

Camelot Terrace, Inc. and Service Employees International Union, Local 4. Cases 13–CA–43936 and 13–CA–44044

September 29, 2008

DECISION AND ORDER REMANDING

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On March 4, 2008, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent, the General Counsel, and the Union filed exceptions and supporting briefs, the General Counsel and the Union filed answering briefs to the Respondent's exceptions, the Respondent filed answering briefs to the General Counsel's exceptions and to the Union's exceptions, and the Union filed a reply brief.

The National Labor Relations 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 only to the extent consistent with this Decision and Order Remanding, and to adopt the recommended Order as modified.¹

We adopt the judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing warnings to and discharging employee Cheryl Henson, and we adopt the judge's entire remedial order, which concerned only those violations.

However, the complaint allegation that the Respondent violated Section 8(a)(3) and (1) by discharging employee Crystal Lopez turned on disputed facts and significant credibility issues that were not adequately resolved for our review by the judge. While he exhaustively recounted the testimony of each witness, the judge failed to articulate a basis for many of his credibility determinations and did not address evidence that arguably contradicted a number of his factual findings. Though 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,"² here we are unable to fulfill our review function.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

² *Wegmans Food Markets*, 351 NLRB 1073 fn. 1 (2007), citing *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). The judge's credibility resolutions in the present case, unlike *Standard Dry Wall*, were not based on witness demeanor.

We shall therefore sever and remand the complaint allegation regarding the alleged unlawful discharge of Lopez to the judge for reasoned credibility resolutions and for findings of fact that detail the evidence supporting his factual findings and either discredit or reconcile the evidence that contradicts those resolutions and factual findings.

By way of example, the judge found that, on the morning of February 25, 2007,³ Lopez uttered an expletive and said, "I quit," following a heated exchange with employee Diana Keith in the Respondent's dining room. In making this finding, the judge relied solely on Keith's testimony, which he credited because Keith was no longer employed by the Respondent and "there was no evidence that she had any stake in the case."⁴ However, the judge failed to discredit or otherwise address the testimony of two witnesses, employees Jessica Palko and Melissa Wilson, or that of Lopez herself, each of whom testified that Lopez neither said that she quit nor used an expletive on that occasion.

Additionally, the chronology of key events relating to Lopez' discharge remains unclear. The judge credited the testimony of nurse Noreen Hayes that she saw Lopez and Palko leave on break at 9 a.m. and return at 9:15 a.m. However, the testimony of four other witnesses—Lopez, Palko, Wilson, and Director of Nursing Julie Huffman—puts Lopez in the dining room assisting residents with breakfast during this same timeframe,⁵ and both Lopez and Palko specifically denied that they were on break between 9 and 9:15 a.m. The judge failed to adequately reconcile this conflicting evidence and to explain why he was crediting one account over others.

There are other instances where the judge failed to adequately address conflicts in the evidence. For example, the judge found that Lopez left the building after her argument with Keith and *upon her return* (which was at approximately 9:30 or 9:35 a.m.), wrote "9:18 a.m." over her sign-out time of 9 a.m. in the break log and "9:30 a.m." over her sign-in time of 9:15 a.m. In so finding, the judge credited Hayes' testimony. The judge's account of Hayes' testimony, however, is inaccurate in a potentially significant respect. Hayes testified that it was at 9:18 a.m. that Lopez wrote "9:18 a.m." over her sign-out time of 9 a.m. in the break log. If this is so, it con-

³ All dates are in 2007, unless otherwise indicated.

⁴ We note that Keith had been an antagonist in the argument with Lopez, a fact which may or may not have influenced her testimony, a determination we leave to the judge to make and explain.

⁵ Huffman testified that she was summoned to the dining room due to the altercation there, but Lopez was no longer present. Huffman then went to the timeclock and found Lopez had clocked out. At this point, she testified, "It was about 9:15. She [Lopez] clocked out at 9:18."

flicts with the Respondent's version of the events, which the judge apparently accepted, that Lopez quit, left the building, then changed her mind and, upon returning to the building around 9:30–9:35 a.m., made entries in the break log to make it appear that she had been on break.

The judge also failed to address certain discordant findings and evidence pertinent to his conclusion that Lopez voluntarily quit. For example, the judge found that, on February 26, Administrator Marna Anderson told Director of Nursing Huffman that Lopez had been discharged, but the judge did not reconcile this finding with his ultimate conclusion. Nor did he address Lopez' testimony that she was told by the Respondent's observer at the February 28 election that she had been terminated or her testimony that, when she tried to report for work on that day, Anderson told Lopez she had been terminated. Moreover, the judge apparently credited Huffman's testimony that Lopez told Huffman that she quit upon her return to the building on February 25.⁶ It is undisputed, however, that, immediately thereafter, Lopez completed her work shift. The judge did not explain why Lopez would have told Huffman that she had quit and then immediately resume working.

Accordingly, we shall sever and remand the complaint allegation regarding Lopez' alleged unlawful discharge to the judge for reasoned credibility resolutions and findings of fact, including, but not limited to, resolution of the issues identified above. In remanding, we stress that we do not pass on the merits of this allegation or the ultimate validity of the judge's prior findings and credibility resolutions; we simply ask that he explain his findings and credibility resolutions in sufficient detail for our review.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Camelot Terrace, Inc., Streator, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the allegation that the Respondent discharged Crystal Lopez in violation Section 8(a)(3) and (1) is severed and remanded to the judge for appropriate action as described above.

IT IS FURTHER ORDERED that the judge shall prepare a supplemental decision setting forth credibility resolutions, findings of fact, conclusions of law, and a recom-

⁶ Huffman testified that Lopez, on her way into the building, told Huffman that she quit and that she did so because "she thought it was going to get better but it had gotten worse." Although not expressly finding that Lopez told Huffman that she had quit, the judge found that Lopez told Huffman that she thought things would get better but they had not and that Huffman accepted Lopez' resignation at that point.

mended Order, as appropriate on remand. Copies of the supplemental decision shall be served on all parties, after which the provisions of Section 102.46 of the Board's Rules shall be applicable.

Charles Muhl, Esq., for the General Counsel.

Michael Lerner, President, pro se, for the Respondent.

Stephanie Brinson, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me in Peoria, Illinois, on August 28 and 29, 2007. The complaint is based on charges filed by Service Employees International Union, Local 4 (the Charging Party or the Union) against Camelot Terrace, Inc. (the Respondent or Camelot Terrace).

The complaint alleges violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The complaint is joined by the answer filed by the Respondent wherein it denies the commission of any violations of the Act.

After due consideration of the testimony and evidence received at the hearing and the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The complaint alleges, Respondent admits, and I find, that at all material times, Respondent, an Illinois corporation, with an office and place of business located at 516 Frech Street, Streator, Illinois, has been engaged in the business of providing long-term residential nursing and rehabilitation services, that during the past calendar year, a representative period, Respondent in conducting its business operations described above, had gross revenues in excess of \$100,000 and purchased goods and services valued at more than \$3000 from points directly outside the State of Illinois and that at all material times, Respondent has been an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find, that at all times material, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. SUPERVISORY AND AGENCY STATUS

It is further alleged, admitted, and I find, that at all material times, Michael Lerner, president/owner; Julie Huffman, director of nursing (DON); Marna Anderson, administrator; and Debbie Kipp, operations manager, have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that about February 13, 2007, Respondent issued a written warning to its employee Cheryl Henson, that about April 24, 2007, Respondent issued a verbal

warning to Henson, and that about May 10, 2007, Respondent issued a written warning to Henson and discharged Henson. The complaint also alleges that about February 25, 2007, Respondent discharged its employee Crystal Lopez.

1. Background and facts

This case involves the issues of whether Camelot Terrace terminated Crystal Lopez in violation of Section 8(a)(1) and (3) of the Act and whether Camelot Terrace disciplined and terminated Cheryl Henson in violation of Section 8(a)(1) and (3) of the Act because of their union and protected concerted activities. Lopez had been employed as a certified nursing assistant (CNA) for 9 years. As a CNA, Lopez assisted residents of the nursing home with their daily living activities such as feeding, bathing, and dressing them. Lopez was also responsible for charting the residents' daily activities such as eating. Respondent's director of nursing (DON), Julie Huffman, testified that Lopez was good in performing her job. Five months prior to her termination, Respondent named Lopez as the "Employee of the Month" in recognition of her excellent job performance. In October 2006, Lopez met the Union's organizer, Thomas Zablocki, who was involved with an organizing campaign at Respondent's facility. Lopez had been involved in an organizing campaign at another nursing home facility in Ottawa, Illinois. Lopez was recruited by the Union to assist in organizing Camelot Terrace and became the leading employee union adherent. Lopez solicited union cards from her fellow employees and personally obtained signed union cards from one-third of the bargaining unit employees. She attended union meetings, telephoned her fellow employees on behalf of the Union, and held union meetings at her home in addition to speaking to the employees on a daily basis in support of the Union. In addition, Lopez testified on behalf of the Union in an arbitration hearing and in a National Labor Relations Board (the Board) hearing and served as a union observer at a Board supervised union election held at the Camelot Terrace facility in December 2006.

