confer with Perez, Salahuddin solicited the signatures on the petition and the cards, the Union never requested recognition before filing the petition, the attorney who filed the petition and Perez were the only persons to appear at the representation hearing on the Union's behalf, the Association had no meetings before the petition was filed, there is no evidence that the Association has a constitution and bylaws or has filed reports with the Labor Department, and the only evidence of any public organizing activity by the Association was a preelection rally at which the only employees in attendance were Salahuddin and Malcolm Davis.

While the Association lacked formality of structure and undoubtedly received assistance in its formation from Perez and the Yale Police Benevolent Association, I find that the Association satisfies the definition of a labor organization set forth in Section 2(5) of the Act. The evidence shows that it is an organization in which employees participate and that it exists in whole or in part for the purpose of dealing with an employer concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Indeed, the evidence indicates that this was its only purpose and that Salahuddin had no interest in the organization other than as a vehicle for obtaining union representation for the security employees at the hospital.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Background

In 1987 Respondent retained Management Science Associates (MSA) to conduct an employee opinion survey to identify concerns in the workplace and elicit feedback from employees in the hope of learning where there were problems and what was going well. Respondent sought to promote a positive and equitable work environment and to convey to employees that it was committed to create such an environment by seeking their opinion and trying to respond to them. Respondent also sought to establish a base line against which it could measure the results of future periodic surveys which it planned to make.

All employees from entry level to top management were asked to respond to the survey. The raw data was sent to MSA which tabulated it and returned the tabulations to Respondent's human resources department. After reviewing the information with Respondent's top management, the human resources department met with department heads to discuss matters relating to the departments under their supervision and then with supervisors to train them to conduct employee feedback sessions.

At the feedback sessions, employees were told the results of the survey, and they discussed actions which might be

taken to respond to specific problems. In the security department the survey showed dissatisfaction with equipment and uniforms. Newell Andrews, then director of the department, established employee committees chaired by department supervisors to make recommendations about several matters, including uniforms. Andrews also retained an outside consultant to analyze the department's radio communications needs and to recommend improvements. Other steps were taken, as set forth below, to pursue the concerns relating to uniforms and radios.

In October and November 1989, Respondent conducted another employee opinion survey again utilizing the services of MSA. In late January 1990, the human resources department discussed the results with senior management, and then reviewed the results with Respondent's vice presidents. From mid-February through March 1 Respondent trained supervisors to conduct feedback sessions with employees.

The results of the 1989 survey showed that employee dissatisfaction in the security department was greater than the norm for the hospital as a whole, and the human resources department asked the security department managers through the feedback sessions to identify more specifically the concerns of the employees and to develop strategies and plans for addressing the dissatisfaction shown by the survey. Feedback sessions with the security department employees were held for the day, evening, and night shifts on April 30 and May 1 and 2, respectively, with one or more additional makeup sessions on the next day or two. The meetings were conducted by Respondent's vice president for administration, Brian Condon, to whom the security department reported. At them security officers voiced complaints about uniforms, pay, and equipment, particularly the lack of radios. Condon listened to the employee complaints and told the employees to give them time and things would be done, but that they were over-budgeted and there was just no money to play with.³

B. Union Activity

At the end of April, Mike Criscio, a security officer, approached Salahuddin and asked him how he felt about starting a union. Salahuddin told Criscio that he thought it was a good idea but that they should wait to hear what Condon had to say at the upcoming meeting to discuss the results of the survey. The day after he attended the feedback meeting, Salahuddin met with Perez for the first time. Perez told Salahuddin to circulate a petition to find out whether the employees were interested in union representation. On the following day Salahuddin solicited signatures of a number of security department employees at their homes and at various places around the hospital when employees were on their breaks and at shift changes. On the next day, a Friday, Salahuddin gave the petition to Perez who produced authorization cards and told him to get them signed. Over the next 2 days, a Saturday and Sunday, Salahuddin solicited signatures on cards at the same times and places, and on Monday he returned them to Perez. Salahuddin returned the signed

³ The finding as to what Condon said to the employees is based on the uncontradicted testimony of Salahuddin and Malcolm Davis. Davis probably attended the April 30 feedback meeting and Salahuddin, the May 2 meeting.

cards to Perez, and subsequently on May 21 a representation petition was filed by an attorney in the name of the Union.

Following a hearing attended for the Union only by Perez and the attorney, a Decision and Direction of Election issued on June 19, and an election was held on July 19. During the time between the solicitation of the authorization cards and the election the Union mailed some election literature to the security department employees and held several meetings.

Salahuddin testified that he was of the opinion that no supervisor had seen or had knowledge of his solicitation of signatures on the authorization cards. However, several of those who signed cards at Salahuddin's request were sergeants who were stipulated in the representation proceeding to be supervisors within the meaning of the Act.⁴ In addition, Vice President Brian Condon testified that he became aware that security employees were interested in joining a union sometime in early May when Andrews, then head of the security department, called him and told him that he had heard there was interest in forming a union in the department. He testified that Andrews' call came during the period of the employee feedback meetings, probably around the Wednesday or Thursday of that week, around May 4 or 5. According to Condon, between the time that Andrews spoke to him and the time the petition was filed, there was uncertainty as to whether there was union activity or merely rumors of union activity. Condon asked those in management to keep their eyes and ears open and see what was going on.

