

Springfield Library and Museum Association and Springfield Library and Museum Professional Employees Association, Local 1809, American Federation of State, County, and Municipal Employees, Council 93, AFL-CIO. Case 1-CA-13474

September 29, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On May 10, 1978, Administrative Law Judge John F. Corbley issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs.

Pursuant to the provisions of section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order as modified below.

We find merit in the General Counsel's exception to the Administrative Law Judge's failure to find that Respondent violated Section 8(a)(1) and (3) of the Act as alleged in the complaint with regard to Respondent's reprimanding Julia Glendon on or about June 17, 1977. The facts are not in dispute. At all relevant times, Glendon was president of the Charging Party Union, in which capacity she regularly wrote articles for the union newsletter. In the May 1977 newsletter an article appeared under the heading "Notes from Julia Glendon" which addressed four basic topics. The second topic refers to an article in the Wilson Library Bulletin which apparently discusses the (alleged) problems and frustrations that professional library employees face as a result of the administrative system which creates or encourages appointment of "non-library, non-public oriented" administrators. Glendon, who on occasion had discussed similar problems with her coworkers at the Springfield Library, commented that she thought that "each library or cultural institution has its own specific administrative problems as well." She went on to state that Respondent's chief administrator was

... a man who never "lost contact" with working professionals because he never had it to begin with. He is simply a man who, when he lost his job at Forbes & Wallace, was put on a form of welfare-for-the-rich courtesy of his friends on the Board of Trustees.

Based on this article, Respondent, on June 17, 1977, issued a formal reprimand to Glendon.

In responding to the complaint's allegation that this reprimand violated Section 8(a)(1) and (3) of the Act, Respondent argued that Glendon went too far, that her statements are "libelous *per se*," that she insulted a management official, and that "such statements by an employee were neither acceptable nor permissible."

The Administrative Law Judge, agreeing with Respondent, concluded that although Glendon's remarks "are themselves union or concerted activity" they were not protected by Section 7 of the Act. He reasoned that Glendon's words lacked specificity, that:

She says nothing of his supervisory actions towards the employees nor any specific contact he has ever had with them. Nor does her article disclose any relationship between his appointment and the employees' efforts at unionization.

He characterized Glendon's article as a "gratuitous attack upon Wallace, entirely unrelated to any protected union or concerted interest"

Clearly the Administrative Law Judge erred. Specificity and/or articulation are not the touchstone of union or protected concerted activity. Rather, the issue to be addressed is the question of whether or not the comments are related to concerted or union interests. Once the concerted nature of the words is established (as formed by the Administrative Law Judge), Respondent had the burden to show that the words were published with knowledge of their falsity or with reckless disregard of whether they were true or false.¹ In *Letter Carriers*, 418 U.S. at 283, the Supreme Court stated:

But *Linn* recognized that federal law gives a union license to use *intemperate, abusive, or insulting language* without fear of restraint or penalty if it believes such rhetoric to be an effective means to make its point. [Emphasis supplied.]

Glendon's article clearly conveyed to the union members a message involving concerted and union matters. This first topic discussed Respondent's insistence (presumably with input from Wallace) that the professional employees undergo new evaluations and the Union's opposition to these evaluations and its reasons therefor. The third topic notes that the non-professional staff has started to organize a petition for a union election. The fourth topic discusses the fact that it was now May (several months after the Union had been certified), and that there was still no con-

¹ *Linn v. United Plant Guard Workers of America, Local 114*, 383 U.S. 53 (1966); *Old Dominion Branch No. 469, National Association of Letter Carriers, AFL-CIO v. Austin*, 418 U.S. 264 (1974).

tract. In this respect, Glendon also noted that, although management, through Assistant Director Gear (again, presumably with the concurrence of Wallace), had not made it any secret that various existing benefits would have been eliminated, such benefits could not be eliminated absent a collective-bargaining agreement. And Glendon closed her comments with regard to Wallace's credentials as an administrator by saying:

The frustration Anonymous expresses so well is probably the chief reason why more and more libraries and cultural institutions have unionized.

In short, Glendon's message to her fellow employees is that they have work-related problems and suggests that one of the reasons for these problems is the manner in which Respondent's administrators are chosen.² Respondent's management may very well have been offended by Glendon's "rhetorical hyperbole," but, as the Court said in *Linn, supra* at 63:

. . . the most repulsive speech enjoys immunity provided it falls short of a deliberate or reckless untruth.

Since Glendon's article clearly is protected concerted union activity, immune from restraint or interference under state libel laws, *a fortiori* this same conduct is immune from restraint or interference by an employer's disciplinary actions.³ We find, therefore, that by reprimanding Glendon on June 17, 1977, Respondent violated Section 8(a)(1) and (3) of the Act, and we shall, accordingly, modify the Administrative Law Judge's recommended Order to remedy this violation.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified herein, and hereby orders that the Respondent, Springfield Library and Museum Association, Springfield, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(a):

"(a) Rescind and excise from its files: its letter of reprimand to Julia Glendon dated June 17, 1977; its interrogation letter to Julia Glendon dated July 11, 1977; its suspension letter to Julia Glendon dated July 29, 1977, to the extent that it reprimands Julia Glendon for refusing to submit to unlawful interroga-

tion: its reprimand to Julia Glendon dated August 5, 1977; and its suspension letter to Julia Glendon dated August 17, 1977."