Cheryl Henson was employed as a medical records/transport aide over 17 years and had not received any discipline for over 16 years. Henson testified that she had received only one discipline in her first week of employment in October 1989. As a medical records aide, Henson prepared Medicare and public aid forms for new residents and performed general filing duties and prepared new resident charts. She was also responsible for obtaining signed medical forms from physicians who had called in medical and treatment orders and for ordering medical supplies and medicines to keep the medical room stocked for the facility's requirements. She also transported residents to various locations for doctors' visits. She was also responsible for taking photographs of new residents to be placed in their files. Henson testified that she was an open supporter of the Union and that she told DON Huffman of her support of the Union shortly before a second election which was held on February 28, 2007. She also testified that she spoke to union representatives at Camelot Terrace during the union campaign and that she testified as a witness for the Union at an arbitration hearing held on January 17, 2007, concerning objections to the first election. Additionally, Henson's daughter, Melissa Wilson,

was a housekeeper/CNA at Camelot Terrace. Wilson testified she is a union adherent and testified at a January 17, 2007 arbitration hearing. Camelot Terrace Administrator Marna Anderson testified she was aware that Wilson was a union adherent and that Wilson had testified at the arbitration hearing.

The Union and Illinois Association of Healthcare Facilities (IAHF) are parties to a master agreement which was in effect from April 20, 2005, to December 31, 2007. This agreement contained regulations controlling the Union's engagement in organizing of unorganized nursing homes owned by IAHF members, such as Michael Lerner, whose company, GEM, owns Camelot Terrace. In October 2006, the Union and Camelot Terrace executed a settlement agreement whereby they agreed to be bound by the neutrality provisions of the master agreement including the appointment of a neutral arbitrator to resolve disputes of matters arising under the neutrality agreement. Edward B. Krinsky was mutually selected as the neutral arbitrator. During the fall of 2006, Union Representatives Andy Friedman and "Shannon" met with employees to discuss the employees' concern that Respondent's timeclock was inaccurate and docking the employees 15 minutes. On September 21, 2006, Lopez and 10 other employees signed and sent a letter to Lerner concerning the timeclock and asserted that the Union was their representative concerning this issue and requested certain information be sent to Friedman. Soon thereafter Lopez and Union Representative Friedman met with Debbie Kipp, the director of operations of GEM, concerning the timeclock issue. About a week later, Lopez and Union Representative George Hemberger met with Kipp, Lerner, and Anderson concerning the timeclock issue.

On October 23, 2006, the Respondent and the Union held a joint meeting at Respondent's facility in accordance with the settlement agreement. Lerner, Kipp, and Anderson were all present on behalf of the Respondent at the meeting and each spoke from a script in which the Respondent purported to be neutral and stated that it would not campaign against the Union. However, the statements disparaged the Union as follows:

... We are not going to campaign against unionization, we are not going to try to convince you that you'd be better off without them; we will let you decide for yourselves whether you can *rely* on the promises given to you by these people or whether they are *empty* promises, made by people who don't have even the slightest ability to give you the things they promise.

... We know that you are intelligent people, and you will decide for yourselves who you can trust for your future—GEM Healthcare, a solid company whom you have steadily relied on in the past; or strangers from Chicago, that you have never met before, who keep knocking on your doors, badgering you to hire them.

... Presently, all of you receive an annual merit raise ... Under a union contract the facility won't have to do that. If a raise would be agreed to, the contract would require us to give each of you the same raise as everyone else; no matter how much more superior your work is than theirs ...

... If you want a union, it's your prerogative to do either . . . But if you don't want a union, you must act by not signing any Union cards, since that can force an election, or actually be accepted as an election. Don't believe anyone who tells you that signing a card is meaningless.

If there is an election, and you don't want a union, you need to come and vote NO. Don't stay home and think nothing will happen—you must come and vote your choice, since you and your paycheck will directly be affected by the vote.

If the union is voted in, many of you could be unhappy with some of the contract's provisions. Since there are a lot of details in a contract, you'd be forced to accept whatever the majority agreed to. But when you don't have a union contract, you are not tied down to those rules. If you have a personal situation, often flexibility can be worked out with your supervisors . . .

Although unions can promise a greater future, they can only guarantee one economic thing—that you will always pay them union dues. No matter how little they may actually do for you, you will forever be paying them a deduction of your paycheck.

Immediately after reading these statements, all three of Respondent's representatives left the room and turned out the lights as the Union's president tried to answer questions from employees. The Union filed a grievance with Arbitrator Krinsky alleging that Respondent's speech was in violation of the settlement agreement. An arbitration hearing was held in this matter on November 7, 2006, wherein employees Crystal Lopez, Pamela Northrup, and Debbie Brennan testified in support of the Union. On November 29, 2006, the arbitrator issued his award in which he found that the aforesaid statements were not neutral but rather were adversarial.

On December 13, 2006, the Board conducted the first election pursuant to the Union's petition for election which had been filed on November 22, 2006. However, on December 12, 2006, the day prior to the election, the Respondent gave the employees a holiday party and gave the unit employees gift cards in the amount of 40 percent greater than in the preceding year. Lopez was the Union's observer for the election. There were 42 bargaining unit employees who voted. There were 18 votes for the Union and 23 votes against the Union. On December 20, 2006, the Union filed objections to the election with Region 13 of the Board and Arbitrator Krinsky. On January 17, 2007, Arbitrator Krinsky conducted an arbitration hearing on the objections at Respondent's facility in its conference room which was located approximately 5 feet from Administrator Anderson's office. Anderson was present during the hearing and her door was opened. Employees Crystal Lopez, Cheryl Henson, Melissa Wilson, Jessica Palko, Deanna Chalky, Diane Bour, and Barbara Rubrecht all testified in support of the Union. Lerner and Kipp represented Respondent at the hearing. On cross-examination of Lopez, Lerner contended that she was a vocal prounion supporter and asked her whether she had received money or gifts from the Union. On February 5, 2007, Arbitrator Krinsky rendered his award in this matter. He found

that the holiday party and the gift distribution the day prior to the election would influence a vote against the Union and that the failure of the Employer to post the arbitrator's November 29, 2006 decision 48 hours in advance of the hearing as ordered by the arbitrator may have reduced the number of employees who attended the meeting potentially affecting the vote of the entire bargaining unit. He thus concluded that the results of the December 13, 2006 election should be voided and a new election should be held. He also ordered that Camelot Terrace as "the party violating the rules of conduct shall join in a stipulation setting aside the results of the election and providing for a rerun election . . ." Initially, the Respondent refused to sign the rerun election stipulation but later, under the pressure of an impending temporary restraining order in Federal court, the Respondent signed the Board approved rerun election stipulation. On February 28, 2007, the rerun election was held. Forty bargaining unit employees voted at the election. There were 21 votes for the Union and 17 against. On March 3, 2007, Respondent filed election objections with the Board in Case 13-RC-2169, but not with Arbitrator Krinsky. On May 8, 2007, the Board's hearing officer issued a report and recommendation which overruled Respondent's objections. Respondent filed exceptions to the report and recommendation which are pending before the Board.

2. The alleged discharge of Crystal Lopez

Lopez testified that on Sunday, February 25, 2007, she reported for work at 6 a.m. for her scheduled shift of 6 a.m. to 2 p.m. There were three other CNAs besides herself between 6:30 to 7 a.m. However, a CNA quit, leaving only three CNAs including Lopez. About 8 a.m. Lopez was in the B-wing by the utility room in the hallway. CNA Jessica Palko and Melissa Wilson, a housekeeper, were also present. Wilson told them that Amy Gaydos, a unit aide who was not a housekeeper, was going to be receiving housekeeping hours and Wilson was not being offered them. Lopez said it was not right for Respondent not to offer Melissa more hours instead of offering them to someone from a different department. Lopez and Palko continued getting residents up since there were only three CNAs on duty that day. When they finished bringing residents out to the dining room it was shortly after 9 a.m. Palko was helping Lopez. Also in the dining room were Wilson and Cecilia Selvidge, another CNA. There were about 15 to 20 residents in the dining room at that point. Lopez was charting the residents' appetites and had a clipboard in her hand. Selvidge had left the room, leaving Wilson, Palko, Lopez, and the residents. At that point Diana Keith, a housekeeper, started screaming at Wilson. She came into the room screaming and got up in front of Lopez' face and said the housekeeping department was none of Lopez' business and she would have never brought the matter up this way. Lopez said that they were in front of the residents and needed to quit it. Keith kept it up and Lopez became aggravated and took the clipboard and threw it on the table, and said, "I've had it. I can't take it anymore," and left the dining room. Lopez was by the door when Keith came in. Keith came up to Lopez when Lopez told her they were not talking about the housekeeper, Amy Gaydos. Keith had started "yelling" at Wilson about talking about Amy Gaydos. Lopez was not ini-