C. The Establishment of Employee Committees

As set forth above, after the 1987 survey and feedback meetings Respondent established several employee committees within the security department. Each was chaired by a department supervisor and made recommendations concerning some of the issues raised by the responses to the survey and the feedback sessions. The committees existed for about a year and were then dissolved.

In 1990 during the week of the feedback meetings, the security department announced the formation of two committees. On May 2 by memo Andrews announced the formation of a department uniform committee to make recommendations regarding uniform appearance of the staff. In a second memo on May 4 he announced formation of a committee to develop a policy to assure a uniform procedure for selections of security personnel for training at the Connecticut State Police Protective Services Training Academy. One or more additional committees were established at unspecified times.

The complaint alleges that by forming committees designed to address employee complaints and grievances, Respondent promised its employees increased benefits and improved terms and conditions of employment. Counsel for the General Counsel contends that Respondent knew of the union activity when it formed the committees and had been aware for several months after it became aware through the survey results that the employees were concerned about uniforms and police academy attendance. The General Counsel contends that the timing of the formation of the committees, within days of the card signing, shows that the formation of

the committees was motivated by the union activity and designed to persuade employees that the issues and concerns of the employees would be addressed.

Respondent contends that the committees were formed for legitimate business reasons, that they followed the pattern established at the time of the initial survey, that Respondent had no knowledge of the union activities at the time the committees were formed, and that there is no evidence that Respondent made any promises at committee meetings. Respondent contends that the committees were formed only to make recommendations which management would review and consider.

The survey itself was clearly unrelated to union activity in the security department. It showed that employees were concerned about police academy admissions and uniforms among other things. From the aftermath of the previous survey, employees knew that one of the consequences of the survey results could be the formation of committees to develop action plans and recommendations for management to deal with concerns raised by the survey. They also knew that committee recommendations could be accepted or rejected by management.

I find that the formation of the committees was in line with the actions taken after the previous survey and contained no offers of benefit beyond any which may have been implicit in the survey process itself which began well before there was any union activity. Accordingly, I find that in forming and announcing the committees, Respondent did what it had done in the past and in all likelihood would have done in the absence of any union activity. I find that formation of the committees actions did not violate Section 8(a)(1) of the Act.⁵

D. Distribution of New Uniforms and Radios

At the time of the 1987 employee opinion survey the security staff wore uniforms consisting of slacks, blazers, white shirt, and tie. In the 1987 survey and the related feedback sessions employees showed interest in police style uniforms, and questions were raised as to the image that the hospital wished to present to the general public through the uniforms worn by the security staff.

In the spring of 1989 Respondent began to convert to police-style uniforms in several of the areas that the security department serviced, particularly the air rights garage, the emergency room, and one or two other areas where there were roving patrols outside the hospital proper and where Respondent wished to present a police profile to the staff and

⁴Salahuddin testified that he only solicited authorization cards from those he believed would be in the bargaining unit and that he had been led to believe that the sergeants would be in the bargaining unit.

⁵See *Craft Maid Kitchens*, 284 NLRB 1042, 1044 (1987). I find it unnecessary to decide whether Respondent was aware of the union activity at the time it announced the formation of the first committee. Even from Condon's testimony it appears that he was aware of the possible union activity at the time of the second committee announcement. Whether Respondent is chargeable with knowledge of union activity at the time the first committee was formed depends not only on whether the knowledge of the sergeants who signed cards is attributable to Respondent but also on the accuracy of the dates on the union authorization cards they signed. There is some inconsistency between the dates on the cards, the sequence of events described by Salahuddin, and the dates of the feedback meetings as testified to by Condon. These inconsistencies were neither explored on cross-examination nor commented upon in the parties' briefs. I find it unnecessary to resolve them.

the community. In October 1989, when Salahuddin completed his probationary period, he was given two police-style uniform shirts and one pair of police-style uniform pants, and by January 1990, 60 percent of the security department personnel had similar police style uniforms.

Employee dissatisfaction with radios also surfaced in the 1987 survey. As a consequence the security department retained a consultant to analyze radio communications problems. The consultant recommended replacing 10 radios in the department, and in April 1990, pursuant to the recommendation, Andrews ordered 10 radios to replace existing equipment. Their purchase had been provided for in the 1990 budget for the department.

The 1989 survey showed that employee dissatisfaction in the security department remained high, and at the 1990 feedback meetings, employees asked for more and better equipment, including radios and uniforms. Condon told them to give the hospital time and things would be done, but that at the time they were overbudgeted and there was no money to play with.

On May 8, in a memorandum to all security department employees Condon thanked the employees, for the way they approached the feedback meetings and continued:

The suggestions which you offered will help us meet your expectations in maintaining the Department which we have developed to provide Security services at Yale-New Haven Hospital.

I would like to provide a summary of the issues that were raised and note the actions that have already been or will be taken in the immediate future to respond to these concerns.

Equipment. The Security Officers unanimously underscored the need to complete our radio replacement program. Mr. Andrews had ordered ten radios in early April, which have been delivered and will be distributed on May 11, 1990. Mr. Andrews will also be able to extend that radio replacement program to include the personal issuance of radios for staff members who use them regularly in their daily routine. Twenty-two additional radios have been ordered and will be issued by June 11, 1990. Mr. Andrews will be asking your help in developing the operating procedures to implement that personally issued radio system.