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

APPENDIX

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

After a hearing at which all sides had the chance to give evidence, it has been decided that we, Springfield Library and Museum Association, have violated the National Labor Relations Act, as amended, and we have been ordered to post this notice.

The National Labor Relations Act gives you, as employees, certain rights, including the rights:

- To self-organization
- To form, join, or help unions
- To bargain collectively through a representative of your own choosing
- To act together for collective bargaining or other mutual aid or protection
- To refrain from any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT suspend you, reprimand you, or otherwise discriminate against you in respect to your hire, tenure, or any other term or condition of employment because you join, support, or assist Springfield Library and Museum Professional Employees Association, Local 1809, American Federation of State, County and Municipal Employees, Council 93, AFL-CIO.

WE WILL NOT coercively interrogate you about your union or other protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights set forth above.

WE WILL rescind and excise from our records the following disciplinary documents in respect to Julia Glendon:

- (1) A letter of reprimand dated June 17, 1977.
- (2) A letter interrogating her about certain union matters, dated July 11, 1977.
- (3) A letter suspending her, dated July 29, 1977, to the extent that it reprimands her for refusing to submit to unlawful interrogation.
- (4) Our reprimand letter to her, dated August 5, 1977.
- (5) Her suspension letter, dated August 17, 1977.

² Respondent makes no claim that Glendon's words were "false" or made with "reckless disregard of whether they were true or false."

³ *Great Lakes Steel, Division of National Steel Corporation*, 236 NLRB 1033 (1978).

WE WILL make Julia Glendon whole for any loss of earnings she may have suffered by reason of our suspension of her after August 17, 1977, because the Board has found that we suspended her unlawfully.

SPRINGFIELD LIBRARY AND MUSEUM ASSOCIATION

DECISION

STATEMENT OF THE CASE

JOHN F. CORBLEY, Administrative Law Judge: A hearing was held in this case on December 7, 1977, at Northampton, Massachusetts, pursuant to a charge filed on August 11, 1977, By Springfield Library and Museum Professional Employees Association, Local 1809, American Federation of State, County and Municipal Employees, Council 93, AFL-CIO, hereinafter referred to as the Union, which charge was served on Respondent on August 12, 1977; on an amended charge filed by the Union on September 12, 1977, a copy of which was served upon Respondent on September 13, 1977; on a complaint and notice of hearing issued by the Regional Director for Region 1 of the National Labor Relations Board on September 15, 1977, and on an amendment to complaint issued by the Regional Director for Region 1 on November 11, 1977, which complaint and amendment were likewise duly served upon Respondent. The complaint, as amended, alleges that Respondent has violated Section 8(a)(1), (3), and (4) of the Act, variously, by interrogating Union President Julia Glendon on or about July 11, 1977, reprimanding Glendon, threatening to suspend her, and suspending her on different dates between June 17, 1977 and August 17, 1977. In its answer, which was amended on the record at the hearing, Respondent has denied the commission of any unfair labor practices.

For reasons which appear hereinafter, I find and conclude that Respondent has violated the Act in all respects alleged in the complaint with the exception of the reprimand and threat to suspend Glendon for certain published remarks by her in which she vilified a Respondent official.

At the hearing all parties were represented by counsel. All parties were given full opportunity to examine and cross-examine witnesses, to introduce evidence, and to file briefs. The Union and Respondent made closing statements, but the General Counsel waived this right. Briefs have subsequently been filed by the parties and have been considered.

Upon the entire record¹ in this case, including the briefs, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a nonprofit corporation duly organized under and existing

by virtue of the laws of the Commonwealth of Massachusetts.

At all times material herein Respondent has maintained its principal office and place of business at 220 State Street, in the city of Springfield, in the Commonwealth of Massachusetts (herein called the Library), and is now and continuously has been engaged at said Library in the operation of libraries and museums, and in conducting lectures, courses, and classes in related subjects.

Respondent, in the course and conduct of its business, causes, and continuously has caused at all times herein mentioned, large quantities of books, library supplies, and related products used by it in the operation of its libraries and museums to be purchased and transported in interstate commerce from and through various States of the United States other than the Commonwealth of Massachusetts.

Respondent, in the course and conduct of its business, annually receives revenues in excess of \$2 million.

Respondent, in the course and conduct of its business, annually receives at its Springfield, Massachusetts, location goods valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts.

Respondent is, and has been, engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Relevant Hierarchy

At all times material herein, the following named persons occupied positions set opposite their respective names. They have been and are now agents of Respondent, acting on its behalf, and are supervisors within the meaning of Section 2(11) of the Act:

Francis Keough	Director
James Gear	Assistant Director
Virginia Vocelli	Supervisor, Reference Dept. ²

The Respondent is governed by a board of trustees who work on a voluntary and part-time basis. The Board has five officers, viz, a president, two vice presidents, a treasurer, and a secretary. The president at all pertinent times herein was Gordon Cameron. The chief executive officer of Respondent—a full-time position—is the executive vice president, who was, at the times in question here, Lawrence Wallace.

