Woodcliff Lake Manor Nursing Home, Inc. *and* 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board and Local 6, International Federation of Health Professionsals, International Longshoremen's Association, AFL-CIO, Party in Interest

Local 6, International Federation of Health Professionals, International Longshoremen's Association, AFL-CIO *and* 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board and Woodcliff Lake Manor Nursing Home, Inc., Party in Interest. Cases 22-CA-11676 and 22-CB-4718

26 September 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JOHANSEN AND BABSON

On 24 July 1984 Administrative Law Judge James F. Morton issued the attached decision. The General Counsel and the Charging Party each filed exceptions and a supporting 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 briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified, as further explained below.

1. We adopt the judge's conclusion that the Respondent Employer (Woodcliff) violated Section 8(a)(1) of the Act by promulgating and maintaining the no-solicitation rule set out in the 16 March 1982[1] contract between Woodcliff and the Respondent Union (Local 6). We also adopt the judge's conclusion that Local 6, by its representative, Steve Jarema, restrained and coerced employees in violation of Section 8(b)(1)(A) of the Act by advising them that they could be discharged for refusing to sign dues-checkoff forms. There are no exceptions on these issues.

2. The remainder of the consolidated complaint raises issues in connection with the allegation that Woodcliff extended recognition to Local 6 as the exclusive bargaining representative of a unit of its service and maintenance employees at a time when Local 6 did not represent a majority of those employees. The consolidated complaint alleges further that the Respondents thereafter entered into a collective-bargaining agreement, which contained union-security provisions, despite Local 6's failure to achieve majority status. Through these actions, Woodcliff is alleged to have violated Section 8(a)(1), (2), and (3) of the Act, and Local 6 is alleged to have violated Section 8(b)(1)(A) and (2) of the Act.

The judge found that the General Counsel failed to prove either by circumstantial or direct evidence that a majority of employees did not support Local 6 on 12 March, the date of recognition. Consequently, he recommended dismissing the complaint allegations dependent upon such proof. Although we agree with the judge about the insufficiency of circumstantial evidence on the question of majority status, an ambiguity in the direct evidence on this point precludes affirming his findings and conclusions or adopting his recommendation to dismiss. Instead, we shall remand this proceeding to the judge for determination of the unit eligibility of two employees, Marie Martin and Estane Hercule.

The General Counsel presented 37 witnesses employed by Woodcliff as service and maintenance employees on 12 March. Thirty-five witnesses testified that they never signed authorization cards for Local 6 before 12 March. The judge found that 28 of these witnesses were in the contractual unit as of that date.[2]

Woodcliff's payroll on 12 March contained 91 service and maintenance employees. The contract entered into by the Respondents on 16 March limited the bargaining unit to those nonsupervisory service and maintenance employees who worked more than 20 hours per week. From the payroll records which he received into evidence as General Counsel's Exhibit 12, the judge noted that 57 service and maintenance employees satisfied the contractual requirement for membership in the unit. Employees Martin and Hercule were among the 57. Since only 28 of these employees denied signing authorization cards for Local 6, the judge found that the General Counsel had not demonstrated that less than a majority of the unit employees approved of Local 6 as their bargaining representative.

In exceptions to the Board, the General Counsel argued that the correct total of unit employees as of 12 March was 55, not 57 as found by the judge. The General Counsel referred to the testimony of Woodcliff's administrator, Emily Howell, about the departmental code numbers of bargaining unit employees. The departmental code numbers listed by Howell as within the bargaining unit were: 130, 135, 140, 150, 155, 160, and 165. As the General Counsel observed, however, Exhibit 12 identifies Hercule and Martin as being in department 157, a

[1] All subsequent dates refer to the year 1982

[2] We affirm the judge's conclusion that the remaining seven employees who denied having signed authorization cards were not then in the contractual bargaining unit

departmental code number not mentioned by Howell. The General Counsel contended that these 2 employees were not in the bargaining unit, and that the 28 unit witnesses who denied signing cards for Local 6 comprised a majority of the resulting 55 unit employees.