tially involved until about 5 minutes later, when Lopez told Keith it was not fair that somebody in the housekeeping department did not get the housekeeping hours which were instead offered to a unit aide. Keith was loud and screaming. Lopez testified she, herself did raise her voice and told Keith they were in front of the residents and needed to stop. Lopez threw the clipboard down on the table. Lopez testified she went to the nurses' station to sign out for her break and went out of the building to her van to calm down as she was aggravated. She testified there was no break sign-out sheet so she clocked out on the timeclock. She was in her van when the nurse for the day, May Nelson, came and asked her what was going on. She told Nelson that she was aggravated about what had happened in the dining room and told her, she did not think she could work there anymore because managers, coworkers, and residents were screaming at them. She was in the van about 15 minutes and then left the van to go back in the building. Director of Nurses Julie Huffman was there at the entrance and was talking on the phone to someone. She heard Huffman say, "I don't know what is going on with Crystal Lopez." Lopez then said, "Well, I'm going back to work." She then walked back in the building and clocked back in and went to work. May Nelson witnessed this conversation, as Huffman was there outside the door as Nelson was coming in at the same time. Lopez then worked until 20 minutes to 3 that day. Her shift was scheduled to end at 2 p.m. that day. Lopez' next scheduled workday was Monday, February 26, 2007. She testified she called in sick to the nurse on the midnight shift 2 hours in advance of her shift as required. She was called by Administrator Anderson but did not initially answer the phone as she was ill. When she saw it was Anderson, she returned the call but Anderson was at lunch. Anderson called her back about noon or 1 p.m. that date. Anderson said, "Crystal, you quit, so I'm taking that as your resignation." Lopez said, "What are you talking about Marna I did not quit." Lopez denied that she had quit and attempted to explain the incident to her but Anderson repeatedly continued to say that Lopez had quit and she would not listen to Lopez, who became irritated and hung up.

Lopez testified that she did not tell anyone involved in the dining room incident that she had quit. Nor did she tell DON Huffman on February 25, 2007, that she had quit. Lopez was not scheduled to work on Tuesday. She was scheduled to work on Wednesday, February 28, 2007, which was also the date of the scheduled election. She appeared to vote at 5:45 a.m. and her vote was challenged by Respondent's election observer, Amy Black, who told her she was terminated. At 6 a.m., Lopez entered the building and clocked in and went to the nurses' station. The midnight nurse asked her what she was doing there as her name was not on the schedule to work. Lopez told her she was to be working this date. Angie Smith, a nurse, then told Lopez that Anderson wanted to see her. Lopez took Wilson with her as a witness and prior to reaching Anderson's office she met Anderson who asked her, "[W]hat the hell," she was doing there. There were residents around the area. Anderson said, "Crystal, you know you were fired on Monday, so what are you doing here?" Lopez told Anderson that Anderson had not told her she was fired. Lopez told Anderson that she had told her that she had not quit and that she was there to

work. At this point Anderson told Lopez that if she wanted to leave peacefully, she could or if she did not, she would call the police. Anderson was screaming at Lopez when she told Lopez to leave. Lopez left.

On cross-examination, Lopez testified that in her conversation with Nurse May Nelson, she told Nelson she did not know if she could continue working there because the management and residents were screaming at her because they were working so "short." When Nelson and Lopez walked up to the building she observed that DON Huffman was on a cell phone standing outside the building. She told Huffman she was going back into work and did so. She heard Huffman say to someone on the phone that she did not know what was going on with Lopez. Lopez said, "Well, I'm going back into work." With respect to breaks, Lopez testified that the policy on notifying management varied from being required to sign out on break, to telling the charge nurse, or to signing themselves out. She had punched out on the timeclock for her break prior to February 25. On Sunday, February 25, she had not written anything on the sign-out sheet and did not see the charge nurse and was not aware that Huffman was still in the building, as Huffman had worked the night shift. Accordingly, she punched out on the time clock prior to going on her break. She did not say, "Fuck it, I'm quitting." She did say, "I've had it. I can't take this." She did not have any conversation with Huffman after her return to the building. The Respondent has a policy referred to as the no-call/no-show policy. This applies to employees who do not call off work and inform the Employer that they will be absent and who do not show up. This policy changes regularly and subjects the affected employees to termination for a single offense or up to three times prior to termination. On February 26, 2007, she called in to the nurse on the midnight shift. When she talked to Marna Anderson on the morning of February 26, 2007, Anderson told her that since she had quit, she would take this as her resignation. She told Anderson that she had not quit.

On redirect by the General Counsel, Lopez testified that the break policy changed often. At one point the employees did not have to notify anyone that they were going to take a break. At other times the employees were required to notify the nurses. If they were leaving the building, they were required to clock out sometimes. There was never a written policy, but notification of changes in the policy were communicated by word of mouth and were not always communicated. On February 25, Huffman had worked the midnight shift and Lopez did not know she was still in the building at 9 a.m. Anderson was not in the building on this date. Often (10 or 15 times a month), the employees took breaks in the parking lot without notifying the Administrator, the DON or a charge nurse. No one has ever told her that she was terminated as a "no-call/no-show." On re-cross-examination by the Respondent, Lopez testified that she did not sign herself out and in on her break sign-out sheet on February 25 because she did not know where the sign-out sheet was the entire day.

Melissa Wilson testified she is a CNA and has been employed at Camelot Terrace about a year. On February 25, 2007, she was a housekeeper cleaning rooms. She was working a 7 a.m. to 3 p.m. shift. About 9 a.m. there was an argument in the dining room. Present were Lopez, Jessica Palko, and Diana

Keith and about 8 to 10 residents. She was beginning to clean the dining room and Keith came in and was yelling about people backstabbing other people and about a conversation concerning hours of employment. Lopez and Palko tried to calm Keith down and Keith turned around and started yelling at Lopez. When Keith first entered the dining room, she told Wilson that if there was anything going to be said about hours, it should be said to Joyce Wahl who was the supervisor for housekeeping and laundry. Lopez told Keith that no one was talking behind anyone's back. It was just a conversation about hours being cut and that is when Keith turned around and started yelling at Lopez. Keith yelled at Lopez that it was none of her business and that it was a conversation that should not have been held with other people and it should have been addressed to Joyce Wahl. Crystal then said she couldn't take it anymore and threw down her clipboard and went out and took a break. Keith was yelling during this incident. Lopez started yelling toward the end of the conversation. Lopez did not say anything else prior to leaving the dining room. Prior to the argument, Lopez had been charting residents' appetites. Lopez did not use profanity and did not say, "I quit." Shortly before 2 p.m. Huffman asked Wilson to tell her what had happened. Wilson told her they were all in the dining room talking and Keith came in and started yelling and Lopez and Palko tried to calm her down and this is when Keith started yelling at Lopez and things progressed and Lopez walked out. Huffman told Wilson that she (Huffman) was outside the doors of the dining room. However, Wilson testified she did not see Huffman there but saw Huffman coming out of her office. Huffman asked Wilson if Lopez had used any profanity and also asked if Lopez said she quit. Wilson told Huffman she did not hear Lopez use profanity or say that she quit. While Wilson was talking, Huffman was taking down notes, but she did not give Wilson an opportunity to review what she had written. Wilson did not provide a statement that she (herself) had written. On the day of the election, Lopez was called into Anderson's office. Lopez asked Wilson to accompany her. Wilson did so and Anderson met them at the secretary's office. There were also some residents out in the sitting area. When Anderson met Lopez she asked Lopez, "[W]hat the hell," she was doing there because Lopez had told her she had quit. Lopez then told her, "I did not quit." Anderson then said she, "called you on Monday and said that you no longer had a job here." Anderson then told Lopez to leave on good terms or she would call the police and have her escorted out. Wilson testified further that about a week prior to the hearing in this case, Anderson called her into Social Services to talk to Wilson. Wilson complied and Anderson gave her a statement to read that Huffman had written of the events of the Sunday prior to the election concerning the argument in the dining room. Wilson read the statement and found it inaccurate. Specifically, the statement said that Wilson had told Huffman that Lopez had said, "Fuck it, I quit." She told Anderson this statement was not accurate and Anderson then crossed out this portion of the statement and Wilson then signed her initials to it. Wilson was given a disciplinary writup by the Respondent for arguing in front of residents. She was not discharged. Her supervisor, Joyce Wahl, told Wilson that her conduct was inappropriate and should not occur in

the workplace. Wilson testified further that she was involved in the Union's organizing campaign and spoke to other employees on behalf of the Union. She also testified on behalf of the Union in two arbitrations.

On cross-examination by Respondent, Wilson testified that Lopez took her break about 9:15 or 9:20 a.m. When Wilson was interviewed by Huffman, Huffman told her that she heard Lopez say, "Fuck it, I quit." Wilson testified that Huffman was nowhere near the dining room but rather was in her office with the door closed and that Huffman was not aware of the situation until Cee Cee (another aide) went in and got her. In addition to striking the words on the statement "Fuck it, I quit," Wilson had Anderson add that Lopez had said, she couldn't take it anymore, that she was stressed. Wilson made public that she was in favor of the Union. Palko also made public that she was in favor of the Union. When Wilson's hours were cut back, she was told it was because the census showed that the ratio of residents was down.