Uniforms. The continuation of the transition of external patrol members to full police style uniforms is being reviewed as part of a management and employee committee effort. As I stated during our discussions, this is a sensitive issue, but I believe there is growing support from within the general Hospital workhorse and community to move in this direction for all Security Officers who have external patrol responsibilities. The quality of the uniforms which have been purchased will also be reviewed with the vendor to ensure that comfortable uniforms are obtained. The committee will also be asked to review the number of uniforms required for staff members to perform efficiently.

During the month of June, Respondent issued new uniforms to all security officers and specialists,⁶ including Malcolm Davis and Salahuddin who had previously been issued police-style uniforms. Each employee was given three shirts and three pairs of pants. About a week or two later all security officers were issued personal radios and chargers which they were permitted to take home with them. Security specialists were also provided new radios which they were required to share. In all 22 new radios were provided.

The General Counsel contends that the distribution of the new uniforms and the 22 additional radios in June was a grant of benefits intended to influence the employees' selection of a bargaining representative. Respondent contends that it was in the process of phasing in new police-style uniforms and improving radio communications well before the beginning of the organizing campaign and that the June distribution of uniforms and radios was simply an implementation of changes in terms and conditions of employment planned before the union activity began.

Absent a showing of a legitimate business reason for the timing of a grant of benefits during an organizing campaign, the Board will infer improper motive and interference with employee rights under the Act. However, the business reason may be established by a showing that the benefits were granted in accordance with a preexisting established program. *Mariposa Press*, 273 NLRB 528, 544 (1984); *PYA/Monarch, Inc.*, 275 NLRB 1194, 1195 (1985).

Dissatisfaction with uniforms and radios was uncovered in the 1987 survey, and Respondent had taken some steps to deal with it. But the fact that Respondent had taken some actions, and had set others in motion does not mean that any and all changes involving uniforms and radios were an implementation of changes already planned.

There is no evidence that before the 1990 feedback meetings Respondent had any plans to purchase an additional 22 radios or to make personal assignments of them to the security officers, despite the lapse of 2 years since the initial survey and the dissatisfactions uncovered by it. Similarly there is no evidence that Respondent had plans to furnish police-style uniforms to all security personnel at one time, let alone to replace all the police-style uniforms that had been gradually issued with different uniforms and more of them.

At the feedback meetings, Condon did not mention plans for more radios or uniforms. Rather, he told employees that he would try to meet their concerns but that they were overbudgeted and there was no money to play with. Condon asked for time to get things done. Condon's statements to the employees at the meetings, if anything, discouraged the thought that further action with respect to these matters was imminent.

Despite his request for time, within a few days after the last of the meetings and within a few days after Condon heard of the union organizing activity, Condon found money in the budget he described as very tight and announced the purchase of more than twice as many radios as had been ordered only a month before based on the 1987 survey. He also announced a new plan for assigning radios, quickly resolving that source of employee dissatisfaction. Other than

⁶Security officers patrol various portions of the hospital and its premises. Security specialists are assigned to particular posts in the hospital buildings.

testifying generally about rearranging budget priorities, Condon gave no indication how this was so suddenly accomplished after asking the employees a few days earlier for time to deal with their concerns.⁷

Condon testified that he was concerned about the security officers' organizing and "that I had wished that the efforts of our employee opinion feedback program had provided them with a comfort level that would have kept them from wanting to unionize." He also testified that the additional radios were ordered after the feedback meetings "because it became an employee issue that required a special response." Given the timing of the announcement of the plan to purchase and assign additional radios, the timing of their distribution before the election, and the absence of any indication of plans to assign them before or during the feedback meetings, I conclude that the radios were issued to provide "a comfort level that would . . . keep [the security personnel] from wanting to unionize" and not in furtherance of any changes previously planned. I find that the issuance of the 22 additional radios to security department personnel violated Section 8(a)(1) and (3) of the Act.

With respect to uniforms, the evidence contradicts Respondent's contention that the new uniforms were given to all the employees in furtherance of plans adopted before the union activity began. Not only were additional employees given police-style uniforms in June, but Salahuddin, Davis, and all those who had previously been given police-style uniforms were given new uniforms in June. Condon did not mention any existing plans to complete the conversion to police-style uniforms at the feedback meetings. In the May 8 memo Condon referred to continuation of the transition of "external patrol members" to police-style uniforms, suggesting that to that point there was no plan to change the uniforms of those who had no external patrol duties. In addition, Condon referred to issues of quality and the number of uniforms required, which evidently led to the decisions to replace the police-style uniforms that had already been provided and to increase the number of uniforms provided to each officer. The issuance of new uniforms to all security personnel in June went beyond preexisting plans to meet employee concerns in three respects. It extended the changeover to employees with no external patrol duties, it increased the number of uniforms provided each employee, and it replaced the uniforms of those who already had police-style uniforms, evidently in response to the concerns over quality. I conclude that, like the radios, the uniforms were given to employees to discourage them from wanting union representation, and