We are unable to determine from the brief and conflicting evidence whether the two employees in department 157 were properly in the bargaining unit on 12 March. We shall therefore sever from the instant proceeding the portions of the complaint which turn on the General Counsel's proof of Local 6's nonmajority status at the time of its recognition by Woodcliff, and we shall remand these portions to the judge for the limited purpose of resolving the determinative unit status of employees Hercule and Martin.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that Respondent Woodcliff Lake Manor Nursing Home, Inc., Woodcliff Lake, New Jersey, its officers, agents, successors, and assigns, and Respondent Local 6, International Federation of Health Professionals, International Longshoremen's Association, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the portions of the consolidated complaint which allege that Respondent Woodcliff violated Section 8(a)(1), (2), and (3) of the Act by recognizing Respondent Local 6 as the bargaining agent for certain of its employees and by executing a contract, which contained union-security provisions, covering those employees, and that Respondent Local 6 violated Section 8(b)(1)(A) and (2) of the Act by accepting recognition and by executing the above contract are severed and remanded to Administrative Law Judge James F. Morton for the purpose of determining whether employees Marie Martin and Estane Hercule were in the bargaining unit on 12 March. The General Counsel and the Charging Party shall be permitted to present testimony and other evidence limited to the unit status of the above employees. The Respondents shall be permitted to cross-examine any of the witnesses presented by the General Counsel or the Charging Party pursuant to this remand, and to offer such rebuttal evidence as is relevant. The administrative law judge shall prepare and issue thereafter a supplemental decision setting forth, where required, a resolution of the credibility of any witnesses who testify in the supplemental proceedings ordered herein, and containing findings of fact, conclusions of law, and a recommended Order. Following service of such supplemental decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Robert A. Pulcini, Esq., counsel for the General Counsel.
Richard Greespan, Esq., of New York City, for the Charging Party.
Sidney Zwerling, Esq. (Zwerling & Zwerling), of New York, New City, for the Respondent Employer.
William Perry, of New York City, for the Respondent Union.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint, as amended, alleges that Woodcliff Lake Manor Nursing Home, Inc. (Respondent Employer) violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act, and the Local 6, International Federation of Health Professionals, International Longshoremen's Association, AFL–CIO (Respondent Union) violated Section 8(b)(1)(A) and (2) of the Act. In particular, the amended complaint alleges that on March 12, Respondent Employer recognized Respondent Union as the exclusive collective-bargaining representative of its service and maintenance employees although Respondent Union had not then been selected by a majority of these employees as their representative. The complaint also alleges that the contract signed by Respondent Employer and Respondent Union 4 days later is thus invalid, that the Union-security clause therein unlawfully encouraged membership in Respondent Union and that another clause therein is an invalid no-solicitation rule. Furthermore, Respondent Union is alleged to have engaged in independent acts which interfered with the employees' rights under Section 7 of the Act, as discussed in detail below.[1]

The hearing was held before me on August 29–30, September 27–29, 1983, and January 12, 1984.

On the entire record, including my observation of the demeanor of the witneses, and after due consideration of the briefs filed by the General Counsel and by Respondent Union, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

As the pleadings, stipulations, and evidence received at the hearing establish, I find that Respondent Employer operates a nursing home in Woodcliff Lake, New Jersey, and that its operations meet the applicable Board standard for the assertion of jurisdiction. I further find that Respondent Union is a labor organization as defined in the Act, as is 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board (the Charging Party).

[1] Separate allegations of conduct independently violative of Sec 8(a)(1) of the Act were settled during the hearing and were withdrawn

II THE ALLEGED UNFAIR LABOR PRACTICES

A *Background*

Based on a petition filed by the Charging Party in Case 22–RC–8520, an election was conducted in August 1981 among the approximately 70 full-time and regular part-time service and maintenance employees of Respondent Employer. Respondent Union was not a party in the case The Charging Party lost that election by a vote of 37 to 20 Counsel for Respondent Employer testified before me that an "outside" consulting firm had been retained at considerable expense by Respondent Employer to direct its campaign against the Charging Party in that case.

The Charging Party's vice president testified that it intended to make another organizing effort among those same employees around the anniversary of that election. As related below, Respondent Union began an organizing effort among these same employees in February 1982. The Charging Party learned in June 1982 that Respondent Employer had signed a contract with Respondent Union in March 1982. It thereupon filed the unfair labor practice charges that gave rise to this case.