B. Background and Sequence of Events

The president of the Charging Union is Julia Glendon, the alleged discriminatee herein.

This is not the first case wherein charges have been brought against Respondent involving Glendon. In an ear-

¹ Certain errors in the transcript herein have been noted and corrected.

² Vocelli left Respondent's employ after the events in question.

lier Board proceeding (Case 1 CA 11876) she charged that she was discriminatorily refused a promotion.

Sometime after the filing of that charge Glendon had occasion to engage Respondent's Library Director Keough in a telephone conversation on or about June 28, 1976. Glendon, who was involved in pursuing her charge and a contemporaneous grievance at the time, was attempting to learn the identities of Respondent's trustees. In the conversation Keough expressed concern that Glendon had earlier advised Respondent's Personnel Director Gear that Glendon proposed to take her grievance all the way to arbitration. Glendon responded that she would not do so if she obtained a favorable resolution before arbitration. Keough then mentioned Glendon's unfair labor practice charge, which, he stated, he considered a personal accusation and which affected her attitude towards her. Glendon stated she filed the charge against her employer because she felt she had been unfairly treated. Keough conceded that he participated in the decision not to promote Glendon; she replied that Keough was one of those she held responsible. Keough concluded the conversation by advising Glendon that he would get in touch with her later.³

In the fall of 1976 the Union was certified (apparently by the Board) as the bargaining representative of Respondent's professional employees. As of the time of the hearing in December 1977, Respondent and the Union had not arrived at a collective-bargaining agreement.

In November 1976 Glendon became the Union president.

Over the winter of 1976-77, Glendon's supervisor Vocelli refused Glendon's offer to participate in the 1977 Library Book Fair, although Glendon had been a prime mover in the previous (1976) fair. In December 1976, Vocelli also refused Glendon's offer to serve on the Library's reference guidelines committee. Vocelli suggested that it would be inappropriate for Glendon to serve on such a policy recommendation committee while Glendon was union president.

Glendon's unfair labor practice charge (Case 1-CA-11876) over the denial of her promotion was settled pursuant to an agreement approved by the Regional Director on January 18, 1977. As a result she was promoted to the position of assistant supervisor in the reference department of Respondent's library.⁴ The case was subsequently closed after compliance with the settlement.

The Union since that time has published several editions of a newsletter which is distributed to its members. Glendon writes articles for this newsletter, which are attributed to her.

In the May 1977 Newsletter (No. 4) an article appeared under the heading "Notes from Julia Glendon" from which the following is excerpted:

"Overdue"

There is a note in this newsletter recommending an article in the April issue of *Wilson Library Bulletin*. A couple of people recommended the article to me and, if you read it, you will probably wonder as I did whether the anonymous author works at the Springfield City

Library. But the truth is that the kind of frustration that we feel as working professionals is widespread in the library field and, no doubt, in the museum field. The fault, according to Anonymous, is not in the individual administrators but in the hierarchical administrative system which creates or encourages [sic] "non-library, non-public oriented" authoritarian administrators. I agree with this, but I do think that each library or cultural institution has its own specific administrative problems as well. We, for instance, have as a chief administrator a man who never "lost contact" with working professionals because he never had it to begin with. He is simply a man who, when he lost his job at Forbes & Wallace, was put on a form of welfare-for-the-rich courtesy of his friends on the Board of Trustees.

Read the article. The frustration Anonymous expresses so well is probably the chief reason why more and more libraries and cultural institutions have unionized.

A copy of this newsletter was given to Keough by another employee who apparently forwarded it to Richard Hayes, Respondent's counsel. After receiving the article, Hayes, in a letter to Respondent's trustees, recommended that a reprimand be given to Glendon on the stated grounds that the contents (i.e., characterizations of Respondent's executive vice president Wallace) were unwarranted and disruptive of the loyalty and respect due from an employee to her employer. Thereafter, Keough requested Vocelli, Glendon's supervisor, to verify that Glendon indeed had written the article. Glendon so admitted to Vocelli on June 14.

At the suggestion of the officers of Respondent's board of trustees, Keough thereupon drafted and sent to Glendon a letter, dated June 17, 1977.⁵ Keough stated in the document that it constituted a formal reprimand. After referring to Glendon's comments about Wallace in the May newsletter, Keough further averred that such statements by an employee were neither acceptable nor permissible and that "no employer need tolerate such conduct from an employee."

The complaint alleges this reprimand as a violation of Section 8(a)(1), (3), and (4) of the Act.

The Union's immediate parent body (Council 93) also publishes a periodical called the "Bay State Employee." In the June 1977 edition an article appeared describing the Union's organization of Respondent. The following is excerpted from that article:

Organizing Local 1809 took two years. The Administration ran a campaign of intimidation, recalled Local Pres. Julia Glendon. "Behind closed doors it threatened people with being fired. It put out propaganda stating that if 'anybody within a hundred miles goes on strike you'll have to strike,' and similar kinds of nonsense. But AFSCME representatives Ken Grace and Mike Boyle (who is helping negotiate our contract) were constantly here."