Jessica Palko testified she has been employed by Respondent 4 years. She is a CNA and works 6 a.m. to 2 p.m. On Sunday, February 25, 2007, she worked the same shift. At the start of the day they were getting residents up and she moved from different wings of the facility. She and Lopez were getting residents up on B-wing. They were approached by Melissa Wilson who told them that a person in another department was receiving housekeeping hours whereas Wilson, a housekeeper who was in the housekeeping department, was not getting enough housekeeping hours. That conversation only lasted 5 minutes and they commented that this does "stink." Lopez and Palko proceeded to get the residents up for their meal. They took the residents to the dining room. Present in the dining room were Lopez, Wilson, and Palko. Then Diana Keith walked into the dining room and went after Wilson saying, "Why would you be talking about Amy." Amy Gaydos was the person who they were talking about earlier as having received the additional housekeeping hours although she was not in the housekeeping department. Wilson told Keith that she was not talking about Amy as a person, but was just stating a fact that she was getting hours. Palko testified that she and Lopez stood up to stop the conversation because Keith was using a raised voice and they were just telling Keith that Wilson was not talking about Amy. Wilson was just stating that she needed more hours and someone else was getting them. Keith then turned her attention to Lopez and got in her face and was yelling at her. Lopez then said, "I've had enough of this. I'm done." Lopez threw the clipboard on the floor and then left the dining room. Palko asked Nurse May Nelson to go after Lopez to calm her down because Lopez was crying. She never heard Lopez say, "I quit" or "Fuck this, I quit." Nor did Lopez use any other profanity. Later on that day she was approached by Huffman who told Palko she needed to take her statement. Huffman sat down where Palko was at a table in the breakroom and Palko told Huffman what had happened. When she was finished writing it down, Huffman said, "[T]hank you" and walked away. Palko told Huffman that Lopez had tried to act as a buffer between Keith and Wilson. Huffman asked Palko if Lopez had quit and Palko told her, "No, she didn't quit." She said, "I've had enough. I'm done with this." Huffman did not

show the note to her. Palko does not recall if Huffman asked her if Lopez used profanity. About a month prior in an investigation on another matter, she was asked to provide a statement and she wrote it, signed it, and dated it herself. Prior to February 25, 2007, she observed Lopez engage in activities on behalf of the Union such as talking with other employees at break and lunchtimes, and making home visits from October 2006 to February 2007. She was approached by Anderson on Monday, February 26, who asked her the same questions that Huffman had asked her. Anderson asked if Lopez used any profanity and had said she quit and Palko said no. Palko further testified that years ago two CNAs got into an argument and used foul language toward each other. The employees were suspended but were not discharged. Palko participated in an arbitration at Camelot Terrace and also testified at a Board hearing in Chicago.

Diana Keith was called as a witness by Respondent. She testified she worked in housekeeping and was a union supporter and was friendly with Lopez. On the morning of February 25, she was getting ready to go to lunch and Respondent's staff was running late with the residents in the dining room. She walked in to ask Wilson if she needed help. She did not get a chance to talk with Wilson because she heard someone call her name and it was Lopez. Lopez started asking her why Amy Gaydos, a unit aide, was getting housekeeping hours instead of Wilson, who was a housekeeper. Keith said she did not know. Lopez said she didn't think it was right. She told Lopez to call her (Keith's) supervisor and took out her phone. Lopez kept saying she did not think it was fair and that she thought it was a bunch of "b. s." and then Lopez said, "Fuck it. I quit. I am out of here." and Lopez threw the clipboard. Lopez was upset. The residents were within hearing distance seated at nearby tables in the dining room. She wrote a statement which she signed and gave to DON Huffman. She was interviewed by Huffman. She received a disciplinary warning for her role in this incident from Marna Anderson and Joyce Wahl. She protested the discipline but was told she should have walked away. She had talked to Huffman on February 25 concerning this matter. Then Anderson told her she had to write up the statement. She also testified that Lopez did not act as a peacemaker but "[s]he was the one who was going at it." Keith is no longer employed by Respondent.

Noreen Hayes, a licensed practical nurse (LPN) at Camelot Terrace, testified she supervises the aides who give direct care to the patients. On February 25, 2007, Crystal Lopez was under her supervision and was working two wings of the facility that Hayes was in charge of. The employee break sign-out sheet is kept at the nurses' station and was at the nurses' station, where she was assigned on February 25. The CNAs are allowed to go on break for 15 minutes in the morning, 30 minutes for lunch, and a 15-minute break in the afternoon. Hayes testified at the hearing that she had signed Lopez and Palko out at 9 a.m. and back in at 9:15 a.m. on the break sheet for February 25. The aides usually tell Hayes when they are going on break and she signs them out. At times the CNAs sign themselves out. On February 25 she saw Lopez go on break at 9 a.m. and return at 9:15 a.m. She saw Lopez go out on break to the breakroom. CNAs do not punch out on the timeclock dur-

ing their shift except if they are going to leave the building and have received permission to leave the building. Hayes testified that later, on February 25, she observed Lopez write in 9:18 a.m. as her time out and 9:35 a.m. as the time in on top of Hayes' writing of their time on the break sheet.

On cross-examination, Hayes testified that on February 25, she was at the nurses' station and she took "report" (received status reports) from the aides and then started passing "meds" (medicines) and giving treatments to residents which takes about an hour and she was back and forth from the nurses' desk to the telephone. At noon she passed meds again. She also takes orders from doctors and then it is time for the next shift to come on and she gives report. On February 25, she was taking a phone call from a doctor on orders between 8:45 and 9 a.m. She was not at the nurses' desk all day when she was performing other tasks. However, when she saw Lopez and Palko go on break from 9 to 9:15 a.m., she was at the nurses' station. She saw them go out the glass door toward the breakroom. Lopez did not ask her for permission to go on break but rather asked Hayes to sign her out for a break. Lopez did not tell her what times to put down on the break sheet. Hayes wrote the times down because she could see the clock across from the nurses' station. Employees have left the building without permission before. Lopez later wrote over the 9 a.m. sign-out sheet and the 9:15 a.m. sign-in sheet. Hayes was at the nurses' station the entire time from 9 to 9:15 a.m. In addition to taking a doctor's call during this time, she was also charting a resident's chart. Hayes testified that Lopez returned and signed the break sign-out sheet over the 9 a.m. time for Lopez that Hayes had entered and later returned at 9:30 a.m. and wrote 9:30 a.m. over the 9:15 a.m. time that Hayes had entered for the return of Lopez, thus apparently taking another break. She did not say anything to Lopez about her taking two breaks as it was a Sunday and there was only herself and another nurse there and there were no "higher ups." Hayes reported this to DON Julie Huffman on the next day.

Julie Huffman testified as follows: She became the director of nursing (DON) in January 2007. As DON she supervised the CNAs including Lopez and the nurses and the unit aides who assisted the CNAs in their duties. On the morning of February 25, 2007, she was in charge as Administrator Marna Anderson was off work on that date. As of February 25, 2007, Huffman had only recently been appointed as DON for the facility. She was in her office that morning when Cecilia, one of the CNAs, came in and said that Huffman needed to go to the dining room right away and that Lopez had just quit. When Huffman arrived at the dining room, Lopez was not there and she went to the timeclock and Lopez had already clocked out at 9:18 a.m. according to her timecard. She saw Jessica Palko feeding and Wilson was standing there and there was a clipboard on a table and "there was paper all over the floor." She went back to the nurse's station and told them she was going to pick up unit aide Debbie Morris to replace Lopez. She then went outside and saw Lopez in her van talking to Nurse May Nelson. She called Nelson to come back into the building because it was cold outside and Nelson had only recently been in the hospital. As Nelson returned, Lopez followed her in and came to where Huffman was standing. Lopez told her that she

had quit because she thought it was going to get better but it was worse. Huffman told Lopez she could not deal with her then and she went to her car to pick up Morris. After she picked up Morris and returned to work, she saw Lopez was still in the building. She told Lopez, “[I]f you had quit, you know, you need to go home but she got very upset. She started screaming at me.” She said, “[N]o, I am not . . . I am not going home. She got right in my face and I got really scared so I just kind of back(ed) off.” Lopez was “screaming and . . . got right in my face.” Lopez is substantially larger than Huffman. Huffman testified she did not call the police because she was aware that Camelot Terrace had a “bad reputation” as a result of two residents who had committed suicide at the nursing home a number of years ago and also because a current resident persists in calling the police because he enjoys their company. Lopez went back to work and worked until 2 p.m. that day. In her written report of February 26, 2007, of the incident, Huffman wrote that “Crystal Lopez gave her verbal resignation to staff nurse after she threw the clipboard in the dining room and said . . . fuck it, I quit, in front of other staff while residents were still in the dining room. Then she clocked out and left the building.” Huffman also wrote in this report that “[s]he confirmed her verbal resignation to me at 9:20 a.m. outside of the employees’ entrance door.” She did not hand this report to Lopez because she was a no-call-no-show the next day. Rather she addressed this matter with Marna Anderson the next day. Anderson told her that Lopez was discharged and that Respondent does accept verbal resignations.