⁷Condon has authority to reallocate expenditures within the department budget but not to exceed the amount allocated to the department. He testified that if something was needed which was not provided for in the budget, either departmental priorities could be re-ordered to sacrifice something else within the department budget or additional funding from outside the department budget could be sought from the hospital president. Condon testified that the security department budget, as well as the entire hospital budget was, "very tight" in April 1990, but that there could be room for nonemergency expenditures for things that were necessary but unbudgeted. April was 9 months through the fiscal year, and according to Condon, there could have been some anticipated expenses which had not occurred and could provide the source of funds for reallocation. However, there is no evidence to indicate that this was the case or where the money came from for these expenditures.

that Respondent violated Section 8(a)(1) and (3) of the Act by providing them.⁸

E. Alleged Threats and Promises

1. Salahuddin

a. Montanari

Dino Montanari served as a security supervisor or lieutenant on the evening shift. His shift ended as Salahuddin's shift began. One evening in June when Salahuddin reported to work, he asked Montanari why he had not been speaking to Salahuddin and said that the union activity was not a personal thing against the supervisors. Montanari said that he was happy that Salahuddin had approached him and that he would like to talk to him about it because he did not know too much about unions. Montanari said that he was going home and asked Salahuddin to call him at home later.

Salahuddin called Montanari later that night. Montanari asked him why they wanted a union and what unions were all about. Salahuddin told him that he had belonged to the Teamsters Union at a previous job and explained what he thought a union could do for the employees. Montanari said that he thought the threat of a union was good and that it brought good things to the department, mentioning new uniforms and radios, but that the hospital would like him to withdraw the petition for 6 months and give the hospital a chance to do something for them. Montanari said that the hospital realized that they had neglected the employees in the department. Salahuddin told him that it was not his decision and that he would have to speak to the body because he did not make up the vote. Montanari went on to say that if he withdrew the petition for 6 months, it would show the hospital that he was trying to meet them halfway, but that if he did not and pursued it to the election, they would come after him and they would be head-hunting after the election.⁹

Counsel for the General Counsel contends that Montanari's statements to Salahuddin that they would come after Salahuddin and would be head-hunting were unlawful threats of reprisal. Respondent contends that in the context of the friendly relationship between Montanari and Salahuddin and the rest of the conversation, Montanari's statements should not be construed as a threat of retaliation but as "tipping off or warning" Salahuddin. Even accepting that construction of Montanari's remarks it nonetheless fol-

⁸*Elston Electronics Corp.*, 292 NLRB 510 fn. 1, 526 (1989). Here the evidence adduced by Respondent supports rather than rebuts the inference that the timing of Respondent's actions was calculated to interfere with the employees' freedom of choice.

⁹These findings are based on the testimony of Salahuddin. Montanari denied that he said anything to Salahuddin about head-hunting. Respondent contends that Salahuddin's testimony that Montanari said that after the election they would come after him and they would be head-hunting was impeached by his concession on cross-examination that Montanari personally did not threaten him during the conversation. However, Salahuddin clearly understood that the question asked him referred to threats that Montanari personally would retaliate against him, and his reply did not contradict his testimony that Montanari said that an unspecified "they" would come after Salahuddin and would be head-hunting. I have credited Salahuddin who remained an employee of Respondent at the time of the hearing and impressed me straightforward and truthful in his testimony.

lows that they violated Section 8(a)(1) of the Act. A warning from a friend in management that retaliation by others will follow is no less threatening than a warning from a hostile supervisor. Particularly because a personal relationship exists, an employee is likely to take "friendly" advice as indicating that the supervisor knows of his employer's intention to carry out the threatened action. I find that Montanari's statements to Salahuddin threatened reprisal including discharge and violated Section 8(a)(1) of the Act. *Westinghouse Electric Corp.*, 277 NLRB 136, 146-147 (1985).

b. *Lamonaca*

On July 1 Salvatore Lamonaca, captain on the third shift, told Salahuddin that employees had complained to him that Salahuddin had been calling them at home and harassing them about the Union. Salahuddin replied that what he did on his own time was his business. Lamonaca said that it was a departmental matter, that the complaints had been brought to him, and that if it continued he would be talking to Salahuddin again and would have to follow up with disciplinary action.¹⁰

Counsel for the General Counsel contends that Lamonaca made an unspecified threat of reprisal linked to Salahuddin's union activity and role in the campaign. Respondent contends that Lamonaca properly confronted Salahuddin about harassing other employees. Respondent also contends that all Lamonaca said to Salahuddin was that he would be talking to him again and that his statements cannot be construed as implying that Salahuddin would suffer any adverse consequences.

There is no evidence that Salahuddin engaged in any unprotected activity directed at other employees in the course of his union activity. The only complaint that Lamonaca could remember and describe involved ordinary protected activity.¹¹ One employee, John Melillo, told him that Salahuddin had called him at home and that when he was home he did not want to be bothered and did not want mail sent to his home either.

¹⁰I have credited Salahuddin as to this conversation. In its brief, Respondent contends that there is no dispute that the only "threat Lamonaca made to Salahuddin was the statement that unless Salahuddin refrained from further misconduct Lamonaca would be talking to him again." The record is otherwise. Salahuddin specifically testified that Lamonaca said there would be disciplinary action and nothing in his cross-examination impeached that testimony. Lamonaca testified that on July 1 he said that if he kept getting complaints he would be talking to Salahuddin again and that in a second conversation the next day, when Salahuddin asked him what he meant when he said that he would take further action if he continued to get complaints, Lamonaca corrected him and said that he had said that if he continued to get complaints they would be talking again. Salahuddin was not asked about this statement, although his version of the July 2 conversation with Lamonaca differed from Lamonaca's in other respects. It is clear even from Lamonaca's testimony that Salahuddin had understood Lamonaca's previous statement as threatening further action as Salahuddin testified. I have credited Salahuddin. While Lamonaca may have thought better of the threat previously made, his attempt to correct Salahuddin in the later conversation does not discredit Salahuddin.