Keough also learned of this article and the comments in it attributed to Glendon. Keough testified he had no prior

³ These findings are based on the credible testimony of Glendon in this regard as not denied, or as in part admitted, by Keough.

⁴ There is no claim nor credible probative evidence that this position is that of a supervisor within the meaning of Sec. 2(11) of the Act.

⁵ All dates appearing hereinafter occurred in 1977 unless otherwise noted.

knowledge of the claimed management misconduct described in the article. He stated that he had rather assumed that the management staff had conducted itself properly, consistent with certain instructions provided by management.

Upon seeing Glendon's remarks quoted in the "Bay State Employee" article, Keough directed a letter to Glendon, dated July 11. In this letter Keough noted the comments attributed to Glendon, stated his (Keough's) lack of knowledge of any threats or intimidations, and requested Glendon to identify the parties who had made the threats, on what dates, and under what circumstances. Keough's letter concluded that a reply was expected by July 22. Keough's instant letter of July 11 is alleged to be unlawful interrogation in violation of Section 8(a)(1) of the Act.

In a letter dated July 19, Michael P. Boyle, business representative of Council 93, responded to the July 11 letter from Keough to Glendon. Boyle advised Keough that the periodical in which Glendon had been quoted was published by Council 93, which controlled the periodical's content. Boyle concluded that if Keough had any question about an article, said questions should be directed to Boyle.

On July 21, Keough replied to Boyle in another letter in which Keough told the latter that the statements attributed to Glendon were serious and warranted an investigation. Keough added that Keough expected Glendon to reply to Keough's letter of July 11.

On July 27 Keough spoke to Glendon personally and asked if she were going to reply to the July 11 letter. Glendon responded that she had been advised not to.

On the next day Glendon's supervisor Virginia Vocelli approached Glendon to discuss Glendon's so-called 6-month performance evaluation. Glendon refused to participate. Glendon told Vocelli that if it had been traditional practice to give performance evaluations 6 months after a promotion Glendon would be happy to do this. Glendon added, however, that it was not traditional; hence she refused to participate. Vocelli then asked for Glendon to give her reasons in writing. Glendon said she would have to consult an attorney and could not do it that day. Vocelli concluded the conversation by stating that Vocelli had to turn the matter over to Keough because Vocelli was leaving on vacation.

On or about July 29 Vocelli advised Keough that Glendon refused to participate.

On July 29 Keough again directed a letter to Glendon. In the letter, Keough made reference to Glendon's position in the appraisal matter and her failure to reply to his letter of July 11. Keough stated he considered both these matters to be insubordination and that Glendon was suspended effective August 2, 1977. The letter gave Glendon until August 16 to comply—compliance to be discussion of the appraisal with Vocelli when Vocelli returned from vacation, and a reply to Keough's letter of July 11.

The issuance of this suspension letter is also alleged in the complaint as a violation of Section 8(a)(1), (3), and (4) of the Act.

This letter was delivered to Glendon by Respondent's Personnel Director Gear at a meeting on August 1, which was also attended by the union steward, Gerry Gillespie. Glendon questioned Gear about the terms of the suspen-

sion and Gear stated that she would be suspended until she complied. Glendon then inquired what would happen if she did not comply, but Gear replied that this had not been decided. Glendon then said to Gear in reference to the matter that Gear couldn't "even do this right" and Glendon persisted in seeking to know when she could report back to work. Gear responded that it did Glendon no good to trade insults. Gear did allow that the library would keep her advised of what would occur. Glendon then asked Gear if Gear had made any arrangements to replace Glendon during Glendon's suspension, to which Gear did not reply. Glendon then opined that Gear "wouldn't care about that" (a replacement for her). Gear again asked Glendon not to insult him. This ended the meeting.

On August 5, Gear gave Glendon a written reprimand by letter for her comment about not "being able to do this right" and not caring about an arrangement to replace her. The letter stated that Glendon's remarks were irrelevant, were demeaning to a management official (Gear), and (in the presence of another employee, Gillespie) showed contempt for management.

Gear's reprimand of August 5 is also alleged to be violative of Section 8(a)(1), (3), and (4) of the Act.

Meanwhile, a compromise was effected between Respondent and Boyle for the Union which resulted in a stay of the suspension. The compromise was confirmed in a letter from Gear to Glendon, also dated August 5. The terms of the agreement were that Glendon would meet with Vocelli for Glendon's evaluation, and that Glendon would reply to Keough's request for information of July 11, and that Glendon would complete both matters by August 16.

As noted, the charge herein was filed on August 11.

On August 16, Glendon was evaluated by her supervisor Vocelli. On that same date Glendon sent a letter to Keough in which Glendon stated she would not respond to Keough's letter of July 11 and would not supply the information Keough sought because, essentially, to do so would interfere with her right to engage in concerted activities which is protected by the National Labor Relations Act.