On cross-examination, Huffman testified she supervises patient care, hiring and firing, and disciplining nursing staff including nurses, CNAs, and unit aides. She also testified that the Respondent uses progressive discipline ranging from verbal warning to termination although some offenses warrant immediate termination. The unit aides are the CNAs assistants. They do work which is similar to the CNAs work but are not allowed to lift and do not do vital signs. Huffman acknowledged that she did not observe the incident in the dining room. The disciplinary reports which she prepared regarding that incident are based on information she received from others. Diana Keith was the only person that personally wrote out a statement of the incident. In her own affidavit, Huffman stated that she supervised Lopez who “was pretty good at her job performance wise” but that she did not give Lopez an entire appraisal as she only supervised her about a month. Huffman interviewed other employees concerning the dining room incident with Lopez and gave these reports to Anderson.

Respondent’s administrator of its facility, Marna Anderson, testified as follows: She did not work on Sunday, February 25, 2007, as this was her day off. She returned to work on Monday, February 26, when she received a report from DON Huffman that Lopez had used the “f-word” and said, “I quit.” Huffman told her that there was a loud argument in the dining room between staff members and that one of the CNA’s ran into her office and told her to hurry up and go to the dining room. Anderson investigated this incident and interviewed residents and staff members. She also reviewed attendance records and documents from the dining room. She received a statement from Diana Keith that Lopez had come up to Keith in the din-

ing room and asked her what was going on and why Amy Gaydos (a unit aide) was getting housekeeping hours over Melissa (a housekeeping aide) and that Keith said she did not know and to ask her supervisor and that Lopez became angry and said she quit, and was out of there and threw the clipboard and walked out. Anderson also took a statement from nurse May Nelson who had worked on February 25. In her statement Nelson said that about 9:15 a.m. she saw Lopez—“storming” across the corridor in front of her while she was sitting at the nurses’ station and that she heard Lopez loudly scream, “This is it. I am quitting.” Lopez then went to the timeclock and punched out and left the building. In her statement, Nelson stated that she followed her outside and found her in her vehicle and tried to calm her down, but that Lopez kept saying she was quitting. Nelson further stated that Huffman came outside and told Nelson to come back inside because of the severe cold as Nelson had recently been in the hospital. In her statement, Nelson also noted that Lopez did not ask Nelson for permission to leave the facility premises on a break. Nelson did not testify at the hearing in this case and I accordingly do not rely on this statement for the truth of its contents but I find it is relevant to demonstrate what Nelson told Anderson.

Anderson testified that when she was in the process of getting documents together for this hearing she noticed that she had forgotten to have Wilson sign the statement Huffman took of Wilson. She asked Wilson to sign it and Wilson agreed to sign it but wanted Anderson to cross out the statements “Fuck it” and “I am quitting.” Wilson also wanted Anderson to add the statement that she (Lopez) couldn’t take it anymore, that she was too stressed and left on her own. Anderson did so. Anderson testified that on Monday morning February 26, Lopez called her and said, “I did not quit. Marna I did not quit.” Anderson asked who it was and Lopez said, “Crystal.” Anderson told her that Huffman had informed her that Lopez had said, “I quit and I am out of here” and that she left. Lopez said she did not say that. Anderson told her that she believed Huffman. Other CNAs have quit in the past and she has always accepted their resignations. She has never hired a CNA who has previously quit for several reasons such as patient abuse, falsification of records, or no-call-no-show. The employee handbook provides that “employees who fail to give two weeks written notice or fail to complete working out the time will not be paid for accrued vacation and are not eligible for rehire.” Anderson also testified that employees punch in and out on the timeclock when they come to work and when they are finished for the day but that they do not ever punch out for their 15-minute break. A review of Lopez’ timecards going back about a year shows that she has never punched out for a 15-minute break. Lopez’ timecard for February 25 shows she punched out at 9:19 a.m. and punched in at 9:35 a.m. The break sheet shows that Lopez’ break was from 9 to 9:15 a.m. that day as was that of Jessica Palko. The nurse on duty at that time was Noreen Hayes and she informed Anderson that she was the one who recorded the breaktime and that Lopez came back in and wrote over the top of the previous time which had been written down by Hayes. After her investigation Anderson concluded that Lopez had gone on a break from 9 to 9:15 a.m., that there was an incident in the dining room and that Lopez punched out on

the timeclock and left and came back in and wrote on the break sheet 9:18 to 9:30 a.m. to make it look like she was just out on a break when actually she had quit and left and came back in. She issued a disciplinary writeup to Diana Keith and Melissa Wilson for their loud behavior in the dining room and accepted Lopez' resignation. No one told Anderson that there was difficulty in finding the break sheet for February 25. She did not consider rehiring Lopez because she had violated the Respondent's rules and also Federal and State rules by swearing in front of residents, engaging in loud and disruptive behavior, falsification of a record, being a no-call-no-show, and abandoning her patients when she left while the CNAs were in the dining room feeding the residents. Federal guidelines prevent the nursing home from employing her because of her verbal abuse by swearing in front of residents. Respondent has terminated employees in the past for using foul language. Lopez did not call in on February 26, 2007, prior to her absence and was therefore a no-call-no-show and Respondent did not receive a call off slip indicating she had called in to notify Respondent that she was going to be absent on February 26. Respondent has terminated other CNAs who were no-call-no-shows.

3. The warnings and discharge of Cheryl Henson

Cheryl Henson testified she worked for Respondent for 17-½ years until her discharge in May 2007. She was employed as a medical records/transport aide. She did paperwork for Medicare and public aid. She filled out forms to be sent to the doctors to be signed for new residents and residents who came back from the hospital. She cleaned the charts of residents and made up new charts for residents coming into Camelot Terrace. She filed paperwork and made copies for others. Julie Huffman was her direct supervisor. She became familiar with the Union in the course of the last year prior to her discharge. Union representatives approached her and explained why they were at Camelot. She did not have any further meetings with the union representatives. She testified in an arbitration hearing in January 2007. She was called as a witness by the Union. She was asked what was going on with the Union and the employees at Camelot Terrace. She was asked about a Christmas party given by Respondent for the employees and about conversations she had overheard at the nurses' station. Respondent Owner Lerner and Respondent's operations manager, Debbie Kipp, were present at the hearing. Prior to 2007, she had never received a discipline after the first week of her 17-½ years employment with Respondent. She also had duties with respect to picking up and dropping off paperwork from doctor's offices. The nurses would receive telephone orders from doctors for their patients for either medication or treatments. The nurses would write the orders down which would have to be signed by the doctors as well as other paperwork. She would put them in an envelope with the doctors' name on them. She did this for a week at a time. On Tuesdays she would take the orders to the doctors' offices and on Thursdays she would pick them up. She would place these forms in the residents' charts.

In the beginning of April 2007, Henson was called into Anderson's office with both Anderson and Huffman present. Anderson told her that she and Huffman had been making the rounds to the doctors' offices for Huffman as the new DON, to

meet the doctors and when they stopped at Dr. Indira Pal's office, he handed her paperwork that Henson had dropped off in his office but that had not been picked up for a couple of weeks. Henson told Anderson that her schedule for transporting residents to and from doctors' appointments and other duties had become busy and she had also been busy with paperwork and filing and she apologized. She contended there were times when she had to wait a week or two to get the paperwork back from the doctors. There were other times when she had not picked up or dropped off doctors' paperwork for 1 or 2 weeks. She had never received any discipline for this and no managers or supervisors spoke to her about it. She had been responsible for picking up and dropping off the doctor's order forms for about 3 years at the time of her discharge. She received a verbal warning in the beginning of April 2007 for this incident which had actually occurred on February 13, 2007.

Henson was also responsible for ordering all of Respondent's medical supplies such as oxygen masks, tubing, needles, treatment items, gauzes, and tapes. She also ordered general resident supplies such as toothpaste, alcohol wipes, briefs, and other necessities for the residents. As part of her job of ordering medical supplies and general resident supplies she would check out the supplies in the med room and would then order what was needed. She received a writeup for a verbal warning from Anderson on April 25, 2007. With respect to this writeup, Owner Michael Lerner had come to the facility and she was called to the med room and he asked if she knew where the IV-flow meters were. (These items go directly on the IVs which eliminates the use of a pump to regulate the IVs.) Lerner, Anderson, Huffman, and Henson were all in the medical room looking for the IV-flow meters. Huffman asked her if she had ordered them. Henson said she did not know that they needed them. Huffman said she had left a note on Henson's desk to order them. Henson said she had not received a note and left the med room and she and another employee searched her desk without success. Henson testified she had not previously ordered the devices and Huffman was showing them to Anderson as Huffman had brought them to the facility to try out. Henson ordered the flow-meters immediately and they received them the next day. Anderson told her she was giving her a writeup as Lerner wanted her written up because he was upset that this product was not on hand. Henson told Anderson that she had told Huffman that she had never received a note concerning this device. After the meeting Huffman approached Henson and told her that she was sorry she had to say something but that she had no choice. There had been no other incidents in the 13 years that she had been restocking supplies where an item that was needed, had not been ordered or was out of stock.