¹¹*PCL Construction*, 269 NLRB 16 (1984), which Respondent cites, did not involve employee attempts to persuade other employees to support a union. It involved jobsite squabbling between a steward and a foreman which the Board found unprotected.

Whether employees liked or wanted Salahuddin to solicit them away from work, it was not Respondent's or Lamonaca's place to discourage that activity. I find that Lamonaca threatened Salahuddin with disciplinary action for engaging in protected union activity. I find further that Lamonaca's clarification of what he meant on the next day neither cured nor excused the violation. When a supervisor tells an employee that if he does not stop protected activities he will "talk" to him again, he implies that the talk will not be mere conversation but will concern the employment of the offending employee. I find that Lamonaca threatened Salahuddin with reprisals for engaging in protected union activity and that Respondent thereby violated Section 8(a)(1) of the Act.

2. *Davis*

Malcolm Davis was employed as a security officer from February until August when he was discharged. Davis attended the rally held by the Union in the courtyard outside one of the hospital buildings at noon on June 29. He and Salahuddin were the only two hospital employees who attended. On his way to the rally Sergeant Pierce asked him if he thought it was a good idea for him to go to the rally because Davis knew the hospital's position, was on probation, and had a family. Davis did not respond and attended the rally. While there he and Salahuddin observed Captain Maureen Wynne and Lieutenant Montanari on the roof of the adjacent building looking down at the rally.¹²

A week or two before the election, while Davis was on duty Montanari had him paged by radio so that he and Wynne could meet Davis on his post and speak with him.¹³ They asked him for his support in the election and said that Respondent had given the employees new uniforms and equipment and that the "so-called" union had not shown them anything so far. They asked for more time to show what they could actually do. According to Davis, toward the end of the conversation Montanari said that the employees would get a 20-percent raise after the election. Wynne testified that neither she nor Montanari said anything about wage increases during their conversation with Davis, and Montanari testified that he said nothing at all during the encounter.

Counsel for the General Counsel contends that Davis should be credited and that the statement to him that the employees would receive a 20-percent wage increase after the election was a promise of a wage increase conditioned on rejection of the Union. Respondent contends that Davis should not be credited but that even if credited, his testimony fails to establish that Wynne promised a wage increase as alleged in the complaint.

Although Davis was no longer employed by Respondent at the time of the hearing and had reason to harbor some resentment for his discharge, I am persuaded that he should nonetheless be credited. It is clear that Davis, whose attend-

¹²Although counsel for the General Counsel introduced the evidence of Pierce's statement to Davis and the presence of Wynne and Montanari on the rooftop, he alleged no violations based on that evidence.

¹³Wynne and Montanari also spoke with other employees about the Union, but Davis was the only employee they had paged for that purpose.

ance at the rally had been noted by Pierce, Wynne, and Montanari, was singled out for a special effort to dissuade him from his support for the Union. Montanari arranged the meeting, and both he and Wynne were present. Wynne equivocated over whether Montanari said anything during the encounter with Davis, and Montanari not only denied saying anything but disclaimed any recollection of things that Wynne concededly said. Apart from the reference to the wage increase, Wynne essentially corroborated Davis' testimony as to the conversation, and apart from matters of dates and timing as to which Davis recollection was at times inaccurate, the remainder of his testimony in this case appears to be accurate. I have concluded that Davis is to be credited over Wynne and Montanari.

Although the complaint does not allege that Montanari promised a wage increase, it alleges that Wynne made such a promise, and the evidence shows that Wynne was present during the conversation at issue. The violation which counsel for the General Counsel seeks to establish is closely related to the allegation of the complaint and the issue was fully litigated. In these circumstances I find that the allegation may properly be considered on its merits and that Montanari's statement that there would be a 20-percent raise after the election was a promise of benefit which violated Section 8(a)(1) of the Act.

F. Enforcement of Rules

For some time Respondent has had a rule for security department employees prohibiting personal telephone calls except for emergencies. Another rule provides that "Employees who are not on duty should not be on Hospital premises except for valid reasons." The evidence is in dispute as to the extent to which these rules were enforced before July.