The General Counsel has stated in his brief that this case "turn[s] on the simply posed question" of whether or not Respondent Union represented a majority of the unit employees when it was recognized by Respondent Employer on March 12, 1982, and that "everything else alleged in the Complaint as violations of the Act flows from the validity or invalidity of this recognition."

B. *The Recognition on March 12, 1982, of Respondent Union*

Many of the General Counsel's witnesses testified that they were employed by Respondent Employer in early 1982 as service and maintenance employees and that they were aware, in February and March of that year, that Respondent Union was attempting to organize that group of employees. As noted below, two of those witnesses testified that they signed cards for Respondent Union before it was recognized, one of them related that Respondent Union met with about 12 employees employed in various departments and that that meeting was held in March 1982, but it is not clear as to whether that meeting was after or before the recognition date.

The General Counsel called Sidney Zwerling, counsel for Respondent Employer, to testify pursuant to Rule 611(c) of the Federal Rules of Evidence. Zwerling testified that, on the basis of a card check he conducted on March 12, 1982, he was satisfied that Respondent Union had obtained signed cards from a majority of the service and maintenance employees employed by Respondent Employer and that, on that basis, Respondent Union was recognized. Four days later, a collective-bargaining agreement was signed covering all service and maintenance employees who work at least 20 hours a week. The particulars as to the events in the period March 12–16, 1982, are discussed further below.

C. *The Scope of the Unit*

It was not until the last day of the hearing (and the hearing had to be reopened to do so) that the exact size of the unit in this case was determined. Up until then various estimates had been made. As noted above, there had been about 70 eligible voters when the election was held in August 1981 in Case 22–RC–8520 among the service and maintenance employees of Respondent Employer. The record of the earlier days of the hearing before me discloses that the estimates of the number of employees in the unit involved in this case as of March 12, 1982 (the date of the alleged unlawful recognition), ranged from a low of 40 to a high of over 90. At one point in the hearing, the parties appeared to have stipulated that the unit was comprised of 52 employees. As it ultimately turned out, Respondent had 91 service and maintenance employees on its payroll as of March 12, 1982. Of the 91 employees, 57 were in the unit covered by the contract signed 4 days later.[2] The 91 names appear on General Counsel's Exhibit 12 received in evidence; the 57 named by the General Counsel as those in the unit are so listed by him because they worked 20 hours or more a week—the unit as described in the contract.

D. *The Alleged Lack of Majority Status*

While the varying estimates referred to above as to the size of the unit on March 12 were being discussed at different points throughout the first 4 days of the hearing, the General Counsel was in the process of calling a total of 37 witnesses who were employed by Respondent Employer on March 12, 1982, as service and maintenance employees. Two of those 37 employees testified that they had in fact signed cards of Respondent Union prior to March 12, 1983.[3]

The remaining 35 testified that they never did. The names of 7 of those remaining 35, however, were not among the 57 in the contractual unit as of the date of the alleged unlawful recognition.[4] Thus, of the 57 shown on General Counsel's Exhibit 12 as being in the contractual unit as of the date of the allegedly unlawful recognition, only 28 testified they never signed authorization cards for Respondent Union.[5] It is obvious that, based only on

[2] The names of the 57 in the unit are *John Acampora*, Vicent Alvarez, Susan Anderson, *Clair Azzarella*, Linda Blank, Elza Borno, Mary Brice, Lisa Brandenburg, *Lorraine Bringman, Clyda Brown*, Beth Brower, Maura Brown, *Karen Bryda, Chris Cassotta*, Jeanne Cayo, Lucille Chabot, *Nicolle Chancy, Emive Coicou, Carl Crites*, Harry Davis, Nathalie Evans, Ann Fitzmaurice, Grace Fogel, *Marlaine Fluerismond*, William Frenyea, John Giolito; Mary Hannigan, *Ann Harrison, Catherine Harris*, Estane Hercule, *Susan Jordan, Marie Kernizant, Marie Kerolle*, Linda Komor, *Teresa Kucich; Chris Lackovic, Linda Ladewig, Ketsia Laporte*, Pauline Letendre, *Stella Lukaszewski*, Marie Martin, Gloria McCannon, *Clara McDonald*, Karen McLinskey, Olga Ortiz, Rita Reilly, Marie Robillard, *Rose Romano, Elizabeth Scharf*, Carmela Scicutella, *Cassandra Shackleford*, Kurt Staul, Denise St Peter, *Bernadette Sullivan*, Clare Watson, Christel Wegner, John Zywokarta