With respect to the final writeup and termination, this incident emanated from a task for which Henson had volunteered to help with the paperwork for new residents. New residents required paperwork and the taking of their picture for inclusion on their identification cards with the residents' names, doctors, and personal information being used by the Social Services Department at the time. She offered to assist with this by taking the photographs of the new residents in order to assist that department which was overbooked. Henson took this task over within 8 months to a year prior to her termination. She was not

given a timeframe for taking the photographs. She always took the pictures when the residents came in unless the residents or their family asked her to wait until they were settled, possibly the next day. She was notified that new residents had come in by Barb Lopez of the Social Services Department. The last discipline she received is actually a termination form issued on May 10, 2007. It shows that on 3 days, May 2, 3, and 4, 2007, three residents came in. The first resident went to the hospital the next day and she was unable to get the resident's picture. That resident came in on the morning of May 2, and was sent to the hospital the afternoon of May 3. The second resident came in on May 3. Henson took her picture but the resident's daughter asked her to wait until she had her hair done the next day and Henson agreed. This was not the first time a resident had asked her to delay their photograph. This had happened a few times. The third resident came in on May 4. On May 10, 2007, Henson received the termination notice from Anderson in the administrative secretary's office in the presence of Huffman and the secretary. Anderson told her that Lerner had come into the facility and looked through the medical administration records (MARs) of the new residents and noted that pictures were missing out of the new residents MARs and that he came in again and the pictures were still missing. The MARs are a list of medications and orders from the doctors which the nurses write out to give them their medications. The MARs forms contain the resident's pictures. They are all placed in a binder on the nurses' medication carts and show the picture and the medications. When Anderson gave her the disciplinary form, Henson told Anderson that she had been busy and had to do the transporting and other things and that she had sat behind the secretary's desk for 2 weeks while the secretary was on vacation and had been doing paperwork. There had been quite a few prior occasions when she was unable to take the residents' pictures within the first 24 hours they were there, and she had not received any discipline on those occasions. She received the writeup on May 10, and was scheduled to work the next day. She showed up the next day and commenced performing her duties. About a quarter after 9 a.m., Anderson called her into the secretary's office and handed her a termination notice and said that she thought Henson had understood it was a termination. Anderson had just previously told her it was a writeup. Henson testified there was no written policy with respect to picking up and dropping off the doctors' forms. She was only told to drop off on Tuesday and to pick up on Thursday, which is on the front of the envelopes for the doctors' forms, by the former director of nursing, Marsha Yeck. There was no written policy for the ordering of supplies. She was taught by the former director of nursing, Anna Ford, who gave her a list of what supplies were needed and she followed this. There was no written policy for the taking of photographs of the new residents.

On cross-examination by Respondent, Henson testified she openly supported the Union. When asked, she told people she was voting for the Union. She told Huffman she supported the Union. At the arbitration hearing Anderson and Huffman saw her going in to testify. She testified about a Christmas party. Henson testified she told Huffman that she was not picking up the doctors' order forms in a timely fashion. When she re-

ceived the first discipline, she did not deny that she was delinquent in picking up the doctors' orders. When she received the second discipline she denied to Anderson that she was delinquent in obtaining the supplies. She told Anderson she did not order the IV-flow meters because it was a new product and she had not received a note telling her to order it. In the meeting in the med room, Huffman said she had left the package of flow meters on Henson's desk with a note on it to order more. Henson testified that this was the first time she was aware she needed to order them.

Administrator Marna Anderson testified regarding the warning and discharge of Cheryl Henson as follows: She never observed Henson promoting the Union. She never received any reports that Henson was supporting the Union. She was not aware in any way of Henson's position regarding the Union. Nor did she suspect that Henson supported the Union. At the beginning of the union campaign, she was involved in providing a list of employees eligible to vote in the election. The Union objected to several people who were on the list and contended they should not be included in the unit. Cheryl Henson was on the list. The Union did not want Henson on the list. Anderson contended she should be eligible to be on the list. Anderson testified she "fought hard for her to be on the list." She did so because, "Well, frankly, I didn't think that she was a union supporter so I fought hard for her to be on the list." Henson was ultimately included in the unit. The issue at the January 17, 2007 arbitration hearing was whether Respondent had violated the neutrality clause in the election agreement. Anderson testified at the hearing. She gave her testimony and then went back to work. She does not know who else testified at the hearing. She was unaware whether Henson had testified at the hearing when she issued the three disciplines to Henson. She did not know who went in and out of the conference room. She was not involved in the planning of the arbitration hearing. Lerner and Debbie Kipp represented the facility at the hearing. Other than her own testimony, she has no idea what went on during the arbitration hearing. After the arbitration hearing, she did not know whether Henson was a union supporter. She discharged Henson for some major violations that occurred while she was working at Camelot Terrace. The first incident occurred when she learned from Dr. Indira Pal, who showed her an envelope containing doctors' correspondence and orders, that he had signed that should have been picked up weeks ago. The Illinois administrative code provides that all orders shall be countersigned by the licensed prescriber within 10 calendar days. She discussed this incident with Henson who did not deny that she had failed to pick up the envelopes. Anderson disciplined Henson on February 13, 2007. Anderson considered this a major offense because it affected Camelot Terrace's reputation in the community. She was not aware of any prior incidents of this type engaged in by Henson. She counseled Henson verbally for this infraction.

Anderson testified that the second incident involving Henson was her failure to order the IV-flow meter that is used for residents who receive IV antibiotics and IV medications. Henson's responsibilities were to order supplies before the facility ran out and she was to check on the inventory on a regular basis. She was to order these supplies when the facility needed them.

Anderson came to the facility in 2004 and the IV-flow pumps were being used then. There was a supply of these IV-flow meters. When Anderson came to the facility, Henson was already ordering the IV-flow meters. She discussed this matter with Henson and Henson did not deny that she had not ordered the IV-flow meters. On April 25, 2007, she issued Henson a verbal warning for not ordering the IV-flow meters. She was never made aware that Henson had not ordered supplies prior to this. Anderson considered the failure to order the IV-flow meters a major offense because they are a piece of equipment needed to administer medication. Huffman had given Henson the product package and taped it to Henson's desk and said, please order this. Anderson made the decision to discipline Henson on her own. Huffman did not bring the IV-flow meters from another hospital.

The third incident occurred when it was brought to Anderson's attention that there were some newly admitted residents that did not have picture IDs on their charts. There were three residents involved. The pictures are a patient identifier and are necessary to prevent residents from receiving the wrong medication. Anderson issued Henson the writeup for not taking the pictures of the residents. Henson did not deny that she had failed to take the pictures of the three new residents and did not offer any excuses for failing to do so. Henson did not say anything to her about a family member asking her to wait for a beauty shop appointment before taking the picture. There was sufficient time for the pictures to have been taken of the three residents. One of the residents went to the hospital the next afternoon but there was 24 hours for her picture to have been taken prior to her leaving for the hospital. Henson's obligation was to take the pictures within 12 hours. During her final conversation with Henson, Anderson told Henson that Lerner was asking for the IV-flow meter because he wanted to take it to another building. Lerner's name did not come up during the conversation regarding the photographs. Lerner did not tell Anderson to terminate Henson for her failure to take the photographs. The nurse who was working on the floor that day brought Anderson's attention to the lack of the photographs in the MARs records. Anderson did not tell Henson that Lerner had been reviewing the MARs and had discovered the lack of the pictures. Henson was terminated after her third major violation which occurred over a several month period. Henson never told her that she had too many work responsibilities. Nor did she ask to be relieved of any of her work responsibilities. At the time that the incidents involving Henson occurred, there were about 50 residents at the facility whereas 2 years ago there were approximately 75 residents at the facility. She terminated Henson on May 10, 2007, which was several months after the election. She was not directed by any supervisor or manager to discharge Henson and the termination had nothing to do with any alleged support for the Union.

Anderson testified further that one of the requests for information in this case was for documents requesting orders for IV-flow meters from August 1, 2005, to the present (date of hearing). The documents which were turned over in response to that request reflect all IV-flow meters and show there were no orders for IV-flow meters prior to May 4, 2007. After Huffman left the meeting discussing this matter, Henson told Anderson

"Marna, I didn't get anything stating that I needed to order those supplies." With respect to the photographs, Anderson testified that the pictures are to be taken on admission with very little delay time after the residents come in and get in their bed. On cross-examination by the Charging Party, Anderson testified that she read part of the Arbitrator's decision, including the issue of gift cards.

Director of Nurses (DON) Julie Huffman testified she was Cheryl Henson's direct supervisor. She never saw Henson promoting the Union. Henson never told her she was in favor of the Union. She did not receive any reports that Henson supported the Union and was not aware of Henson's position on the Union. She was not aware that Henson had testified for the Union in an arbitration hearing. She had no idea what went on during the arbitration hearing and never saw a transcript of the arbitration hearing. No one told her that Henson testified at the arbitration hearing. She was involved in the three disciplines of Henson. The first was regarding medical records. It was Henson's job to pick up signed physicians' orders from the physicians' offices which she failed to do. The papers sat in the doctors' offices for several weeks. There is a maximum of 10 days in which the signed order must be placed back in the chart. She had been brought into Dr. Indira Pal's office by Anderson to be introduced as the new director of nursing. Dr. Pal was upset because of the failure of Henson to pick up the orders. Huffman was involved in the disciplinary action which was issued on February 13, 2007, and Henson was given a copy of the discipline on the same day. The second discipline was for Henson's failure to order medical supplies. The facility was running low on IV-flow meters. Henson's job was to order these when they are low and she did not do this so Huffman took a packet with the label on it and wrote a note to Henson, "I need this," and taped it on Henson's desk. Seventy-two hours later, Huffman had still not received the flow-meters. She talked to Anderson about it. Huffman always has a "stash" in her office and so she used the last one and after 72 hours she still did not have it so she told Henson "I need this. This is my last one." She thus had asked Henson on two different occasions to order the flow meter. Henson was responsible for taking inventory daily and ordering the supplies needed. This particular IV-flow meter was in use at Camelot Terrace when Huffman started as a nurse in 2005. She did not bring it from St. Mary's Hospital. Anderson had to show her how to use it. Huffman issued a verbal warning to Henson which stated, "Verbal warning given for not ordering needed supplies for the nurse department. IV-flow meters were not purchased despite order from DON to do so, leaving the facility with no supply to use." She discussed this with Henson and Henson did not deny that she had not ordered the IV supplies. Huffman considered this a major offense, as the IV-flow meter is necessary to give antibiotics and IV fluids. There are three methods of infusing IVs. They are the drip rate, the IV pump and the IV-flow meter. The facility uses the IV pump and the flow-meter. The flow-meter is to replace the IV pump. Without this it would be difficult to regulate on a drip and would cause medication error. The IV-flow meter has been in the facility since Huffman came to the facility. No one else was responsible for medication ordering other than Henson. The third discipline of Henson

was for her failure to take pictures of new patients which are necessary for identification purposes for the administration of medication. She considers this a major infraction as a medication error could kill the patient. This failure had not happened before. After this third offense, they decided to discharge Henson. The discharge discipline stated "Residents admitted to Camelot Terrace on 5/2 of '07 and 5/3 of '07, as of 5/10 of '07, no pictures are on the medication administration records as required for resident safety. Failure to perform job duty." Henson was written up on May 10. The nurse administering the medication informed Huffman of the failure to take the photographs. She decided to discharge Henson because Henson had made three major errors. The decision to terminate Henson was not motivated by Henson's support for the Union. Huffman did not apologize to Henson at the time of her termination. Huffman did not tell Henson that she had no choice. Henson threw the paper and walked out.

On cross-examination by the General Counsel, Huffman testified that the new admission resident's identification policy and procedure was in effect in 2007. The policy states: "A photograph of the residents will be taken and placed in the MAR upon admission. On admission an identification bracelet will be placed on all new residents. Identification bracelet may be removed after seven days." With respect to the IV, Huffman testified that on April 24, 2007, there were no IV pumps or IV-flow meters in the med room in the facility as all of them were being used in the facility. General Counsel Exhibit 26 is a pink slip dated May 4, 2007, that came with a UPS form for a reorder of an IV-flow meter. Huffman testified that the flow-meters had been ordered prior to the April 24 discipline. She is certain that the discipline was given to Henson on February 13, 2007.

Analysis

Under *Wright Line*, 251 NLRB 1083 (1980) enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel has the initial burden to establish that:

1. The employee engaged in protected concerted activities.
2. The employer had knowledge or at least suspicion of the employee's protected activities.
3. The employer took adverse action against the employee.
4. A nexus or link between the protected activities and the adverse action underlying motive.

Once these four elements have been established, the burden shifts to the Respondent to prove, by a preponderance of the evidence, that it took the action for a legitimate nondiscriminatory business reason. In *Fluor Daniel Inc.*, 304 NLRB 970 (1991), the Board held that once the General Counsel establishes a prima facie case that protected conduct was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

The aforesaid evidence demonstrates that both Crystal Lopez and Cheryl Henson were union supporters and that Respondent was aware of their support of the Union and their engagement

in protected concerted activities on behalf of the Union. With respect to Lopez it is undisputed that she was the leading employee union adherent and was instrumental in initiating the Union's campaign to organize the Respondent's employees and that Respondent was aware of the various activities she participated in such as the solicitation of union cards, her service as an observer in the first election, her representation of her fellow employees with the aid of union organizers regarding the employees' concern that they were being wrongfully docked because of an erroneous timeclock, her testimony in support of the Union in an arbitration and in a representation case before the National Labor Relations Board. With respect to Henson, she testified that she told others, including DON Huffman that she was a union supporter. She was called to testify by the Union in an arbitration hearing and her daughter, Melissa Wilson, was also a union supporter. The evidence further supports a finding that the Respondent had animus toward the Union and against Lopez and Henson because of their support of the Union.

As the General Counsel states, in his brief, the threshold issue in the Lopez case is whether Lopez quit her job voluntarily or was otherwise terminated by Respondent. I find the evidence establishes that Lopez quit her job voluntarily. It is undisputed that Lopez threw the clipboard on which she was charting residents' appetites. I credit Keith's testimony that Lopez threw the clipboard and said, "Fuck it. I quit," and left the dining room. I found Keith's version of this incident to be credible. I note that Keith is no longer employed by Respondent and there was no evidence that she has any stake in this case. However, assuming arguendo that the testimony of Lopez, Wilson, and Palko that Lopez did not use profanity and did not say she quit, it is nonetheless true that Lopez expressed her frustration and left the dining room and went to her van in the parking lot. I credit the testimony of Nurse Hayes that she signed out both Lopez and Palko for their break at 9 a.m. and back in at 9:15 a.m. and that she personally observed both Lopez and Palko leave on their break and return at those times. I further credit Hayes that she witnessed Lopez return and write in 9:18 a.m. over her sign out time of 9 a.m. that had been placed there by Hayes and write in 9:30 a.m. over her sign-in time of 9:15 a.m. that had been placed there by Hayes. I credit the testimony of Hayes who was not otherwise involved in this incident. I do not credit the testimony of Lopez that she could not find the break log that day and that she punched out on the timeclock because she could not find the break log. I also do not credit the testimony of Palko which indicated she was unable to locate the break log for a portion of the day. The record discloses that Lopez punched out on her timecard at the timeclock at 9:19 a.m. and returned and punched back in at 9:35 a.m. I find it likely that Lopez clocked out with the intention of quitting but during this 16 minute period went to sit in her van and then was joined by Nurse Nelson to whom she expressed her frustration and her intent to quit. I further find that Lopez returned to the facility following Nurse Nelson and expressed to DON Huffman that she thought things would get better but that they had not. Huffman testified that she was preparing to pick up another aide to replace Lopez and told Lopez that she did not have time to deal with her at that time. I find that

Huffman accepted the resignation of Lopez at this time and was preparing to obtain another aide to replace Lopez. I do not find that this was to replace another aide who had quit earlier that day as it was not until Huffman was apprised of the incident involving Lopez that Huffman made arrangements for another aide to take her place. I credit Huffman's testimony that when she returned to the facility after picking up the replacement aide, she saw Lopez was still on the premises. She questioned Lopez as to why she was still on the premises since she had quit. She testified that Lopez refused to leave and became angry and got in her face. Lopez is substantially larger than Huffman. Huffman testified she just backed off and did not make any additional efforts to cause Lopez to leave. The next morning Huffman related to Anderson what had occurred and Anderson told Huffman that Lopez was discharged. Lopez did not show up on the next morning which was Monday, February 26, although she was scheduled to work on that date. Lopez testified that she called in to the night nurse and gave her the required 2-hour notice that she was sick and would not be in on that Monday. Anderson testified that there was no record of Lopez having made this call. Lopez testified that she did not initially answer her phone on Monday, February 26, because she was ill until she noticed that the caller was Anderson and that she then tried to reach Anderson by telephone but Anderson was out. Lopez testified that when she reached Anderson, Anderson said, "Crystal I am taking this as your resignation." Anderson testified that when they reached each other on the phone, Lopez said "Marna (Anderson), I did not quit." Thus, Anderson affirmed on Monday, February 26, that she was accepting Lopez' resignation. On Wednesday, February 28, Lopez was met at the facility by Anderson who told her she was discharged. I find that Lopez quit her job, I find that no adverse action was taken against Lopez. In *Aluminum Industries*, 343 NLRB 939, 940 fn. 11 (2004), the Board held that a finding of adverse action is an essential element of the General Counsel's burden to make a prima facie case under *Wright Line*, 251 NLRB 1083, 1089 (1980). I have considered *Di Marco Paving & Construction, Inc.*, 341 NLRB 330, 333 (2004), cited by the General Counsel in which the Board rejected the respondent's claim that the employee quit on the same date that he worked a full day. However, in the instant case before me, Lopez returned to work after announcing that she was quitting and after her resignation had been accepted by Huffman who had made arrangements for another employee to replace Lopez. I have also considered *Swardsron Painting Co.*, 340 NLRB 179, 180 (2003), where the employees were found to have quit as they did not return to work following their alleged resignation. In the instant case Lopez did not report for work on the day after the dining room incident, and contended she had called in. However, there was no record of her call to the night nurse to support her testimony.