In late June, after a 3-month special assignment to other duties, Lamonaca returned to the third-shift to resume its command. About a week later, Lamonaca spoke to the third shift security department employees at a lineup and stressed that he was concerned about work deficiencies and that things were going to have to tighten up. Lamonaca mentioned personal telephone calls, and said that it was not professional for the security department employees to be seen on the telephones, that it would no longer be tolerated, that the telephone lines were for incoming security calls and should not be tied up with personal telephone calls, and that the conversations diverted attention from monitoring closed circuit cameras. Lamonaca also said that he would talk to each of the employees individually about their job performance.¹⁴

Lamonaca then spoke to Salahuddin individually. He told Salahuddin that he could no longer remain on the premises in uniform talking to other employees when he was off duty, that it did not look professional, and that other employees would think that he was just "goofing off." Lamonaca told Salahuddin that when he and other security officers completed their tours of duty they should go home and not wait

around and talk with one another. When Salahuddin replied that he did not do that, Lamonaca said that during the previous week he had seen Salahuddin walking around on his post in the air rights garage with Rodney Smalls who had been off duty for a couple of hours. Salahuddin replied that he had just met Smalls and had not been walking around with him.¹⁵

Counsel for the General Counsel contends that neither rule had been enforced before the union campaign began and that Lamonaca's announcements that they would be enforced were in retaliation for the union activities. Respondent contends that the rules had always been enforced and that Lamonaca's efforts to enforce them were not discriminatory.

According to Salahuddin, the rule pertaining to personal telephone calls had never been enforced. He testified that he had observed supervisors make and receive personal phone calls, and that he had made personal phone calls in the presence of supervisors, naming D'Agostino as one. He had also been given messages by supervisors concerning incoming personal calls. Salahuddin had never been disciplined for making personal phone calls while on duty.

Lamonaca testified that he had previously called employees' attention to excessive personal telephone calls and had occasion to discipline employees for it in the past but he could not recall any example. Maureen Wynne identified a performance evaluation from 1986 in which it was noted that a security officer had shown improvement regarding personal telephone calls while on duty since last counseled about it. The evaluation noted that the employee should continue to monitor that area as it seemed to be a recurring problem for him. Wynne testified that she also had brought the issue to the attention of employees, naming two former employees, but that she did not issue either of them written warnings or impose greater discipline. Montanari testified that on March 26, 1991, an officer was counseled verbally for inattentiveness while working due to the fact that she was talking on the telephone on a personal call. The memorandum memorializing the counseling indicates that she was informed not to use the telephone for personal calls. D'Agostino, who served as a lieutenant immediately under Lamonaca at the time of the events at issue, testified in this proceeding but was not questioned about enforcement of the telephone rule.

While I credit the testimony that there had been efforts to enforce the rule in the past, it also seems clear that during the period of the union activity, which coincided with Lamonaca's special assignment there had been no enforcement of the rule on the third shift. Less clear is whether enforcement of the rule on that shift in the past had also been spotty.

The timing of the announcement in relation to the pending election, the evidence of antiunion animus, and the efforts of Lamonaca on the previous day to curtail Salahuddin's union activity in telephoning security employees at their homes raise an inference that Lamonaca's attempt to enforce the telephone rule was motivated by the desire to inhibit and impede Salahuddin's union activity. However, weighing against that inference is the fact that Lamonaca's concerns were di-

¹⁴ Salahuddin testified that Lamonaca spoke to the group about the telephone restrictions. Lamonaca testified that he spoke to Salahuddin about it in an individual conversation after the lineup. If Lamonaca had singled Salahuddin out for special attention with respect to telephoning, I believe that Salahuddin would have recalled it and would have had no reason to convert a personal admonition into one directed at the entire third shift. I have credited Salahuddin.

¹⁵ While there is some conflict in the testimony of Salahuddin and Lamonaca as to other aspects of this conversation, their versions of this portion are not inconsistent, and the findings are based on a composite of their testimony.

rected at the entire third shift security force and came after he had had his first opportunity in 3 months to observe the third shift at work. While it is clear even from Lamonaca's testimony that enforcement had lapsed during his absence from the third shift, the rule had been enforced at least at times in the past. Lamonaca's remarks were made in the context of addressing issues of work performance generally and the announced intention to go over the performance of each person individually in later private meetings. The union campaign was not mentioned by Lamonaca in the course of what he said to the assembled third-shift employees.

I conclude that the statements by Lamonaca to the third-shift employees were part of an attempt by Lamonaca on his return to his normal assignment to shape up the performance of those for whom he was responsible and not a response to the union organizing campaign. Accordingly, I find that the statements to employees about personal telephone calls did not violate the Act.

With respect to the rule relating to the presence of off-duty employees on the premises, Salahuddin testified that in the past he and other security officers had remained on the premises while off duty at the end of their shifts. Whenever he wanted to talk to someone, he stayed around to do so, and if a group of officers wanted to leave together or to talk with one another, they waited on the premises and met in the parking lots. Salahuddin had never previously been counseled or disciplined for remaining on the premises while off duty and was not aware that any one else had been.

The only evidence offered as to prior enforcement of the rule was a memo dated June 9, 1988, which Respondent circulated to all security personnel then employed. The memo was captioned "POST AND PERSONAL APPEARANCE" and stated:

Please read and sign this Memorandum, to acknowledge that you understand the following part of the Security Standard Operating Procedures.

D. Do not permit anyone, including on-duty or off-duty Security personnel to loiter at your post. No one should be by the post unless it is strictly Hospital business. Do not let others sit on the stool at the post.

Lamonaca testified that the memo was written because there had been complaints and a perception that when a couple of officers were seen together they were "goofing off."

There is in fact no testimony to contradict Salahuddin's testimony that the rule pertaining to the presence of off-duty security personnel remaining on hospital premises was not enforced. The memo in evidence relates to enforcement of a different rule. While the example given by Lamonaca in his conversation with Salahuddin indicates that he may have observed a violation of that rule, even that is uncertain, for the quoted rule may apply only to those with fixed posts. The memo reminding employees of that rule was last distributed in 1988, before Salahuddin was employed, and there is no evidence of any later attempt to enforce that rule or the rule relating to remaining on the premises. Thus it appears that Lamonaca sought to enforce a rule that had not been enforced for some time and directed its enforcement at Salahuddin based on an incident which involved violation of a different rule by him.

The factors summarized above which supported an inference that the telephone rule was invoked because of the union activity support a similar inference here. But here the offsetting factors are not present. Lamonaca's efforts were directed at Salahuddin personally. He was clearly known as the principal proponent of the Union. The rule had not been enforced since Salahuddin was employed, and there is no evidence that Lamonaca's invoked the rule against Salahuddin because he had observed any violation of that rule by Salahuddin. As counsel for the General Counsel points out, although Lamonaca sought to enforce the rule as to Salahuddin, he did not seek to discipline Smalls who had violated it nor is there any evidence that he brought the matter to the attention of the proper person in supervision to do so. I conclude that like Lamonaca's attempt the previous day and again that night to inhibit Salahuddin's solicitation of other employees, Lamonaca cautioned Salahuddin about remaining on the hospital premises when off-duty to inhibit his union activity and that the effort to enforce the rule against remaining on the premises violated Section 8(a)(1) of the Act.

G. Changes in Assignments

1. Davis

Ordinarily security officers were not assigned to the same post on consecutive days. D'Agostino, who was responsible for scheduling the third-shift security employees, tried not to schedule an officer to the same post on consecutive days, and officers usually were not assigned to the same post more than 2 days in 1 week, unless there was a scheduling problem.

Before the election Malcolm Davis, a security officer, had never been assigned to a fixed post, but had on occasion been worked at a post to cover for a break or to fill in for a security specialist who was not at work. Davis had been assigned to a post in the emergency room on occasion but not for more than 1 or 2 days in a week. However, after the election Davis was scheduled to work the emergency room post for all but his regular days off during the period from August 6 through 19. Davis testified that he did not know why he was assigned to the emergency room post in August but he did not complain to any one about his assignment. As Davis was terminated on August 15, he did not complete the assignment.¹⁶

Lamonaca testified that D'Agostino assigned Davis to the Emergency Room after discussing the matter with Lamonaca because they were having several problems with Davis. These included inability to locate Davis when he was assigned to patrol positions, sleeping on the job, improper searches, and slow responses. According to Lamonaca, he, D'Agostino, and Sergeant Dawson decided to assign Davis to the emergency room to give him closer supervision than was possible for someone on patrol. Lamonaca testified that the problems with Davis began about 6 weeks earlier and that they had confronted Davis in mid-July and made him aware of them. Davis' assignment to the emergency room was intended to give him a chance to prove himself.

¹⁶ Davis' termination is not at issue in this proceeding. Insofar as appears, a charge filed by Davis was either withdrawn or dismissed by the Regional Director.

Lamonaca did not know if Davis had problems on his final assignment to the emergency room post. D'Agostino testified in this proceeding but was not asked about Davis' assignment or his performance.

Counsel for the General Counsel contends that in the light of Davis' union activities which were known to Respondent,¹⁷ the evidence of animus, and the failure to question D'Agostino about Davis' assignments to the emergency room post, Lamonaca's testimony should be rejected as unreliable and the assignment should be found to be retaliatory. Respondent contends that Davis was assigned to the emergency room post for legitimate business reasons and that the assignment did not violate the Act.

While D'Agostino's testimony would certainly have been relevant, Lamonaca was not incompetent to establish the basis for Davis' assignment, and key parts of his testimony—that D'Agostino and Lamonaca had spoken to Davis in mid-July about his short-comings and that Davis had been found sleeping by a nurse—were not challenged. Lamonaca's testimony was specific as to the nature of the problems encountered with Davis and how the assignment to the emergency room post related to them. D'Agostino's testimony does not cast doubt on the truth or accuracy of Lamonaca's testimony. That D'Agostino did not mention Davis' assignment in his testimony reflects only that he was not asked about it by counsel. His testimony that he would assign an individual to the same post as often as three times in one week only because of scheduling problems clearly pertained to his normal assignment practices and not to a special assignment such as Lamonaca described. I have credited Lamonaca. I find that Davis' assignment to the emergency room was for legitimate business reasons and did not violate the Act.

2. Salahuddin

Before June the posts of Salahuddin and other security officers were rotated, and Salahuddin was never assigned for more than 2 days in 1 week to work as the desk officer in the squad room in the basement of the New Haven unit. He was assigned to a desk post for 2 consecutive days about once a month. As set forth above, the usual practice was not to schedule an officer to the same post on consecutive days or to the same post more than 2 days in 1 week. However, according to D'Agostino, it sometimes became necessary to change the schedule if a person booked off sick for the day, took personal time off, or had a training day coming to him or her.

During the 11-day period from June 22 through July 2, Salahuddin worked as the desk officer for 7 days: Friday, June 22, Saturday, June 23, Monday, June 25, Tuesday, June 26, Saturday, June 30, Sunday, July 1, and Monday, July 2. Salahuddin believed that even if there was a scheduling problem caused by an employee calling in sick or failing to arrive at work as scheduled, the security officers would still have been rotated in the post and would not have been assigned to it more than 2 days in a row.

D'Agostino prepared schedules about 1 week in advance. For the week beginning June 18, D'Agostino had scheduled Salahuddin to work as desk officer on Thursday, June 21. For the rest of the week on that post D'Agostino scheduled

Daniele for Monday and Friday, June 18 and 22, Briggs for Tuesday, June 19, Lett for Wednesday and Saturday, June 20 and 23, and Benzi for Sunday, June 24. Salahuddin was scheduled to be off duty on Saturday and Sunday, June 23 and 24. D'Agostino could not tell from looking at the schedule and the desk officer log why Salahuddin had worked as desk officer on the days in that week when he had not been scheduled to work that post, and no further explanation was offered.

For the week beginning June 25, D'Agostino scheduled Salahuddin to work as desk officer on Monday, June 25, Friday, June 29, and Sunday, July 1. For that post for the remainder of the week, D'Agostino scheduled Daniele for Tuesday, June 26, and Saturday, June 30, and Lett for Wednesday and Thursday, June 27 and 28. Salahuddin was scheduled to be off duty on Wednesday and Thursday, June 27 and 28. D'Agostino testified that the actual assignments for the week beginning June 25 differed from the schedule because on Saturday, June 30, Daniele booked off, and D'Agostino reassigned Salahuddin from the air rights post because that was an easier post to fill because it is an overtime position. No explanation was offered for Salahuddin's assignment as desk officer on Tuesday, June 26 or Monday, July 2.

The initial question to be answered is whether Salahuddin's assignment to work as desk officer for 7 days out of 11 in late June and early July represented the imposition of more onerous and rigorous terms of employment as alleged in the complaint. The assignments of Salahuddin to the desk officer post clearly deviated from what D'Agostino described as his normal practice. Thus, Salahuddin was assigned to the desk officer post on 2 consecutive days in the week ending June 24, a total of 4 days, with 2 pairs of consecutive days in the week ending July 1, and again on July 2 making that day the third consecutive day that Salahuddin was assigned to the post. There was no testimony as to why assignments in this pattern were considered more onerous or rigorous by the security employees, but from D'Agostino's testimony as to his scheduling practices it may be inferred that consecutive day assignments to the same post were regarded as undesirable both by management and employees.

The fact that Salahuddin was not scheduled to work consecutive days in the initial schedules prepared by D'Agostino indicates that these assignments to Salahuddin were made to meet needs to adjust the schedule as they arose. To that extent the general testimony of D'Agostino as to why he deviated from his usual practice may explain why it was not possible to man the post as originally scheduled. What remains virtually unexplained is why it was necessary to use Salahuddin as the replacement on this post five times in the 11-day period and why other security officers were not utilized for that purpose. While D'Agostino's testimony as to his assignment of Benzi during the week beginning June 25 may explain why Benzi was not utilized as a replacement, the record is silent as to reasons for not using others.

I find that the evidence establishes that D'Agostino deviated from normal practice in his assignments of Salahuddin to work as desk officer for 7 of the 11 days between June 22 and July 2, that the timing of the assignments, the knowledge of Salahuddin's union activity, and the evidence of antiunion animus are sufficient to support an inference that the choice of Salahuddin to work in that post during this pe-

¹⁷ Davis had attended the union rally and served as the union observer at the election.

riod was discriminatory and to shift the burden of explaining the choice of Salahuddin for these assignments to Respondent. I find further that Respondent has failed to establish a lawful basis for choosing Salahuddin to fill the post on all of the dates in that period and that these assignments violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. By threatening employees with reprisals because of their union and protected concerted activities and promising them wage increases to discourage them from engaging in union and protected concerted activity, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By informing an employee that it would more strictly enforce a rule prohibiting employees from remaining on its premises after working hours, imposing more onerous working conditions of employment on an employee by assigning him to the same post on consecutive days, and increasing the benefits of employees by providing them new uniforms and radios, all to discourage them from engaging in union activity, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it 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 recommended¹⁸

ORDER

The Respondent, Yale New Haven Hospital, New Haven, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with reprisals for engaging in union and protected concerted activity.

(b) Promising employees wage increases in order to discourage them from engaging in union and protected concerted activity.

(c) More strictly enforcing work rules in retaliation for employees' union and protected concerted activity.

(d) Assigning employees to more rigorous and onerous work to discourage them from engaging in union and protected concerted activity.

¹⁸If 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.

(e) Increasing the benefits of employees to discourage them from engaging in union and protected concerted activity.

(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.

(a) Post at its facility in New Haven, Connecticut, copies of the attached notice marked "Appendix."¹⁹ Copies of the notice, on forms provided by the Regional Director for Region 34, 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.

¹⁹If 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."

APPENDIX

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.

WE WILL NOT threaten our employees with reprisals for engaging in union and protected concerted activity.

WE WILL NOT promise our employees wage increases in order to discourage them from engaging in union and protected concerted activity.

WE WILL NOT more strictly enforce our work rules in retaliation for employees' union and protected concerted activity.

WE WILL NOT assign our employees to more rigorous and onerous work to discourage them from engaging in union and protected concerted activity.

WE WILL NOT increase the benefits of our employees to discourage them from engaging in union and protected concerted activity.

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

YALE NEW HAVEN HOSPITAL