[3] Namely, Lucille Chabot and William Frenyea

[4] The seven who testified but were not part of the unit involved herein are Ana Alvarez, Janet LeBeau, Carol Chintala, Michelle (DiNallo) Donovan, David Gaetner, Susan Pennypicker, and Jennifer Post

[5] The names of the 28 in the unit who testified that they never signed a card for Respondent Union are all italicized in the listing of the 57 names set out above in fn 2

the testimony of those 28 employees, the General Counsel has not shown that a majority of the 57 in the unit did not want Respondent Union as their unit representative on March 12, 1982.

The General Counsel, in apparent but nonetheless implicit acknowledgement of the fact that 28 is not either one-half, or a majority, of 57, has stated in his brief that she is not required to establish a lack of majority "with mathematical precision" in order to prove the alleged violation. She would have me instead discredit the account given by counsel for Respondent Employer, who was called as a 611(c) witness, as noted earlier. The General Counsel would also have me discredit the corroborative account of the president of Respondent Union. The evidence thereon is now set out. Parenthetically, I observe that the circuitous route taken by General Counsel towards proving the alleged lack of majority might have been avoided had he been able to produce but one more service and maintenance employee in the contractual unit to testify that he or she never signed a card for Respondent Union. Had he done so, 29 of 57 employees would have testified to that effect and, if credited, the lack of majority would have established with "mathematical precision." Instead, it is necessary to discuss and analyze the other evidence relied on by the General Counsel.

E. *The Circumstantial Evidence*

At the outset, I note that Respondent Employer had engaged an outside consultant, apparently at some expense, in its successful campaign against the efforts of the Charging Party in 1981 to be elected as bargaining representative for a unit service and maintenance employees of Respondent Employer.

I note too that, in February and March 1982, Respondent Union had distributed authorization cards to unit employees and that, as set forth above, two employees testified that they in fact had signed such cards.

The General Counsel urges that the sudden recognition of Respondent Union on March 12, 1982, and the signing of a contract 4 days later—when contrasted with the opposition shown to the Charging Party by Respondent Employer in 1981 and in context with the testimony given by the employees as related earlier and by that of the respective representatives of Respondent Union and Respondent Employer—establishes, prima facie, that Respondent Union was not the majority representative as of March 12. The General Counsel contends further that that showing has not been rebutted as the testimony given by counsel for Respondent Employer and that given by the president of Respondent Union "is a terribly large pill to swallow by any standard."

William Perry, president of Respondent Union, testified as follows. His office received in the mail 50 signed authorization cards from employees of Respondent Employer during the period in early 1982 when Respondent Union was engaged in an organizational effort among those employees. On March 9, 1982, Respondent Union sent a telegram to Respondent Employer demanding recognition. A meeting was arranged with its attorney for March 12. On that date, Perry gave the attorney, Sidney Zwerling, the signed authorization cards. Zwerling checked them against a list he had with him. Perry indicated to Zwerling that he wanted recognition for all service and maintenance employees who worked 20 or more hours a week. Perry was not sure he had a majority and did not think the cards he had contained any reference to the hours worked each week by the employees who signed them. Zwerling then told him that Perry had a majority. Four days later, after two bargaining sessions, a contract was signed.

Perry further testitfied that the authorization cards he used on March 12 were later stored away at the office Respondent Union occupied then. That office later was damaged in a flood. Respondent Union now is at a different location. Perry testified that the cards he used are now missing and have not been found at Respondent Union's present location.

Zwerling's account is as follows. He was under instructions from his client to avoid another costly union campaign and to recognize Respondent Union if it had a majority. He asked the administrator of Respondent Employer's nursing home to provide him with a paper containing the signatures of the service and maintenance employees and was given such a list. That list was not produced at the hearing. (No testimony was offered by any employee that he or she ever signed such a list or had never done so.) Zwerling's recollection is that Perry had about 5 more cards than he needed to have a majority of the approximately 90 names on that list.