I find that Respondent violated Section 8(a)(1) and (3) of the Act by the issuance of the three warnings to Henson and by its discharge of Henson. The evidence supports a finding that Respondent had knowledge of Henson's engagement in union and protected concerted activities by her testimony on behalf of the Union in the arbitration hearing in January 2007. It also supports a finding that Respondent had antiunion animus and

took adverse action against Henson by the issuance of the three warnings to Henson and its discharge of Henson. Henson's testimony was protected under the Act. See *Bruce Hardwood Floors*, 314 NLRB 996, 998 (1994), where an employer was held to have violated the Act by discharging an employee for offering to act as another employee's witness in a grievance matter. It is amply demonstrated in the record that Respondent was aware of Henson's support of the Union as Henson was called as a witness by the Union and was questioned by Respondent's owner, Lerner. It is clear that both Anderson and Huffman were aware of Henson's testimony and her support of the Union. Anderson admitted she read the arbitrator's decision including a description of Henson's testimony. I credit Henson that both Anderson and Huffman were in the hallway outside of the room where the arbitration was held and saw her go into the room. Anderson admitted she read about the gift card issue and its early distribution which Henson had testified about and which was supportive of the rerun election that was ordered by the arbitrator. Anderson admitted she was aware that Henson's daughter, Melissa Wilson, testified at the arbitration hearing. I find Respondent's antiunion animus has been established as discussed supra in this decision. The timing of the adverse actions of the issuance of the warnings and the discharge of Henson establishes the discriminatory motive on the part of the Respondent. The first discipline on February 13, 2007, was approximately a week after the arbitrator ordered the rerun election. There were no prior instances of discipline issued to Henson in her over 17 years of employment.

The issuance of the first discipline was for her failure to pick up signed doctors' orders and other documents as required including a State of Illinois requirement that the signed doctors orders be placed in the residents' file within 10 days of an order given telephonically. Henson testified she had become busy and was not aware of the 10-day requirement and had never been told of this prior to the issuance of the discipline. I credit this un rebutted testimony.

The issuance of the second discipline was for failure to order IV-flow meters which regulate the flow of intravenous medication without the necessity of having an IV pump to control the medication. Henson testified she did not order the flow meters because she had never ordered them prior to this incident when she was called into the medical supply room on April 24, 2007, in the presence of Lerner, Anderson, and Huffman and was questioned as to where the IV-flow meters were and whether she had ordered them. She said she did not know they were needed, Huffman then stated she had written on the package of a flow-meter that she needed it and placed it on Henson's desk. Henson checked her desk but was unable to find the note. On that afternoon Henson was called into Anderson's office and given a "verbal warning," Henson refused to sign the warning. Anderson told her that Lerner had ordered that she be given the writeup because he was upset that the product was not there. In her testimony in answer to an inquiry from Lerner, Anderson testified that in her final conversation with Henson she told Henson that Lerner was asking for the IV-flow meter because he wanted to take it to another building. Thus, I find there was no immediate need for the IV-flow meter at the time that Henson was called into the med room and questioned about it.

Although both Anderson and Huffman testified that the IV-flow meter had been in use prior to this incident, I credit Henson's testimony that she had never been required to order it before. Henson's testimony is supported by the lack of orders for IV-flow meters in the past 2 years and Respondent's documents, subpoenaed by the General Counsel produced only one order dated May 4, 2007 which was after the events herein. Anderson confirmed in her testimony that the May 4, 2007, order was the only order for IV-flow meters in the last 2 years. It is clear that Lerner wanted to take this new product to another of his facilities and that he ordered Anderson to discipline Henson when she was unable to find the IV-flow meters.

The third and final discipline culminating in Henson's discharge was for Henson's failure to timely photograph new residents on three occasions and to place their photographs in their medical assessment records of the three new residents on May 2, 3, and 4, 2007. I find that Respondent seized on these incidents to justify the issuance of this additional warning and discharge of Henson. I find unpersuasive Respondent's reliance on its written policy for "New Admission Resident Identification" which provides that a photograph of a resident must be taken "upon admission" as there is no specific timeframe setting out the meaning of "upon admission." The new admission policy also requires an identification bracelet be placed on all new residents and may be removed after 7 days. These bracelets provide identification of a resident for any and all purposes. It follows that if these alleged failures to timely photograph the residents were so serious as to warrant discipline including discharge, Henson would not have been permitted to return to work the next day only to then be advised that she was terminated. In summary, I find that, General Counsel has established a prima facie case that each of the three warnings and the discharge of Henson were contrived and motivated by Respondent's animus against the Union and Henson because of her support of the Union in her testimony at the arbitration hearings. I do not credit Respondent's explanations for its actions and find that Respondent has failed to rebut the prima facie case. I find that the Respondent's imposition of the warnings and discharge on the basis of alleged failures of performance was pretextual, *Limestone Apparel Corp.*, 255 NLRB 722 (1981), *enfd.* 705 F.2d 799 (6th Cir. 1982); *Bardville Electric, Inc.*, 309 NLRB 337 (1992). Assuming *arguendo* that a *Wright Line* analysis is necessary, I would find that the Respondent failed to rebut the prima facie case established by the General Counsel. See *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1065-1066 (2007), where the Board stated that under the *Wright Line* test, "the General Counsel must prove by a preponderance of the evidence that union animus was a substantial or motivating factor in the adverse employment action. The elements commonly required to support such a showing are union or protected activity by the employee, employer knowledge of that activity and union animus on the part of the employer." If the General Counsel makes the required initial showing, "the burden then shifts to the employer, to prove, as an affirmative defense, that it would have taken the same action even in the absence of the employee's union activity," *Manno Electric*, 321 NLRB 278, 289 fn. 12 (1996).

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent did not violate Section 8(a)(1) and (3) of the Act with respect to Crystal Lopez.
4. Respondent violated Section 8(a)(1) and (3) of the Act by its issuance of the warnings to Cheryl Henson and its discharge of Cheryl Henson.
5. The aforesaid actions taken against Henson, in connection with Respondent's status as an employer, affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in the above violations of the Act, it shall be recommended that Respondent cease and desist therefrom and take certain affirmative actions, designed to effectuate the policies and purposes of the Act and post the appropriate notice. It is recommended Respondent rescind and expunge from its files the discharge and warnings issued to Cheryl Henson and offer her immediate reinstatement to her position or to a substantially equivalent one if her prior position no longer exists. She shall be made whole for any loss of backpay and benefits sustained as a result of the Respondent's unfair labor practices. The backpay amount shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), at the "short term federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Camelot Terrace, Inc., Streator, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Issuing unlawful warnings to its employees because of their engagement in protected concerted activities.
 - (b) Discharging its employees because of their engagement in protected concerted activities.
 - (c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.
2. Take the following affirmative actions necessary to effectuate the policies of the Act.
 - (a) Within 14 days from the date of this Order rescind the warnings issued against Cheryl Henson and the discharge of Henson and offer her full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent job without prejudice to her seniority or any other rights or privileges

¹ 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.

previously enjoyed, and expunge from its files the unlawful warnings and discharge.

(b) Make whole Henson for any loss of earnings and other benefits suffered as a result of the discrimination against her with interest.

(c) Preserve and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix"² at its facility in Streator, Illinois. Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 2006.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

The complaint is dismissed with respect to Crystal Lopez.

² If this Order is enforced by a judgment of the 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 THE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT issue our employees warnings because of their engagement in union and other protected concerted activities.

WE WILL NOT discharge our employees because of their engagement in union and other protected concerted activities.

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

WE WILL, within 14 days from the date of the Board's Order, rescind the unlawful warnings and discharge of Cheryl Henson and offer her reinstatement to her former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make her whole for any loss of earnings and other benefits as a result of the discrimination against her, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful warnings and the discharge, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful actions will not be used against her in any way.

CAMELOT TERRACE, INC.