In the meantime, on August 15 Respondent came into possession of a new edition of the Union's newsletter ("Summer, 1977; Number 5"). This edition contained an article by Glendon ("Notes from Julia Glendon") entitled "The Emperor has no Clothes." In this article Glendon advised the readers that she had been reprimanded for her comments regarding Wallace in the earlier issue of the newsletter. She then proceeded to discuss the matter and to raise certain questions. Thus, she asked rhetorically whether it would have been better for her to write a sober essay on the evils of the "old boy" system, and went on to mention the "even more clearly dubious propriety" of the employment by Respondent of Margaret Downey. (Downey is apparently another management official.) Glendon opined that the best way (for Respondent) to avoid being criticized for unpleasant things would be to eschew the unpleasant act in the first instance. Glendon said, however, that Respondent had instead opted for "censorship, punishment and reprimand."

Glendon's article then expounded on the matter of free speech, the traditional role of libraries in fighting censorship, and the need for answers to protect this traditional

role. She essayed the notions that Wallace's appointment was based on "privilege," that the privileged treatment of Wallace was inconsistent with Respondent's claimed treatment of long term employees, and that a system of privilege led to such evils as favoritism, intrigue, insecurity, and fear. Glendon said that her knuckles had been rapped merely for saying what was generally believed or known to be true. She concluded the article by discussing possible solutions for the problems created by Respondent's discipline of her and by its appointment policy. She averred that a grievance procedure would help, as would a contractual promotional policy and the protection, generally, of a union. Her final remark in the article was an exhortation that management behave well and recognize employee rights.

On August 17, Keough directed another letter to Glendon. This letter took up a number of subjects; i.e.—

1. It referred to Glendon's "conditional suspension of July 29".
2. It faulted Glendon for not entering into the discussion of her evaluation but conceded that she had complied with the letter of her "duty in this regard" by attending an evaluation meeting with her supervisor.
3. It referred to her refusal to supply the information about management intimidation previously requested by Keough.
4. It accused her of expanding on her "ad hominem" attacks on Respondent by her accusation in respect to Downey in the latest newsletter.
5. The letter stated that Glendon's above-mentioned actions were contemptuous and insubordinate and repeated Respondent's desire to know the circumstances of the claimed intimidation which it said could be provided without informing on other employees.
6. The letter concluded with a notice of one week's suspension (to end on August 25) the purpose of which was to make clear the "seriousness of (Glendon's) untoward behavior."

In imposing this suspension Keough received the concurrence of Respondent's president, vice president, and officers of the board of trustees. Unlike the earlier suspension, this suspension was, in fact, carried out.

This suspension is also alleged as a violation of Section 8(a)(1), (3), and (4) of the Act.

The amended charge was filed by the Union on September 12.

Concluding Findings

A. *The June 17 Reprimand for Glendon's Initial Newsletter Article About Wallace's Appointment*

This, it may be recalled, was the reprimand for the article wherein Glendon stated that:

We [apparently speaking of Respondent's library staff], for instance have as a chief administrator a man who never "lost contact" with working professionals because he never had it to begin with. He is simply a man who, when he lost his job at Forbes & Wallace, was put on a form of welfare-for-the-rich courtesy of his friends on the Board of Trustees.

The reprimand is alleged as a violation of Section 8(a)(1), (3), and (4) of the Act.

To begin with I find no probative credible direct or circumstantial evidence that this reprimand related to Glendon's prior filing of a charge (in respect to her promotion the previous fall) against Respondent. Keough's reaction to the charge filing occurred more than a year before the events in question here. The denial of the promotion and certain other arguably discriminatory treatment of Glendon (refusing her services for the 1977 book fair and a library committee) all likewise occurred some time back and pre-date the settlement of January 1977. There was no repetition of any of this conduct—an inference I draw from the fact of compliance with the settlement and the absence of any effort herein to have the settlement set aside.

Thus, Glendon was reprimanded in this instance not out of any sense of vengeance for her filing of the earlier charge but simply for what she said in this article.

The Charging Party contended at the hearing that Respondent's treatment of Glendon deprived her of her right to free speech. To the extent that this contention implies that Glendon's remarks are protected by the first amendment to the Constitution, I reject the contention. The first amendment prohibits only any attempted restriction of such right by Congress.⁶ It has nothing to do with the right, if any, of an employer to react to the remarks of an employee.

That general question is rather a statutory issue under the Act; i.e., whether the remarks of an employee against an employer union or other concerted activity protected by Section 7. Both the Charging Union and the General Counsel argue here that Glendon's instant comments about Wallace's qualifications enjoy that protection. I disagree.

It is true that Glendon's accusation as published was made in her role as union president in a union publication. It is further true that this publication is a concerted activity to the extent, as the record shows, that Glendon's articles were published along with those of other union contributors and were reviewed by the publication's editor. The comments, according to Glendon's undisputed testimony, had also been discussed at union meetings and constituted a union position.

On the other hand the union periodical was public to the extent that those to whom it was distributed were also employees of Respondent who freely dealt with the information in a manner whereby others besides union members (Keough for one) quickly learned of it.

The specific issue presented here is whether these public remarks of Glendon, which, as I have held, are themselves a union or a concerted activity, are safeguarded by Section 7.

Section 7 of the Act prescribes that: "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining

⁶ The first amendment reads "Congress shall make no law respecting the establishment of a religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble or to petition the Government for a redress of grievances."

or other mutual aid or protection and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)."

Section 7 thus does not provide an umbrella for all union or concerted activities *per se* but only those directed to purposes described by that section. This means then that remarks made by a union adherent in the course of his union or other concerted activities enjoy no greater protection under that section than any other union or concerted activity. This further means that not all remarks made by union adherents in the course of such activities are protected.⁷

The question then becomes whether Glendon's criticisms of Wallace's qualifications in this publication are for a purpose covered by Section 7. I conclude that they were not.

The General Counsel argues that Glendon's comments deal with Respondent's supervision of its employees, the contact between the chief administrator and its employees, and the relationship of these factors and efforts at unionization.

The Charging Party argues that Glendon was trying to encourage union members to read another publication (the Wilson Library bulletin) and its article on the lack of professionalism in the attitude and background of many library administrators.

I disagree.

In the above-quoted text Glendon plainly prescinds from the problem noted by the Wilson Library bulletin writer. She speaks of the separate matter of Respondent's appointment of Wallace as Respondent's chief administrator. She says nothing of his supervisory actions towards the employees nor any specific contact he has ever had with them. Nor does her article disclose any relationship between his appointment and the employees' efforts at unionization. Glendon's comments are purely and simply a direct *ad hominem* attack upon Wallace as someone who never had contact with working professionals and who obtained his appointment by way of a "welfare-for-the-rich" program.

In short, Glendon delivered a gratuitous attack upon Wallace, *entirely unrelated to any protected union or concerted interest*—a crucial distinction between this and a later article, as I will point out.⁸ The attack was published and came to the attention of the Respondent. For this she was reprimanded on the ground, stated by Keough in his letter to her of June 17, that such a statement by an employee was neither acceptable nor permissible.

On the basis of all the foregoing, I conclude that the reprimand was for cause, hence not unlawful.

Accordingly, I shall recommend that this allegation of the complaint be dismissed.⁹

B. The Alleged Interrogation of Glendon in Keough's Letter of July 11, 1977, Wherein He Demanded Substantiation of Her Quoted Remarks in the "Bay State Employee" that Respondent Ran a Campaign of Intimidation Against the Union

In Keough's letter he stated he had no knowledge of such intimidation and requested that Glendon advise him no later than July 22 of the identity of the parties who made the threats, on what dates, and under what circumstances.

Glendon has steadfastly refused to furnish this information, despite later efforts by Respondent to obtain it, as will be discussed.

Respondent contends that the General Counsel has introduced no evidence of any inappropriate conduct by Respondent to which Glendon's comments could conceivably be a response. And it points to the testimony of Keough that Keough had assumed that the management staff had conducted itself properly and in accordance with certain guidelines for conduct during an organizing campaign, which the management staff had been given. Respondent urges that, in the absence of any showing by the General Counsel that Glendon's comments here had a protected purpose, this allegation must be dismissed.¹⁰ I reject this contention.

Specifically, the facts show that in Keough's July 11 letter he did not fault her for her published comment in the "Bay State Employee" about management's claimed misconduct in the prior union campaign. What he did in this letter was to demand the facts in support of Glendon's accusations.

Were there such facts? In the state of this record I must conclude that there were. In a later letter to Keough, Glendon stated that a response to Keough's query would require her to name intimidated employees and reveal confidences shared during their organizing activity. In contrast, Keough did not claim that he had interviewed all managerial officials to learn whether the Respondent's guidelines had been violated. Nor did any supervisors appear herein so to testify. Keough simply assumed there had been no supervisory dereliction in this regard.

In addition to concluding that such facts existed, I also agree with Glendon's response that such facts of their very nature are intimately related to the employees' union activities—their sharing of their experiences at the hands of management during the campaign and their concerted reaction thereto.

In the light of the forceful tone of Keough's letter as well as his later efforts (to be discussed) to require Glendon to reveal this information, I conclude that by Keough's instant letter, Respondent coercively interrogated Glendon in violation of Section 8(a)(1) of the Act.¹¹

¹⁰ Respondent includes this allegation in its arguments related to all of Glendon's comments in issue here.

¹¹ The Board has carefully laid down criteria, with employee safeguards, for management interviews of employees to investigate unfair labor practice charges against management. *Johnnie's Poultry Co. and John Bishop Poultry Co., Successor*, 146 NLRB 770, 775 (1964), enforcement denied 344 F.2d 617 (C.A. 8, 1965). However, here Keough was not investigating any such unfair labor practice charges. There were none. Nor did he offer Glendon the *Johnnie's Poultry* safeguards; e.g., he did not assure her that, if she failed to cooperate, no reprisal would be visited upon her. He rather, as will appear, did just the opposite.

⁷ *N.L.R.B. v. Local Union No. 1229, International Brotherhood of Electrical Workers*, 346 U.S. 464 (1953).

⁸ This lack of relationship renders unnecessary any inquiry whether the attack was "deliberately or maliciously false." Compare, *El Mundo Broadcasting Corporation*, 108 NLRB 1270, 1278-79 (1954).

⁹ *N.L.R.B. v. Local Union 1229, IBEW*, *supra*.

C. Keough's Letter to Glendon, Dated July 29, Suspending her Effective August 2

As noted, this suspension was never carried out, but the letter of suspension against Glendon remains outstanding and reflects unfavorably upon her employee record. The stated grounds for the suspension were that Glendon refused to participate in her 6-month employer appraisal and that she declined to reply to Keough's letter of July 11, *supra*, found by me to have been unlawful interrogation.

The suspension letter is alleged to be a violation of Section 8(a)(1), (3), and (4) of the Act.

Here again I find no credible probative direct evidence nor compelling circumstantial evidence that the suspension letter was motivated by the earlier unfair labor practice charges on behalf of Glendon (the present ones had not yet been filed).

The General Counsel urges that Glendon's refusal to participate in the employee evaluation was a protected concerted activity because the Union took the position that such evaluations violated past practice and because Glendon's refusal was consistent with the Union's position. The General Counsel further urges that this position was obviously shared by fellow employees.

The record does not establish that the Union took any firm position in respect to these evaluations. It withdrew its charges that the evaluations constituted unfair labor practices. Further, Glendon was the only employee known to have refused to cooperate with the evaluation program.¹² Finally, employee evaluations are a recognized and legitimate management prerogative,¹³ where not used for a discriminatory purpose.¹⁴

However, to the extent that the suspension letter was also based upon Glendon's refusal to submit to unlawful interrogation, it necessarily discriminated against her because of her protected union and other concerted activities, as I have already discussed.

I, accordingly, conclude that by issuing the suspension letter, Respondent has violated Section 8(a)(1) and (3) of the Act.

D. Gear's Official Reprimand of Glendon by Letter Dated August 5 for Her Remarks to Gear in the Presence of Employee Gillespie When Gear Presented to Glendon Keough's Suspension Letter of July 29

The remarks to Gear in this conversation for which Glendon was being reprimanded were her comment to Gear that Gear didn't "even do this [suspend her] right"¹⁵ and her inquiry of Gear whether he cared enough to arrange for a replacement for her while she was being suspended.

This reprimand is likewise alleged as a violation of Section 8(a)(1), (3), and (4) of the Act.

¹² Keough credibly so testified without dispute.

¹³ See, e.g., Sec. 2(11) of the Act. See *Sherwood Enterprises, Inc., d/b/a Doctor's Hospital*, 175 NLRB 354 (1969).

¹⁴ Insofar as the record shows, Respondent's insistence that Glendon be evaluated was no different from its insistence in the same regard for the other employees.

¹⁵ Brackets mine.

As with other allegations of the complaint discussed, *supra*, I find no basis to conclude that this reprimand violated Section 8(a)(4) of the Act.

As to the remarks themselves, they were no worse than the predictably hurt reaction of an employee being given a suspension letter, which I have already found to be a violation of Section 8(a)(1) and (3) of the Act. The remarks were accompanied by no physical violence whatsoever on the part of Glendon. I conclude therefore that the remarks were part of the *res gestae* of a situation caused by Respondent and in which Respondent continued its unlawful interrogation of Glendon, and that by reprimanding Glendon for such remarks Respondent extended and reinforced such unlawful activity in further violation of Section 8(a)(1) and (3) of the Act.¹⁶

E. Respondent's Suspension of Glendon for 1 Week on or About August 17, Because of a Further Article by Her in a Union Newsletter, in Which She Purportedly Repeated Her Castigation of Wallace and Likewise Insulted Downey

This (actual) suspension is likewise alleged as a violation of Section 8(a)(1), (3), and (4) of the Act. Again I find no persuasive evidence of any violation of Section 8(a)(4). While this suspension came after the initial charge in the present case, only the sequence of these events would support this allegation of the complaint. *Post hoc est non necessarie propter hoc*. In any event, since I will find a violation of Section 8(a)(1) and (3) by Respondent's action here, an additional finding of a Section 8(a)(4) violation would not significantly alter the recommended remedy.

Management's action in suspending Glendon was admittedly (per Keough's letter to her of August 17) based upon her refusal to submit to what I have already found to be unlawful interrogation. It was further based, admittedly, on what Keough claimed were her unreasoned and unjustified *ad hominem* attacks upon Respondent's hiring of Downey (in addition to its hiring of Wallace).

It is true that Glendon repeated her "welfare-for-the-rich" attack on the appointment of Wallace and that she added the appointment of Downey in passing. Glendon then launched upon a highly opinionated philippic on "privilege" and what she denominated as censorship. However, significantly, she did not rest her essay on these points. She went on to say, as I have found, that she had been reprimanded for her earlier attack on Wallace and that she considered this unfair. She added that Respondent's treatment of Wallace and Downey was in marked contrast to its treatment of other employees. She then proceeded to propose several "solutions." The solutions were "a bona fide grievance procedure," a "contractual promotion policy," and the "protection of a Union" generally. These solutions are all legitimate concerns of a labor organization in protecting employee interests in collective bargaining.

I have already held that Glendon's publication of articles in a union periodical, in her role as Union president, is both a Union and a concerted activity. In this later article, while she repeated her attacks upon management appointments,

¹⁶ Cf. *Thor Power Tool Company*, 148 NLRB 1379 (1964), *enfd.* 351 F.2d 584 (C.A. 7, 1965).

she explicitly made those attacks relevant to legitimate union interests (unlike her earlier article). As such, the attack and the enhancement of union interests became integral parts of the same piece, and that piece is ordinarily protected.

There is no indication whether the repeated attack on the appointment of Wallace, or the new attack on the hire of Downey, constituted misstatements of fact.¹⁷ But even if it were, the Board has held:

It is well settled that misstatements made in the course of concerted activity which denounce an employer for his conduct in labor relations, or in affairs germane to the employment relationship, only forfeit the statutory protection when it is evident that the statements are deliberately or maliciously false.¹⁸

While Glendon admitted she did not investigate her charges before they were made, an employee need not do so before speaking out.¹⁹ What is significant is that there is no evidence that Glendon's allegations were deliberately or maliciously false.

Accordingly, I conclude that by suspending Glendon for her protected remarks in advancing a legitimate union interest in her role as union president, Respondent violated Section 8(a)(1) and (3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 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. By coercively interrogating Julia Glendon in respect to concerted activities protected by Section 7 of the Act, Respondent has violated Section 8(a)(1) of the Act.

4. Respondent has violated Section 8(a)(1) and (3) of the Act by:

(a) Issuing Julia Glendon a suspension letter dated July 29, 1977, because she refused to submit to unlawful interrogation.

(b) Reprimanding Julia Glendon in a letter dated August 5, 1977, for remarks made by Glendon during her suspension interview.

(c) Suspending Julia Glendon for one week on or

¹⁷ A question I did not consider in respect to the earlier attack because—true or false—that earlier attack was not for a purpose protected by Section 7.

¹⁸ *Texaco, Inc.*, 189 NLRB 343, 347 (1971), *enfd.* 462 F.2d 812 (C.A. 3, 1972).

¹⁹ *Westinghouse Electric Corporation, Ansonia Plant*, 77 NLRB 1058, 1060 (1948), *reversed on other grounds* 179 F.2d 507 (C.A. 6, 1949).

about August 17, 1977, for refusing to submit to unlawful interrogation and for making protected comments in a union newsletter.

5. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent was not shown to have violated the Act except as found above.

THE REMEDY

Having found that Respondent has violated the Act, I shall recommend an Order directing Respondent to cease and desist from the unfair labor practices found and to post a notice to that effect which will also state the affirmative action Respondent will be required to take to remedy such unfair labor practices.

Thus Respondent will be directed to rescind and to excise from its files: (a) its interrogation letter to Glendon, dated July 11, 1977; (b) its suspension letter to Glendon, dated July 29, 1977²⁰; (c) its reprimand to Glendon, dated August 5, 1977; and (d) its suspension letter to Glendon, dated August 17, 1977.

I shall also recommend that Glendon be made whole for any loss of earnings she may have suffered by reason of her unlawful suspension by payment to her of a sum of money equal to that which she would have earned as wages, had she worked during the period of such suspension, less net earnings, if any, during such period, to be computed in the manner prescribed by Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950) with interest thereon as prescribed by *Florida Steel Corporation*, 231 NLRB 651 (1977).²¹

It will be further recommended in view of the nature of the unfair labor practices in which Respondent has engaged (see *Entwistle Mfg. Co. v. N.L.R.B.*, 120 F.2d 532, 534 (C.A. 4, 1941)) that Respondent cease and desist from infringing in any other manner upon the rights guaranteed employees in Section 7 of the Act.

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

ORDER²²

Respondent Springfield Library and Museum Association, Springfield, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in, activities on behalf of, or sympathies towards, Springfield Library and Museum

²⁰ This suspension letter was based in part on Glendon's refusal to submit to unlawful interrogation. To the extent it was also based on her failure to participate in an employee evaluation, that basis is moot, as Keough in effect admitted in his letter to Glendon dated August 17, 1977, wherein he noted that she later participated in such an evaluation.

²¹ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

²² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

Professional Employees Association, Local 1809, American Federation of State, County and Municipal Employees, Council 93, AFL-CIO, or any other labor organization by suspending, reprimanding, or otherwise discriminating in regard to hire, tenure, or any other term or condition of employment of any of Respondent's employees in order to discourage union membership, activities or, sympathies.

(b) Coercively interrogating or in any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

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

(a) Rescind and excise from its files: its interrogation letter to Julia Glendon, dated July 11, 1977; its suspension letter to Julia Glendon, dated July 29, 1977; its reprimand to Julia Glendon, dated August 5, 1977, and its suspension letter to Julia Glendon, dated August 17, 1977.

(b) Make whole Julia Glendon for any loss of earnings she may have suffered as the result of her unlawful suspension after August 17, 1977, in the manner set forth in the "Remedy" section of the Administrative Law Judge's Decision herein.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records neces-

sary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities at Springfield, Massachusetts, copies of the attached notice marked "Appendix."²³ Copies of the notice on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that the complaint be, and it hereby is, dismissed to the extent it alleges violations not found herein.

²³ In the event that 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."