F. *Subsequent Events*

In late April 1982, Respondent Employer's administrator asked a kitchen employee to be "the steward for the kitchen." The employee declined because she was going on a leave of absence. Apparently, nothing further developed on that point.

The General Counsel called witnesses who testified that Steve Jarema, a business agent of Respondent Union, came to the premises of Respondent Employer in May 1982 and gave the employees dues-checkoff cards to sign. One employee asked him if she could be discharged if she refused to sign a checkoff card. She and the other witnesses called by the General Counsel testified that Jarema replied in the affirmative and that, when Respondent Employer's administrator was later asked by them if Respondent Union could do that, she answered, "Legally, yes." Jarema, in his testimony, simply denied threatening any employee.

G. *Analysis*

As observed above, the General Counsel did not present direct evidence to establish that Respondent Union was not authorized by a majority of the employees in the contractual unit to represent them when it was recognized. Only 28 of 57 testified that they never so authorized Respondent Union. The approach advocated by the General Counsel implies that at least one more of those 57 also had never so authorized the Respondent Union. There is no evidence that any of the unit employees were coerced into signing authorization cards prior to March 12. The General Counsel argues that the totality of the evidence requires a finding that appreciably less

than a majority of unit employees had ever designated Respondent Union as their representative That argument was handsomely constructed in the General Counsel's brief. It asserts that the testimony of Respondent Union's president (to the effect that Respondent Union had 50 signed cards from unit employees when it was recognized) cannot be credited because (1) there were then only 57 employees who worked 20 hours or more a week, and (2) 28 of those 57 testified that they never signed any card for Respondent Union, (3) thus making it obvious that, at most, 29 could have signed cards for Respondent Union, not 50. The General Counsel further argues that, as Respondent Union was seeking a unit limited to those who worked 20 hours or more, it could not account for the "missing" 21 cards (i.e., the balance of the asserted 50 cards it then possessed) by suggesting that they must have came from employees who worked less than 20 hours a week. The General Counsel then seeks to buttress that argument by stating that the testimony offered by the respective representatives of Respondent Employer and Respondent Union "inspires little confidence" and contains "arbitrary creations" and by commenting that Respondent Union could not offer anything better in view of its assertion that the 50 signed cards it claimed it had were "*incredibly*" 'lost' in a 'flood'."

In essence, the General Counsel would have me discredit the accounts given by Perry and Zwerling and, on that basis, find that Respondent Union had considerably fewer than the requisite majority of signed cards when it was recognized on March 12.

The difficulty that I have with that suggested approach is that, when all is said and done, it puts the onus on Respondent Employer and Respondent Union to absolve themselves of allegations of unlawful conduct. In that regard, the General Counsel has observed that neither Respondent has "produced one witness to testify that he or she signed one card at any time on behalf of Respondent [Union]." The record however discloses that at least two employees called by the General Counsel as witnesses themselves testified that they signed cards for Respondent Union before it was recognized. More importantly, the General Counsel never addressed the matter of his not having called but one more witness to establish the lack of majority.

All in all, while I have reservations as to whether 50 signed authorization cards were lost as a result of a flood, while I have some skepticism that Respondent Employer had a sheet containing about 90 signatures against which it checked about 50 cards, and while the argument advanced by the General Counsel to contest the estimates of Zwerling and Perry that about 50 cards were produced on March 12, 1982, gives me pause, I am not persuaded that these considerations and the other circumstantial evidence relied on by the General Counsel demonstrate the alleged lack of majority. A very significant consideration in making that evaluation is that the General Counsel, without explanation, did not produce but one more unit employee as of March 12 to testify that he or she never signed a card for Respondent Union. I note too that Respondent Union had some cards signed before March 12. The accounts of Perry and Zwerling are not so implausible in themselves as to override that consideration. It is possible that Perry hoped to have a majority; it is possible that Zwerling made less than a meticulously careful examination to verify that claim; and it is possible that Respondent Union had a majority of all 91 service and maintenance employees (including those working less than 20 hours a week) as of March 12 and, presumably, a majority of the 57 in the unit in which it sought and was given recognition. The circumstances surrounding the recognition accorded to Respondent Union are indeed suspicious, especially in views of the campaign Respondent Employer had conducted against the Charging Party's organizational effort about to find a violation when evidence apparently readily available to the General Counsel to establish definitively a lack of majority was, without explanation, not proferred.[6]

I note also that there is no allegation that Respondent Employer or Respondent Union had engaged in any coercive conduct before Respondent Union was recognized which might have tainted that recognition.[7]

In view of the foregoing, I find that the evidence is insufficient to establish that Respondent Union did not possess a majority of authorization cards when it was recognized on March 12, 1982.

The General Counsel amended the complaint during the hearing to allege also that the unit in which Respondent Union was recognized was inappropriate for purposes of collective bargaining and that, as a consequence, the recognition of Respondent Union as the exclusive representative of the employees there was violative of the Act. The General Counsel concedes, in his brief, that there is nothing inherently inappropriate in a unit of service and maintenance employees who work 20 or more hours a week.[8] The theory he advances for asserting that the unit is unlawfully inappropriate is, in essence, identical to that considered above—it assumes "the lack of majority status." As I have already determined that the evidence does not establish the asserted lack of majority status, I must reject his theory as well and I thus find that the evidence is insufficient to support the contention that the unit is unlawfully inappropriate for purposes of bargaining.

In the General Counsel's brief, there are statements that the "scenario of this case" suggest that "the smaller the bargaining unit, the less likelihood that discovery of the non-majority status would be made." The General Counsel, elsewhere in his brief, contends that "the

[6] *American Beef Packers*, 187 NLRB 996, 997 (1971) See also *Regency Gardens Co*, 263 NLRB 1268 (1982), and *Progressive Construction Corp.*, 218 NLRB 1368 (1975). Cf *Sanford Home for Adults*, 253 NLRB 1132 (1981).

[7] Cf *Siro Security Service*, 247 NLRB 1266, 1271–73 (1980); *Clermont Bros. Co.*, 165 NLRB 698 (1967)

[8] In any event, Board cases make that point very clear Thus, in *Trustees of Columbia University*, 222 NLRB 309, 311–312 (1976), the Board expressly declined to include employees who averaged 8 to 10 hours a week in the unit found appropriate even though the employer there was party to collective-bargaining agreements with other unions which covered employees working 8 to 10 hours a week. Cf. *Tiflin Enterprise*, 258 NLRB 160 (1981), where an agreement to exclude certain regular part-time employees was held not to have contravened the policies of the Act even though the Board itself would have included those employees.

March 12, 1982 recognition was a device designed by (Respondent Employer and Respondent Union) to frustrate the return of [the Charging Party]." There is no direct evidence that Respondent Union initiated its campaign in early 1982 pursuant to any scheme it had then with Respondent Employer. There is no question that the March 12 recognition had such an effect. What is significant to me, however, is that this case was not tried on any theory that the Charging Party had a continuing interest by reason of the showing it made in the election held in August 1981 such that Respondent Employer was obligated to maintain neutrality during the certification year nor is there any allegation in the amended complaint of disparate treatment.[9]

I turn now to the remaining issue. I credit the accounts of the General Counsel's witnesses that Respondent Employer's administrator sought unsuccessfully in May 1982 to nominate a unit employee to be the steward for Respondent Union for the employees working in the kitchen. In his brief, the General Counsel urges that this attempt should be found to be violative of the Act although not specifically pleaded. On May 2, 1984, I approved a partial settlement in Case 22–CA–11676 which effectively remedied the allegations of the complaint that Respondent Employer, independently of the recognition issue above and also of the no-solicitation issue in this case, had interfered with employees' rights under Section 7 of the Act. In view of the settlement, no useful purpose is served by requiring Respondent Employer to restate its assurances that it will not do anything to interfere with the rights of its employees guaranteed by the Act, especially as the settlement specifically remedied the allegation that the Respondent Employer violated the Act by the response given by its administrator when employees questioned her as to what Steve Jarema told them concerning their refusal to sign dues-checkoff cards, as discussed next.

The complaint also alleged that Respondent Union, by Steve Jarema, threatened employees in May or June 1982 with loss of their jobs unless they signed dues-checkoff cards. I credit the accounts of the General Counsel's witnesses over Jarema's bare denial and thus find that he told them, when asked if they could be discharged for refusing to sign dues-checkoff cards, that they could.

The last complaint allegation to be considered is that, by the provisions of article V of the contract between Respondent Employer and Respondent Union, Respondent Employer has maintained an unlawfully broad no solicitation rule. Article V, paragraph 1, of the contract reads:

> No employee shall engage in any union activity including the distribution of literature which could interfere with the performance of work during his working time or in working areas of the Home at any time.

Respondent Employer notified employees in March 1982 that this contract became effective. Although "working time" is for work, the rule is unlawful as it applies only to union activities.[10]

Conclusions of Law

1. Respondent Employer is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Union and the Charging Party are each labor organizations as defined in Section 2(5) of the Act.

3. Respondent Employer did not violate Section 8(a)(1), (2), and (3) of the Act by recognizing Respondent Union as the bargaining agent of certain of its service and maintenance employees on March 12, 1982, and by executing a contract covering a unit of service and maintenance employees on March 16, 1982, which contained union-security provisions.

4. Respondent Union did not violate Section 8(b)(1)(A) or (2) of the Act by reason of its accepting recognition on March 12 or executing the March 16 contract.

5. Respondent Employer has violated Section 8(a)(1) of the Act by promulgating and maintaining the no-solicitation rule set out in article V, paragraph 1 of the March 16 contract.[11]

6. Respondent Union, by its representative, Steve Jarema, restrained and coerced employees in violation of Section 8(b)(1)(A) of the Act by having advised them that they could be discharged if they declined to sign dues-checkoff forms.

7. The unfair labor practices found above in paragraphs 5 and 6 affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

A. Respondent Woodcliff Lake Manor Nursing Home, Inc, Woodcliff Lake, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining in effect the provisions of article V, paragraph 1, of the contract it has with Respondent Union dated March 16, 1982.

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

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

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[9] Cf. *Film Consortium*, 268 NLRB 436 (1984), *Bruckner Nursing Home*, 262 NLRB 955 (1982), *Lyndale Mfg. Corp*, 238 NLRB 1281 (1978)

[10] *Our Way, Inc*, 268 NLRB 394 (1983)

[11] It would not be appropriate to invalidate the entire contract because of that rule or the answer given by Respondent Union's representative Jarema when he was asked by employees if they could be discharged for failing to sign dues-checkoff forms Cf *Piledrivers Local 438 (Ernest Construction)* 234 NLRB 1301 (1978) There, the invalid contract provision was ordered deleted.

[12] If 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 Woodcliff Lake, New Jersey, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 22, 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. Respondent Local 6, International Federation of Health Professionals, International Longshoremen's Association, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Advising employees of Woodcliff Lake Manor Nursing Home, Inc. that they could be discharged for failing to sign dues-checkoff authorization cards for Respondent Union.

(b) In any like or related manner restraining or coercing employees in the exercise of 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 in conspicuous places at offices, meeting halls, and other places where notices to members are customarily posted, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 22, 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 members 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.

IT IS FURTHER RECOMMENDED that the complaint is dismissed in all other respects.[15]

[13] If 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"

[14] See fn 13, above

[15] Pars 14 and 15, having been settled during the hearing, are of course not subject to this recommended Order

APPENDIX A

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

WE WILL NOT give effect to article V, paragraph 1 of our collective-bargaining agreement with Local 6, International Federation of Health Professionals, International Longshoremen's Association, AFL–CIO as that paragraph unlawfully restricts only union activities of employees during working time.

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

WOODCLIFF LAKE MANOR NURSING HOME, INC.

APPENDIX B

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

WE WILL NOT advise employees of Woodcliff Lake Manor Nursing Home, Inc. that they could be discharged for failing to sign dues-checkoff authorization forms.

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

LOCAL 6, INTERNATIONAL FEDERATION OF HEALTH PROFESSIONALS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO