

Joint Industry Board of the Electrical Industry and Pension Committee, Joint Industry Board of the Electrical Industry, and Trustees of the Pension Hospitalization and Benefit Plan of the Electrical Industry, as named in Appendix A [of the Complaint] and Local 277, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 29-CA-4989

September 29, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND MURPHY

On June 9, 1977, Administrative Law Judge Max Rosenberg issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.¹

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 brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order only to the extent consistent herewith.

In this proceeding, the Administrative Law Judge found that Respondent had engaged in numerous violations of Section 8(a)(1) of the Act; had discharged its dentists and dental clerical employees and had closed its dental clinic in violation of Section 8(a)(3); and, based on its unfair labor practices, had refused to bargain with the Charging Party in violation of Section 8(a)(5). Accordingly, the Administrative Law Judge concluded that a bargaining order was warranted. As a remedy for the violations, the Administrative Law Judge, *inter alia*, ordered Respondent to reopen its dental clinic and reinstate those employees who had been discharged. Respondent has excepted to all the Administrative Law Judge's adverse findings. A majority of the panel, as noted on individual

issues described below, finds merit in certain of those exceptions.

I. THE ALLEGED VIOLATIONS OF SECTION 8(a)(1)

Respondent has excepted to the Administrative Law Judge's findings that Dr. Paul Brunetto, the assistant to the director of the clinic, is a supervisor within the meaning of the Act, and/or an agent of Respondent, and there committed an 8(a)(1) violation discussed at footnote 4, *infra*. Respondent argues that Brunetto has no supervisory responsibility for the carrying out of Respondent's personnel policies, rather his sole responsibilities concern the diagnosis and care of patients' ailments. All members of the panel agree with Respondent. Contrary to the Administrative Law Judge, the panel members find no evidence that Brunetto resolved employee grievances, or that he was in any way responsible for personnel decisions affecting the dentists. The panel members, therefore, conclude that Brunetto was not a supervisor within the meaning of the Act.

All panel members do agree, however, that the record does support a finding that Brunetto was, in his discussions with employees, an agent of Respondent. Thus, he routinely acted as a conduit between admitted supervisors and dentists, instructing the latter in techniques and procedures approved by the former. He also acted on Respondent's behalf in adjusting patient complaints. Accordingly, all panel members do adopt the Administrative Law Judge's finding that Dr. Brunetto is an agent of Respondent² and violated Section 8(a)(1) of the Act as described at footnote 4, *infra*.

Respondent also excepts to the Administrative Law Judge's finding that Respondent, through Dr. Sidney Krauss, the director of the dental clinic, and Joseph D'Angelo, director of administration of the Pension Committee, violated Section 8(a)(1) by accusing the dentists of circulating rumors that the dental clinic would be closing, of sabotaging the operations of the clinic, and of performing inadequate work; and that Respondent also violated Section 8(a)(1) by subjecting the dentists to closer supervision in order to discourage support for the Union. The Decision refers to two instances on March 31, 1976, in which Dr. Krauss spoke to employees about circulating rumors that the clinic would close. First, after Dr. Joseph Vierno had suggested to a patient, "better go up and make an appointment fast because I understand there's rumors or talk about closing the clinic," Dr. Krauss shouted at him, "Dr. Vierno, I want to speak to you. . . . I'm not going to have you spreading ru-

¹ Respondent also filed two motions with the Board. General Counsel filed an opposition to the second motion; Respondent filed an answer to that opposition; General Counsel filed a response to the answer; and Respondent filed a response to General Counsel's last filed document. In the first motion, Respondent requests the Board to investigate the authorship of the attached Decision. This motion advances no reasonable basis for questioning the authorship of that Decision, nor do we know of any. The motion is, therefore, denied.

In its second motion, Respondent moves to reopen the hearing for the taking of additional testimony with regard to the status of Dr. Paul Brunetto. We deny the motion for two reasons. First, the information raised by Respondent was available at the time of the hearing and could have been presented then. Secondly, Dr. Warren's statements in his letter in support of the motion are not inconsistent with his testimony.

² See for this result *Samuel Liefner and Harry Ostreicher, a Copartnership, d/b/a River Manor Related Health Facility*, 224 NLRB 227, 234-235 (1976).

mors." When Vierno protested that he had not done so, Krauss retorted, "If you want to take your hat and coat and leave --?" Immediately thereafter, Krauss held a meeting of all dentists working that day and, according to Vierno, told them:

This business about rumors of the clinic closing would have to stop because if he received any information about the clinic closing it would come from upstairs. And then we would be told. And if anybody started any rumors after that they would be treated summarily.

While Krauss threatened first Vierno, and then all of the dentists, with termination or discipline for spreading rumors of closure, all members of the panel fail to see how these threats violated Section 8(a)(1), since nothing in the record suggests that they were directed at any protected or union activity. Nor does the threat of discharge or discipline for spreading rumors appear to be a pretext for an unlawful motive. Dr. Vierno admittedly told a patient that there was a rumor that the clinic would close. And the record in uncontroverted that the patient he told was extremely upset by his statement. Dr. Krauss' anger is, therefore, understandable, and all panel members conclude that his statements on this point did not violate Section 8(a)(1).

Similarly, the panel members do not agree with the Administrative Law Judge that Krauss made statements which violated Section 8(a)(1) at the meeting immediately following his confrontation with Vierno. As before, Krauss merely warned the dentists that if they spread rumors that the clinic was closing they would be disciplined. The Act does not prohibit employers from threatening discipline for this kind of behavior, unless the threat is a pretext for an underlying purpose of discouraging union activity. Here, as found above, the evidence does not support such an inference. Accordingly, the panel members conclude that Respondent did not violate Section 8(a)(1) by the above statements.³

Next, Respondent has excepted to the Administrative Law Judge's finding that it, through Dr. Krauss and D'Angelo, violated Section 8(a)(1) by supervising the dentists more closely after it learned of their union activities. Respondent asserts that Dr. Krauss has always regularly reviewed the dentists' worksheets and X-rays and that he continued to do so with the same frequency after the filing of the representation petition. With respect to the close review of Dr. Vierno's work, Respondent asserts that Dr. Krauss only began doing this after his regular review of worksheets and X-rays led him to believe that Dr.

³ Nor do the panel members find any evidence in the record to support a conclusion that D'Angelo violated Sec. 8(a)(1) by threats with regard to spreading rumors about closing.

Vierno had filled perfectly good teeth. The panel members find merit in Respondent's exception on this point.

The record shows that Dr. Krauss had always checked the dentists' work records and X-rays and that he continued to do so as a routine matter after the filing of the petition. The Administrative Law Judge's contrary finding stems from his misunderstanding of Dr. Krauss' testimony with regard to his normal review of work during 1975. Dr. Krauss did not testify, as found by the Administrative Law Judge, that he had inspected "maybe a dozen" work records during 1975; he testified that, during 1975, upon reviewing their records, he had discussed deficiencies with specific dentists "maybe a dozen" times. As the Administrative Law Judge found, if Dr. Krauss found a significant deficiency with the dentist's work, he mentioned it to him, and in some instances, to D'Angelo. This occurred with Drs. Falkin, Katz, Manford, and Vierno. Thus, his activity after the petition was filed, of reviewing the dentists' work and discussing any problems, was consistent with his prior practice. Accordingly, the panel members find no violation of Section 8(a)(1) based on Dr. Krauss' or D'Angelo's supervision and review of the dentists' work performance.⁴

Third, the panel members do not agree with the Administrative Law Judge that Dr. Krauss' and D'Angelo's statements and concern about inadequate work stemmed from their opposition to the Union. The panel members have already concluded that Respondent did not check the work of its dentists more closely because the Union came upon the scene. With regard to the alleged inadequacy of certain dentists' work, the panel members note that the General Counsel has not shown that such inadequacies did not, in fact, exist. Further, there is no showing that these complaints by Dr. Krauss and D'Angelo about alleged inadequacies were union-related. In those discussions about alleged inadequacies in which the Union was also raised as an issue, it was not Dr. Krauss who raised that latter issue, and therefore the panel members do not link his comments about the Union in those discussions to his complaints about the dentists' work. Krauss concluded, based on his review of X-rays and work records, that one of the dentists--whom he knew to be a union supporter--was filling teeth that had no cavities. He also testified, and the Administrative Law Judge credited his testi-

⁴ Thus, although the panel members adopt the Administrative Law Judge's finding that Respondent violated Sec. 8(a)(1) when its agent Brunetto warned some of the dentists that Dr. Krauss was reviewing their work more closely since the filing of the petition, the panel members also find that Brunetto was, in fact, incorrect. The panel members find the 8(a)(1) violation on the basis that, although the statement was untrue, the dentists could reasonably have believed Brunetto, in his role as a reliable, regular conduit of information from Respondent.

mony, that he showed the X-rays to Drs. Brunetto and Goldberg. Although Goldberg testified as a witness for the General Counsel, neither he nor Brunetto was called to rebut Krauss' testimony about the X-rays. Nor did the Administrative Law Judge find it inherently incredible. Accordingly, the panel members concluded that Dr. Krauss and D'Angelo had a reasonable basis for being concerned about the adequacy of the dentists' work, and that Krauss' statements on that point did not violate Section 8(a)(1).

Finally, however, a majority of the panel (Chairman Fanning and Member Murphy), adopts the Administrative Law Judge's finding that Respondent did violate Section 8(a)(1) of the Act when, on April 1, D'Angelo spoke to the dentists of deliberate sabotage. According to the written text of D'Angelo's April 1 speech, put in evidence by Respondent, D'Angelo stated:⁵

We are fully aware of the outside activities that are currently being conducted by some of you.

We feel very strongly that any attempt to use our members as a bargaining point is the most reprehensible conduct imaginable.

Any deliberate degeneration in the quality of care provided to our members will be dealt with summarily.

In finding a violation in this statement, the panel majority notes that D'Angelo not only suggested that union supporters were deliberately mistreating patients to further their drive for unionization, he also coupled this suggestion with the threat of discipline for doing so. At no time while making the threat to the employees did D'Angelo provide any facts in support of its claim of deliberate mistreatment. Under these circumstances, the panel majority finds that D'Angelo's threat tended to convey the message to the employees that if they continued their union activity and erred in their work they would be disciplined, as Respondent would presume without any basis in fact that any such error was deliberately made in order to further unionization. As this statement would clearly have a chilling effect on the exercise of Section 7 rights, the panel majority finds that D'Angelo's statement violated Section 8(a)(1).⁶

⁵ The written text is used, since it is undisputed that D'Angelo read his statement at the meeting. While the Administrative Law Judge's reliance on Dr. Nesse's testimony was thus misplaced, it does not affect the panel majority's ultimate agreement with his finding.

⁶ Contrary to the panel majority, Member Jenkins does not find an 8(a)(1) violation in D'Angelo's comments that Respondent was strongly against any "attempt to use our members as a bargaining point" and "any deliberate degeneration in the quality of care" would be dealt with summarily. In this regard, Member Jenkins notes that Krauss had already legitimately concluded that some union supporters might have performed work improperly; he also knew that another had improperly spread rumors to the patients that the clinic might close, in what Krauss apparently and reasonably regarded as an effort to manipulate the patients against management. Thus, in Member

Similarly, a panel majority (Chairman Fanning and Member Murphy) finds that Dr. Krauss, in the course of a disciplinary interview of Dr. Jules Manfred, at which Drs. Goldberg and Calem were present, interrogated and threatened the employees with respect to their union activity. Thus, he asked Calem, a good friend of his, "Why didn't you tell me about the union drive?" And, when Goldberg told him that the employees were personally fond of him, and that the union organizing was not directed at him, he replied:

Look, don't give me that . . . from the minute I got that telegram, I knew you gentlemen had absolutely no confidence in me. . . . Since I've been the one to go pushing for your increases in salary every year, and the first time . . . there's nothing doing in the way of an increase, you go ahead. . . . Because there's going to be a certification election here, and if you gentlemen certify any organization to represent you, it means you're off my back, I don't have to have a damn thing to do with your welfare and with you.

Upon considering these remarks, the panel majority finds it quite clear that Krauss did not simply make a neutral statement concerning the impact of unionization on his role as director of the clinic. Rather, Krauss believed that the union drive was personally directed at him, reminded the employees of his previous efforts in securing their annual raises, and made it clear that if the Union were certified he would not have to have anything to do with them. When viewed in this context, the panel majority concludes that such remarks conveyed the possibility that as a consequence of unionization employer-employee relations would suffer, as Krauss was prepared to retaliate against the employees by withdrawing his good will and by viewing them less favorably in the future.⁷ Accordingly, this threat⁸ and the above interrogations⁹ violated Section 8(a)(1).¹⁰

Jenkins' view, Respondent was entitled, without statutory restriction, to express its views about its opposition to the Union, and this is all its first statement did. Respondent's second remark, according to Member Jenkins, regarding the deliberate degeneration in the quality of care, simply demonstrates Respondent's concern for its patients' health and is plainly justified by the derelictions of the union supporters noted above. Thus, in contrast to the panel majority, Member Jenkins would find nothing in the statement to infer that "Respondent would presume without any basis in fact that any such error was deliberately made in order to further unionization."

⁷ See, e.g., *Super Thrift Markets, Inc., t/a Enola Super Thrift*, 233 NLRB 409 (1977).

⁸ Although the complaint alleged that Dr. Krauss' conduct in this incident violated Sec. 8(a)(1) because he accused an employee of sabotage because of his union activity, we are not precluded from finding a violation here under an alternative theory. As we said in *C & E Stores, Inc., C & E Supervalue Division*, 221 NLRB 1321, fn. 3 (1976):

It is well established that where, as here, the facts underlying the violation are fully developed at the hearing, an unfair labor practice finding can be based on the issues litigated as well as those specifically alleged

II. THE VIOLATIONS OF SECTION 8(a)(3) AND (5)

Respondent has also excepted to the Administrative Law Judge's finding that it violated Section 8(a)(3) by closing its dental clinic and subsequently discharging the dentists and dental clericals. For reasons set forth below, a majority of the panel (Members Jenkins and Murphy) finds merit in Respondent's exceptions, since there is insufficient evidence to support this allegation of the complaint.

It is undisputed that Respondent faced economic problems at the time it decided to close the clinic on April 29, 1976. Nevertheless, the Administrative Law Judge found, and our dissenting colleague agrees, that Respondent closed the clinic because of union activity which otherwise would have resulted in a representation election at the clinic on May 21. While it is rarely possible to obtain direct evidence of employer discrimination,¹¹ circumstantial evidence must produce more than a mere suspicion.¹² The evidence relied on by our dissenting colleague does not meet this requirement.

The record reveals that Respondent was operating under a substantial deficit in its welfare account fund, which resulted in the necessity to delay payment of certain outstanding obligations. The 1975 deficit was \$2,400,000, and at the end of the first half of the fiscal year 1976 the deficit was approximately \$4,800,000. Further, it is undisputed that the Pension Committee which administers the fund met in February—prior to the Union's demand for recognition in March—and agreed that costs would have to be reduced. The

in the complaint. See, e.g., *Phillips Industries, Incorporated*, 172 NLRB 2119, fn. 2 (1968).

⁹ Member Jenkins agrees with the finding of unlawful interrogation here but does not find that the balance of Krauss' remarks were in violation of the Act. In this latter regard, Member Jenkins notes that all Krauss said was that the Union would have responsibility for securing pay raises in the future, and Krauss need not exercise such responsibility. In Member Jenkins' view, this statement hardly indicates Krauss was prepared to "retaliate against" employees by undermining their future welfare.

¹⁰ In addition to the above violations, the entire panel has adopted, for the reasons stated in his attached Decision, the Administrative Law Judge's findings that Respondent violated Sec. 8(a)(1) when Krauss interrogated three dentists as to whether they had any previous knowledge of the union petition; when Krauss told Dr. Corliss that negotiations with the Teamsters would get nowhere, and that it might have been better to pick an AFL-CIO affiliate; and when Brunetto told some of the dentists on two different occasions that, because of the petition, Krauss was scrutinizing their work more closely.

A panel majority (Chairman Fanning and Member Murphy) also agrees with the Administrative Law Judge's finding that Respondent violated Sec. 8(a)(1) when, on the day following the permanent closure of the dental clinic, Krauss told Dr. Eiges, "You fellows joined the Teamsters . . . now you go get jobs as truckdrivers." In reaching this conclusion, the panel majority finds that this statement itself, regardless of whether it truly reflected Respondent's motive in closing the clinic, would lead an employee to believe that he lost his job because of his union activity and would, as a result, deter an employee from the future exercise of his Sec. 7 rights. Member Jenkins would not find a violation in this statement.

¹¹ *KBM Electronics, Inc., v/o Carsounds*, 218 NLRB 1352, 1358 (1975).

¹² *Bogart Industries, Inc.*, 196 NLRB 189, 192 (1972). See also *Production Molded Plastics, Inc., and Detroit Plastic Molding Co.*, 227 NLRB 776 (1977).

committee discussed alternatives such as "the reduction of all benefits" or the "elimination" of certain others. Thus, it is clear that Respondent faced serious economic problems and had acknowledged that reductions in costs had to be made, prior to learning about the advent of the Union.

The Pension Committee met again on April 28, a week after the issuance of the Regional Director's decision directing an election on May 21. It was again agreed that some action had to be taken with respect to the mounting deficit. Respondent's officers, Joseph and Armand D'Angelo, were authorized to take any action necessary. On the following day, the D'Angelos decided to close the dental clinic, effective the next day. Letters were sent to patients that the clinic was closed "until further notice." At the time of the hearing, the dental equipment was still in place and one dentist was caring for patients in the clinic.

In our view, these facts do not require the conclusion that Respondent's decision to close was a response to the union campaign. It is true that the D'Angelos did not consult with the Pension Committee before making the decision. However, this is explained by the fact that they were authorized by the Committee to take any action necessary. The Committee apparently wanted to take action, had not determined what course would be best, and decided to delegate authority in the matter to the D'Angelos.

Our dissenting colleague concludes that no adequate explanations were given for the decision to eliminate the dental clinic rather than a different benefit; for the necessity to close the clinic so abruptly, without even 24 hours' notice; and for the absence of other similarly dramatic actions to reduce costs. This course of action does raise suspicions regarding Respondent's motivation, particularly in light of its antiunion campaign, which resulted in a number of unfair labor practices. Nevertheless, as acknowledged by our dissenting colleague, it was established that the closing of the clinic would result in a projected savings of 20 percent of the welfare account fund *deficit*. Thus, there was a substantial economic basis for Respondent's choice to close the dental clinic. This, coupled with the fact that Respondent had considered elimination of other benefits prior to the advent of the Union, weighs heavily against the "suspicions" relied on by the dissent. And in the absence of any other evidence,¹³ the panel majority does not think

¹³ The dissent notes that Respondent's letter to the dental patients stated that the clinic was closed "until further notice." It further notes that Respondent left the dental equipment in place and that one dentist continued to treat patients in the clinic. These facts, according to the dissent, indicate that Respondent did not intend to permanently close the clinic, but rather to close it only until the movement for unionization had been effectively chilled. We do not think that this conclusion follows. The phrase "until further notice" was probably more a matter of form than content. In addition, there is nothing to indicate that it would have been more reasonable for Respon-

(Continued)

that mere suspicions warrant a finding that Respondent's defense of economic necessity is pretextual. Accordingly, the majority would find that there is insufficient evidence to support a finding that Respondent violated Section 8(a)(3) and (1) of the Act by closing the dental clinic and would dismiss this allegation of the complaint.

Since a majority of the panel noted above would not find a violation in the closing of this clinic, the same majority does not believe that the violations of Section 8(a)(1) of the Act which were committed here are of such a nature or so extensive as to require a finding that a bargaining order is warranted as a remedial measure. In this regard, the violations did not include threats to close the clinic or to lay off or discharge employees. In the absence of such threats, which the Board has held to be proscribed conduct of the most egregious sort,¹⁴ no basis exists for finding a violation of Section 8(a)(5) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Joint Industry Board of the Electrical Industry and Pension Committee, Joint Industry Board of the Electrical Industry, and Trustees of the Pension Hospitalization and Benefit Plan of the Electrical Industry, as named in Appendix A [of the Complaint], Flushing, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their union activities and sympathies.

(b) Warning employees that their work records would be more closely monitored because they joined and assisted Local 277, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any labor organization.

(c) Telling employees that their loss of employment was attributable to their union activities.

(d) Accusing employees of sabotaging the operation of the clinic in an attempt to dissuade them from giving aid and support to the Union.

(e) Threatening employees that selection of the Union as their bargaining representative would adversely affect employer-employee relations.

(f) Encouraging the employees to forsake the Union and embrace a labor organization affiliated with the AFL-CIO in order to obtain greater employment rewards.

dent to have removed the equipment immediately, or that the minimal treatment of patients was anything more than a completion of some unfinished business connected with the closing of the clinic.

¹⁴ *General Stencils, Inc.*, 195 NLRB 1109, 1110 (1972).

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

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

(a) Post at its clinics on the second floor of its building in Flushing, Queens, and forthwith mail to all affected employees, copies of the attached notice marked "Appendix."¹⁵ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's authorized 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 said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

CHAIRMAN FANNING, dissenting in part:

As I agree with the finding of the Administrative Law Judge that Respondent's closing of the dental clinic, and its consequent discharge of the dentists and dental clericals, violated Section 8(a)(3) of the Act, I dissent from my majority colleagues' failure to affirm this finding of the Administrative Law Judge.¹⁶

Respondent asserts, and the record shows, that in 1975 the welfare account fund had a \$2.4 million deficit. And, at the end of the first half of fiscal 1976, the fund projected that its 1976 deficit would be approximately \$4.8 million. Moreover, for the first time, in the early part of 1976, the fund was experiencing cash flow problems, such that it was having to delay payment of certain outstanding obligations. Respondent also asserts that the closing of the clinic was to result in a projected savings of 20 percent of the fund's deficit. For these reasons, the majority concludes that Respondent's closing of the dental clinic was solely for the purpose of reducing its financial burden.

In addition to the proffered economic reasons for the closing, however, there is substantial evidence that Respondent closed the clinic on April 29, 1976, because of union activity at the clinic which was to culminate in an election on May 21, 1976. Thus, the record shows that Respondent did not consider closing the clinic until after it learned of the union cam-

¹⁵ In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹⁶ As is reflected in the majority opinion, I would affirm most of the Administrative Law Judge's 8(a)(1) findings, and it is in the context of these findings that I weigh here the 8(a)(3) allegation.

paign, although D'Angelo was aware of the fund's deficit as early as October 1975, when the Pension Committee met and reviewed an interim financial report which showed a large deficit for 1975. Then, in February 1976, at its bimonthly meeting, the Pension Committee considered a final report for 1975 which showed a large deficit for 1975, and an interim report for 1976 which, based on the first 4 months of the fiscal year, suggested an even greater deficit for 1976. At the meeting, the committee members agreed that costs would have to be reduced, and they discussed abstractly whether it would be better to reduce benefits overall, or eliminate certain benefits. D'Angelo and his assistant, John Calascibetta, were requested to explore various means of saving money. The discussion was extremely general, and no plan was approved. The closing of the clinic was not discussed at any time at the meeting.¹⁷ Approximately a month later, on March 16, 1976, Respondent received a telegram from the Charging Party demanding recognition, and on March 17, the Charging Party filed a representation petition.

From then until the next Pension Committee meeting on April 28, 1976, D'Angelo and the committee took no further steps to cut costs. Indeed, their planning was limited to an April 23 memo from Calascibetta to D'Angelo proposing that the welfare fund pay hospitals directly, rather than giving the money to the membership.¹⁸ Throughout April, however, Dr. Krauss and D'Angelo were actively involved in discouraging unionization through the above-described statements, which have been found to have violated Section 8(a)(1). Then, on April 21, the Regional Director issued a decision directing an election on May 21.

On April 28, the Pension Committee held its regular meeting at which it received an interim report on the fund's balance for the first two quarters of fiscal 1976. All agreed that some action should be taken to reduce costs, and they then authorized D'Angelo and his father, Armand D'Angelo, the chairman of the Joint Industry Board, to take any action necessary. No one mentioned closing the dental clinic, nor were suggestions, other than the change in the payment of benefits, considered. On the following day, the D'Angelos met in a New York hotel following a charity luncheon which they both attended. According to Joseph D'Angelo, after discussing various other ways to save money, the two men decided to close the dental clinic effective the following day. The decision was made without any prior consultation with the other

committee members, and without having devised a plan to deal with those patients who were in the midst of treatment. No explanation was given for the decision to close without even 24 hours' notice. D'Angelo and his father knew, however, about the Charging Party's organizing campaign, and about the election scheduled for May 21. Thus, the evidence suggests that the decision to close the clinic was precipitous, as it related to economic objectives, but that it was consistent with Respondent's purpose to avoid unionization.¹⁹

In professing the legality of closing the clinic, Respondent does not adequately explain why it singled out the dental clinic for this precipitous action, or, if its financial crisis was so immediate, why it did not take any other similarly dramatic action to cut its costs immediately.²⁰ In fact, the evidence suggests that Respondent did not intend to close the clinic permanently. Thus, in a letter to the patients, Respondent said that the clinic was closed "until further notice," and, as of the date of the hearing, the dental equipment was still in the building and Dr. Krauss was caring for patients there. But, according to D'Angelo, the fund's financial problems were of indefinite duration. If the clinic had been closed because of economic necessity, it is extremely unlikely that Respondent could have had such public hope for its reopening. Thus, the evidence suggests that Respondent intended to close only until it had successfully chilled the movement for unionization.

Despite the foregoing, my colleagues are unable to find the record evidence sufficient to show that the clinic was closed because of union activity. In their opinion, since there is evidence that closing the clinic saved money, that, by itself, rebuts all the other evidence of unlawful purpose. The majority, however, simply fails to recognize the logical inferences from the great quantity of circumstantial evidence. The suddenness of the closing, the manner in which it was done, and the complete elimination of the dental care program itself were inconsistent with Respondent's prior financial deliberations and with its overall goal

¹⁹ It should also be noted that, throughout the time in question, the Pension Committee was able to pay its obligations with money from the welfare account, since, as of September 30, 1975, \$16.6 million remained in the account. Thus, there was no immediate danger of bankruptcy or of funds not being available to meet current obligations.

²⁰ Respondent claims that the Administrative Law Judge should have considered the testimony at the 10(j) hearing in August 1976 (approximately a month after the hearing in this proceeding) that Respondent had agreed had agreed with five hospitals to pay them directly, thus reducing the medical costs at each hospital by 20 percent. While I fail to see why this testimony was not adduced at the hearing on the charges, even accepting it at face value does not affect the disposition of this case. The fact remains that Respondent - until it learned of the union activity at the dental clinic - proceeded with deliberate speed to reduce costs generally without adversely affecting the benefits it provided. Following knowledge of the union activity, it then closed the clinic. But although the financial crisis apparently continued, it took no other drastic steps to reduce costs.

¹⁷ In contrast to the general discussion at this meeting, at another meeting that month the members of the vacation committee - which included D'Angelo - voted to reduce the vacation benefits by approximately 8 percent, thus saving money in a related fund.

¹⁸ Calascibetta had begun studying this idea in March.

of reducing costs without substantially reducing benefits. The closing was, however, entirely consistent with Respondent's purpose to discourage union activity and to rid itself of those who sought representation. Any resultant savings were entirely secondary to this purpose.

Accordingly, I would find that the dental clinic was closed in order to chill unionism, and that it could reasonably have had that effect on Respondent's remaining employees who worked at the medical clinic across the hall. I would therefore affirm the Administrative Law Judge's finding that Respondent violated Section 8(a)(3) of the Act.

And, in finding this 8(a)(3) violation in addition to the already noted unfair labor practices committed during the organization drive, I would also agree with the Administrative Law Judge's conclusion that Respondent's refusal to bargain with the Union violated Section 8(a)(5) of the Act.

APPENDIX

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

WE WILL NOT coercively interrogate our employees concerning their union activities and sympathies.

WE WILL NOT warn our employees that their work records will be more closely monitored because they joined and assisted Local 277, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any labor organization.

WE WILL NOT tell employees that their loss of employment was attributable to their union activity.

WE WILL NOT accuse our employees of sabotaging the operation of the clinic in an attempt to dissuade them from giving aid and support to the above-named Union.

WE WILL NOT threaten employees that selection of the Union as their bargaining representative would adversely affect employer-employee relations.

WE WILL NOT encourage our employees to abandon the Union and embrace a labor organization affiliated with the AFL-CIO in order to obtain greater employment rewards.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Sec-

tion 7 of the National Labor Relations Act, as amended.

JOINT INDUSTRY BOARD OF THE ELECTRICAL
INDUSTRY AND PENSION COMMITTEE, JOINT
INDUSTRY BOARD OF THE ELECTRICAL IN-
DUSTRY, AND TRUSTEES OF THE PENSION
HOSPITALIZATION AND BENEFITS PLAN OF
THE ELECTRICAL INDUSTRY, AS NAMED IN
APPENDIX A

DECISION

MAX ROSENBERG, Administrative Law Judge: With all parties represented, this case was heard before me in Brooklyn, New York, between July 19 and 23, 1976, on an amended complaint filed by the General Counsel of the National Labor Relations Board and an amended answer filed in opposition thereto by the Joint Industry Board of the Electrical Industry and Pension Committee, Joint Industry Board of the Electrical Industry, and the Trustees of the Pension Hospitalization and Benefit Plan of the Electrical Industry, as named in Appendix A, herein called the Respondent.¹ At issue is whether Respondent violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, by certain conduct to be detailed hereinafter. Briefs have been received from the General Counsel and the Respondent, which have been duly considered.

Upon the entire record made in these proceedings, including my observation of the demeanor of the witnesses as they testified on the stand, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. THE BUSINESS OF THE EMPLOYER

It is undisputed, and I find, that the Joint Industry Board, herein called the Joint Board, is a tax-exempt association doing business in the State of New York, with its principal office and place of business located at 158-11 Jewel Avenue, County of Queens, city and State of New York, where it is, and has been at all times material herein, *inter alia*, continuously engaged in maintaining and administering trust funds established pursuant to collective-bargaining agreements and declarations and agreements of trust by and between Local No. 3, International Brotherhood of Electrical Workers, AFL-CIO, herein called Local 3, and various employers and employer associations engaged in commerce and in industries affecting commerce, including Broadway Maintenance Corp. and Fluorescent Maintenance Association, for the purpose of providing, *inter alia*, dental, medical, hospitalization, pension, and other related benefits for the employees covered by said collective-bargaining agreements and declarations and agreements of trust.

It is further undenied, and I find, that to effectuate the administration of the various employee benefits described above, the Joint Board has established the Pension Com-

¹ The complaint, which issued on June 7, 1976, is based upon a charge filed on May 5, 1976, and served on May 6, 1976, and an amended charge filed on May 27, 1976, and served on May 28, 1976.

mittee of the Joint Industry Board of the Electrical Industry, herein called the Pension Committee. At all material times, the individuals named in Appendix A of the complaint and made a part thereof have been Trustees of the Pension Committee. The Joint Board and the Pension Committee and its Trustees, herein collectively called the Respondent, are, and at all material times have been, affiliated enterprises with common officers, directors, and trustees and constitute an integrated enterprise; and the said directors and trustees formulate and administer a common labor policy affecting the employees of Respondent.

During the annual period material herein, Respondent, in the course and conduct of its business operations, received payments in excess of \$50,000 from employers and employer associations engaged in commerce, including, *inter alia*, Broadway Maintenance Corp. and Fluorescent Maintenance Association.

During the same period, Respondent, in the course and conduct of its medical and dental clinics and other business, purchased and caused to be transported and delivered to its place of business dental and medical equipment and supplies and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its place of business in interstate commerce indirectly from States of the United States other than the State of New York.

Respondent contends that the Board's jurisdiction should not be exercised on the ground that, unlike most other nonprofit organizations, it has no control over its income. In this connection, it asserts that Respondent neither charges fees to patients nor bills any employer or union; instead, the amount of money contributed to it is set at the bargaining table by distinct entities and, if income is insufficient, it has no remedy.

The record demonstrates, and I find, that on March 17,² Local 277, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, filed a petition with the Board in Case 29-RC-3343, seeking an election in a unit of all dentists employed by Respondent as its Flushing, New York, dental clinic, excluding all other employees, guards, and supervisors as defined in the Act. At the hearing on the issues raised by the petition, Respondent's counsel briefly noted an appearance for the record and then departed without proffering any reasons for its contention herein that the Board lacked jurisdiction over Respondent and without submitting any evidence in support thereof. On April 21, the Regional Director for Region 29 issued a Decision and Direction of Election, ordering an election to be conducted on May 21. Meanwhile, Respondent filed with the Board a request for review of the Regional Director's action in holding the election, which request was denied by that tribunal on May 13 in reliance upon its decision in *Tropicana Products, Inc.*³ In my opinion, the recorded facts establish that

the dental clinic is an integral segment of Respondent's benefits program and that the operation is essentially like that of a nonprofit hospital, over which the Board has assumed jurisdiction under the 1974 amendments to Section 2(2) of the Act.⁴ Moreover, under the teachings of *Tropicana Products, Inc.*, I conclude that the assumption of jurisdiction over Respondent in this proceeding is warranted.⁵

Accordingly, I find and conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that Respondent, by and through its agents and supervisors, violated Section 8(a)(1) of the Act by the following misconduct: (a) on or about various dates in March and April, Dr. Sidney Krauss, the director of Respondent's dental clinic, interrogated its employees concerning their membership in and activities on behalf of the Union; (b) on or about March 31, and on various dates during the months of March and April, Director Krauss and Dr. Paul Brunetto, the assistant to the director of Respondent's dental clinic, warned and directed its employees to refrain from becoming or remaining members of the Union and to refrain from giving any assistance or support to it; (c) on or about March 24 and April 1, 5, 22, 23, and 26, Director Krauss and Joseph D'Angelo, Respondent's director of health services, harassed its employees by accusing them of starting rumors, engaging in sabotage, and performing inadequate work, and by subjecting them to stricter and closer supervision than they theretofore had undergone; (d) on various dates in March and April, and on May 5, Director Krauss informed its employees that the selection of the Union would be useless, and that the Union would be unable to obtain any benefits for them if they selected that labor organization as their collective-bargaining representative; and (e) on or about May 5, Director Krauss stated to its employees that should they decline to vote for the Union in the forthcoming election Respondent would reopen its dental clinic, which it had closed on April 30, and that the employees would fare better by the selection of a labor organization affiliated with the AFL-CIO.

The complaint further charges that Respondent violated Section 8(a)(3) of the statute by ceasing operations at its dental clinic on April 30 and discharging all dentists on that

⁴ E.g., *St. Catherine's Hospital of Dominican Sisters of Kenosha, Wisconsin, Inc.*, 217 NLRB 787 (1975).

⁵ At the hearing, Respondent denied the appropriateness of a unit of dentists solely on the ground that its operations did not fall within the Board's jurisdictional ambit. Having found that Respondent is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act, I find and conclude that all dentists employed by Respondent at its Flushing, New York, dental clinic, excluding all other employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act. See *The Permanente Medical Group*, 187 NLRB 1033 (1971).

² All dates herein fall in 1976, unless otherwise indicated.

³ 122 NLRB 121 (1958). The election was conducted as scheduled on May 21. The tally of ballots showed that, of the approximately 31 eligible dentists who voted, 29 had their ballots challenged by Respondent and impounded by the Regional Director. Thereafter, Respondent filed objections to the election. Before an investigation of the objections could be undertaken, the Union sought and received permission from the Regional Director to withdraw its petition, and an order to this effect issued on July 2.

date, any by discharging other clerical personnel in the dental clinic sometime in May, because the dentists joined or assisted the Union or otherwise engaged in concerted activity for the purpose of collective bargaining and mutual aid and protection. Finally, the complaint avers that Respondent violated Section 8(a)(5) of the Act when, on March 15, and at all times thereafter, it refused the Union's demand for exclusive representation of all dentists in the requested unit. For its part, Respondent denies the commission of any labor practices proscribed by the Act.

Before turning to a consideration of the alleged violations of Section 8(a)(1) of the statute, a threshold issue is presented concerning the supervisory and/or agency status of Director Sidney Krauss, Assistant to the Director Paul Brunetto, and Director of Health Services Joseph D'Angelo. In its answer to the pleadings, Respondent admitted that Krauss and D'Angelo were supervisors under Section 2(11) but denied that they were agents of Respondent when they engaged in the alleged misconduct attributed to them in the complaint. Respondent further denied that Assistant to the Director Paul Brunetto was either a statutory supervisor or an agent of Respondent.

It is undisputed, and I find, that for approximately 6 years prior to this proceeding, Joseph D'Angelo held the position of Director of Administration for the Pension Committee, with offices located on the fourth floor of the Flushing, Queens, building which, as indicated marginally below, also houses the officials of Local 3. In this capacity, he is charged with the responsibility for the overall administration of the benefits offered by the Pension Committee, including pensions, major medical hospitalization, surgical benefits, as well as the medical and dental departments, and a convalescent home located at Bayberryland in Long Island, New York. In addition, D'Angelo is required to attend all meetings conducted by the Trustees of the Pension Committee. Based upon D'Angelo's testimony, I find that he is consulted by the Pension Committee as well as the Joint Board, whose chairman, Armand D'Angelo, is D'Angelo's father, in formulating decisions regarding the fiscal affairs of the various funds and that he is authorized to implement those decisions made by him in collaboration with Respondent's officials. Accordingly, I find and conclude that D'Angelo is not only a conceded statutory supervisor but an agent of Respondent as well, and that Respondent is responsible for his acts and conduct, which will testimonially be portrayed hereinafter.

Dr. Sidney Krauss occupies the position of Director of the dental clinic and has held that title for approximately 10 years. While Krauss exercises considerable supervisory control over the personnel in the clinic, he discharges his duties under the guidance and direction of D'Angelo, as well as under the mandates of Respondent's officials. In sum, I also find and conclude that Krauss, at the times material herein, acted as an agent on Respondent's behalf concerning the terms and conditions of employment of the clinic's dentists, as well as a supervisor within the meaning of Section 2(11).

Dr. Paul Brunetto is classified as the assistant to the director of the dental clinic, namely Dr. Krauss. In his testimony, Krauss claimed that Brunetto's job was simply to assist the former in the professional area of the department;

that Brunetto possessed no administrative powers; and that the dentists were instructed in early 1975 not to approach Brunetto with requests for leaves of absence or vacation but to deal directly with Krauss. However, Krauss' testimony in this regard is belied by that of Dr. Gus Goldberg and other dentists, whose testimony I credit and who averred that Brunetto assigns work to the dentists, determines exactly what procedures are to be performed on the patients, and decides which dentist is to treat a particular patient. Additionally, he adjusts grievances between patient and dentist or between dentists. Moreover, Brunetto routinely serves as a conduit between Director Krauss and the staff dentists in relaying general and specific instructions relating to the working conditions of the professionals, and he does not personally perform any dental work. Based upon the foregoing and the totality of the testimony given in this case, I find and conclude that Dr. Brunetto possesses and exercises supervisory authority over the dentists in the clinic and also acts as an agent regarding personnel relations for Respondent.⁶

The record discloses, and I find, that commencing in the 1950's Local 3 and various employers and employer associations established, pursuant to collective-bargaining agreements and declarations and agreements of trust, various trust funds for the purpose of providing, *inter alia*, dental, medical, and optical care for members and their families covered by the foregoing agreements and declarations. An edifice commonly called the "Local 3" building, consisting of at least four floors, was obtained at a location in Flushing, Queens, New York. The second floor houses the dental, medical, and optical clinics, staffed by professional and supporting clerical personnel. All clinics are under the ultimate supervision of Director of Health Services Joseph D'Angelo. So far as this record stands, the doctors in the medical clinic, some 20 in number, have never been represented by any labor organization. The clericals in the clinics have for approximately 20 years been collectively represented by Local 153 of the Office, Professional Employees International Union.⁷

Sometime in February, the dentists became disgruntled with their wages and terms and conditions of employment and decided to obtain collective representation by a labor organization. Consulting a telephone book, Drs. Gus Goldberg and Joseph Vierno placed anonymous calls to Anthony Distinti, the president and business agent of the Union, to inquire into the prospect of having the Union represent them and bargain for them with Respondent. In consequence of these inquiries, Distinti met on March 5 with Drs. Goldberg, Robert Kramer, John Warren, and Joseph Vierno. During their colloquy, Distinti discussed the necessary steps to be taken for joining the Union, and stated that his labor organization needed a majority of signed cards before he could launch his recognition drive. At the conclusion of the session, Distinti scheduled a meeting of dentists for Sunday morning, March 14, at a Queens motor inn. With 16 dentists in attendance, the union president explained the background of the Union and outlined

⁶ Dr. Brunetto was not called as a witness in this proceeding.

⁷ No unfair labor practice charges were filed by Local 153 on behalf of the 17 dental clericals when they were separated from Respondent's payroll following the termination of the dental clinic on April 30.

the procedures that had to be followed to join that entity. After a question regarding the execution of authorization cards was posed to him, Distinti left the room to allow the dentists to discuss the matter privately. When he returned to the meeting room, the dentists announced that they had unanimously decided to sign the union designations and join the Union. Thereupon, Distinti distributed blank cards to the assemblage and observed their execution. Distinti testified, and I find, that all 16 of the dentists present filled out the cards and appended their signatures thereto on that date.⁸ After checking over the cards which were submitted to him, he informed the men that he would attempt to obtain voluntary recognition for a unit of dentists from Respondent and that, failing in this endeavor, he would file a representation petition with the Board in quest of an election. Noting that several other dentists at the clinic were not present at the meeting, he gave between six and eight blank cards to Drs. Warren and Vierno and instructed them to solicit their absent colleagues. Warren and Vierno did so, and returned some signed authorizations to Distinti thereafter.⁹

I find that on March 15 Distinti dispatched a telegraph to Respondent in which he demanded exclusive recognition as the collective-bargaining agent for a unit of dentists at Respondent's dental clinic. Distinti testified, and I find, that following receipt of the telegram, on March 16, he returned a telephone call from Director of Health Services D'Angelo. In their conversation, D'Angelo inquired into the purport of the telegram, and Distinti responded that the dentists had signed designation cards indicating their desire for exclusive union representation. When D'Angelo asked whether the Union possessed a majority showing, Distinti replied that he had received between 21 and 23 signed cards. D'Angelo promised to get back to Distinti. Not hearing from D'Angelo, Distinti filed a representation petition with the Board on March 17 in Case 29-RC-3343. Although he attempted on several occasions thereafter to contact D'Angelo, Distinti was unable to do so.

When called to the stand, Clinic Director Krauss acknowledged that he had received the Union's telegram of March 15 demanding exclusive recognition. In Krauss' words, "I looked at it. I was a little shocked and stunned, to tell the truth." Krauss immediately walked upstairs to D'Angelo's office and presented the telegram to the latter. D'Angelo read the document and asked Krauss, "do you know anything about it." When Krauss replied in the negative, D'Angelo stated, "You leave it with me . . . you know the rules of the ballgame. Stay out of this." Krauss left the office after D'Angelo remarked, "I'll get back to you and let you know. . . ."

Krauss further testimonially acknowledged that on March 17 he was paid a visit in his office by dentist Ralph Corliss. In an ensuing conversation, Corliss told Krauss, "Sid, understand, we've been friends for a long time, I have not signed any card for any Local, I never will sign a card

for a Local, and there are eight or nine men here who feel as I do, and we have to know where we stand, and I have to talk to you . . . we don't know what our rights are, we don't know whether we have to join the organization or we don't. We don't know whether we can be pressured into joining the organization or not. We'd like to know what our position is." Despite D'Angelo's clear and firm instructions to Krauss that the latter should maintain a stance of neutrality during the organizational drive and "Stay out of this," Krauss proceeded to obtain a layman's guide to the National Labor Relations Act and commenced to tutor Corliss in the rights guaranteed employees under that legislation. The next morning, Krauss went to D'Angelo and reported the content of his discussion with Corliss on the previous day. Krauss, "made the point of telling him [D'Angelo] that Dr. Corliss had told me that the men felt I would no longer have any control over them. They could do whatever they wanted." D'Angelo's response to this intelligence was "Look, keep your eyes open, and touch base with me before you make any definite decisions . . . because it's a little too tough for you to handle on your own."¹⁰

In a decision rendered on April 21, the Regional Director scheduled an election for May 21. Before the election could be conducted, Respondent, on April 30, eliminated the dental clinic. I now turn to a consideration of the various alleged acts of misconduct in which Respondent's supervisors and/or agents indulged both before and after the closure date.

The complaint alleges that on various dates in the months of March and April, Respondent, by Clinic Director Sidney Krauss, coercively interrogated its employees concerning their membership in, activities on behalf of, and sympathy for the Union. It is undisputed, and I find, that on March 15, the date on which the Union sent its telegraphic recognitory demand to Respondent, Dr. Gus Goldberg exited his office, which was located adjacent to Dr. Krauss', and encountered the latter. Reading the Union's telegram, Krauss inquired, "Do you know who are involved in this union bit?" Goldberg answered that "I heard some vague rumors to the effect that somebody on the outside had contacted the Teamsters," a response that was contrary to fact because, as Goldberg put it, "I was afraid of my job. I would have been fired immediately."¹¹ Dr. Joseph Alcalay testified without contradiction, and I find, that about a week prior to the closure of the dental clinic on April 30 Dr. Krauss approached him near the waiting room and inquired, "are we involved with those people, are you involved with those people." Alcalay understood this ques-

⁸ Dr. Joseph Alcalay, who attended the March 14 union meeting and signed a card thereat, mistakenly dated the document as March 15.

⁹ Five additional signed designations were obtained from the following dentists on the indicated dates: Felix Glass, 3/17/76; Milton Goldsmith, 3/19/76; Stephen E. Rosen, 3/19/76; Theodore Eiges, 3/20/76; and Morris D. Ross, 3/22/76.

¹⁰ As a witness, D'Angelo conceded that he was aware on March 15 that the Union had submitted a telegraphic demand for recognition and that he also became aware that a representation petition had been filed by the Union on March 17. D'Angelo did not deny Krauss' testimonial declarations regarding D'Angelo's instructions given to Krauss on March 15 and 17 or the contents of Krauss' conversation with Corliss on March 17. Accordingly, I find the facts in this regard to be as reported by Krauss as a witness. D'Angelo also admitted that some of the trustees of the pension committee were aware of the Union's organizational campaign.

¹¹ In his testimony, Krauss corroborated Goldberg when he stated that on March 15, after he had received the telegram, he walked out of his office and entered the corridor where he met Drs. Goldberg and Brunetto. Krauss asked, "Do you fellows know anything about this," a reference to the Union's demand for recognition.

tioning to have reference to joining the Union.¹² Dr. Sidney Calem's testimony is undenied, and I find, that sometime between late March and the end of April, as Krauss was working on a patient, he summoned Calem to observe the procedure. While they were discussing the matter, Krauss changed the subject and asked, "By the way, are you one of the men that signed with the Union?" Calem responded in the negative, and the conversation terminated.

Viewing these incidents in the context of the entire case, I find and conclude that Krauss' questioning of Goldberg, Alcalay, and Calem constituted coercive interrogation and that Respondent thereby violated Section 8(a)(1) of the Act.

The complaint further alleges that during the months of March and April Drs. Krauss and Brunetto and Director of Health Services D'Angelo warned and directed the dentists to refrain from becoming or remaining members of the Union or from giving assistance or support to it, and harassed its dentists by accusing them of starting rumors, engaging in sabotage at the clinic, and performing inadequate work, and by subjecting them to stricter and closer supervision than they were theretofore given.

Despite the fact that Dr. Krauss and D'Angelo testimonially proclaimed that the dental department had "a reputation for providing excellent health care on a public health service basis" which could be "confirmed by quite a few of the local dental societies and the State Dental Society," their high estimation of the quality of the dentists' work and their professional deportment dropped markedly after they received the Union's demand for recognition on March 15.

Dr. Joseph Vierno testified that during the last week in March he had heard rumors from some of Respondent's laboratory men that the dental clinic might close. Sometime thereafter Vierno received a visit from a patient who lived in Florida and who was in need of having a denture remade, for which service she had already paid. Vierno suggested that the patient "better go up and make an appointment fast because I understand there's rumors or talk about closing the clinic." The patient asked if it would be permissible to use Vierno's name in this connection, and the dentist answered in the affirmative. A few minutes later, Dr. Krauss sought out Vierno, shouting, "Dr. Vierno, I want to speak to you. . . . I'm not going to have you spreading rumors." When Vierno protested that he had not done so, Krauss retorted, "If you want to take your hat and coat and leave—?" Vierno further testified that sometime after this incident Krauss summoned between 12 and 15 dentists to the lounge, where he announced that "[t]his business about rumors of the clinic closing would have to stop because if he received any information about the clinic closing it would come from upstairs. And then we would be told. And if anybody started any rumors after that they would be treated summarily."

Dr. Gerald Nesse testified that on March 31 he also attended the meeting of dentists to which Vierno adverted in his testimony, which was called by Dr. Krauss. According to Nesse, "Dr. Krauss came in and delivered a statement to

the effect that a rumor had been started that the dental clinic was closing. He did not say whether it was true or false, but he said that the only one who could close the clinic would be the Joint Board, and they certainly have not made any such decisions, and anybody who spread any such rumors would be dealt with summarily." Nesse further testimonially recalled, and I find, that on April 1 Joseph D'Angelo, Respondent's director of health services, summoned the dentists to the lounge, where he read to them a written statement "to the effect that [Respondent] is aware of the outside activities of some of the dentists . . . and they would expect us to behave in a professional manner and not injure any of their patients . . ." Nesse reported that never in the course of his 3 years of employment at the clinic had the dentists ever been assembled and warned about any mistreatment of their patients, nor could he recall any incident in which he or any other dentist had engaged in such a practice.

Dr. Krauss recalled the foregoing incidents when called as a witness. He remembered that a patient had informed him that Vierno had stated that the patient's denture work should be expedited because the dental clinic was scheduled to close. On March 31, Krauss called upon Vierno and "told Dr. Vierno to stop starting rumors in that department, which were completely unfounded, because I wouldn't tolerate it." Later that afternoon, Krauss gathered the dentists together and announced that "no such decision had been reached by anyone, that I did not have the authority to close down that department, and if anyone reached the decision, they would notify me through the proper channels, and then I would inform everyone else in the department who would be concerned, and that would be it. But until such time that I learned that there was a definite decision to close that department, I didn't want them harassing my patients." Later that afternoon Krauss journeyed upstairs to D'Angelo's office and spoke to the latter "because I hadn't taken any action against Dr. Vierno of any sort and I wanted for him to tell me what to do." D'Angelo remarked that "in view of what we know Dr. Corliss told you,¹³ and if this is what they're doing now, then perhaps I'd better come down and speak with them."¹⁴

With respect to the General Counsel's contention that Respondent subjected the dentists to stricter and closer supervision after the filing of the Union's petition on March 15 and accused the men of sabotaging patients' work and performing inadequate work, in order to discourage their adherence to that labor organization, Dr. Gerald Nesse testified without contradiction, and I find, that on three or four occasions during the month of April, Krauss' assistant, Dr. Paul Brunetto, warned the dentists that "Since you fellows have joined the union Dr. Krauss is very busy checking the records very carefully and making notations, so would you please be careful—extra careful, even for technical matters, because the records, since you joined the union, have been checked very carefully, more so than the usual routine." True to Brunetto's caution, Clinic Director

¹² Here again Krauss corroborated Alcalay when the former stated on the stand that "I think on one instance I said to him, hey, Yussella, you too, are you involved?" Krauss also added in this testimony that while he was not absolutely certain of the identity of the card signers, "I had an idea, but it was only speculation on my part."

¹³ D'Angelo had reference to a conversation on March 17 which Krauss had with Dr. Ralph Corliss, a dentist who did not favor the Union, during which Corliss reported, according to Krauss, that "the men felt I would no longer have control of them. They could do whatever they wanted."

¹⁴ So far as appears on this record, D'Angelo's address to the men on April 1 was the same as that reported by Dr. Nesse in his testimony.

Krauss called a meeting of approximately 10 dentists from the filling section on April 22. During the session, Krauss revealed that "he has been checking within the past month or 6 weeks, he has been checking the records, and he has found an unusually large number of fillings falling out and he attributed this to deliberate sabotage on the part of the dentists." Nesse spoke up and countered that "I did not believe it because I do not believe that anybody ever sabotaged or did any poor work deliberately. . . . He [Krauss] stressed that he felt it was deliberate. . . ." Later that day Nesse spoke to Krauss about another matter and at the conclusion of the conversation stated that "I'm sure no dentist working would deliberately do poor work. And that was a disgraceful and unprofessional thing to say." Krauss replied that, "If you don't like it, you can leave." Respondent, on its behalf, submitted no evidence to substantiate Krauss' assertions that the dentists had in any way attempted to, or did, sabotage its dental program after March 15.

Dr. Sidney Calem, a dentist who had practiced for approximately 36 years and had been employed by Respondent for 2 years in the Operative and Crown and Bridge Departments, testified that he had never signed a union authorization card, that he had not attended any union meetings, that he was opposed to the unionization of the dental clinic, and that he made his antiunion feelings known to his colleagues during lunchtime and during their best breaks.

Calem further testified that about a week before the clinic closed on April 30 he and Dr. Gus Goldberg were called to Krauss' office. When they arrived, Krauss informed the men that Dr. Jules Manford had failed to send to the laboratory a removable bridge taken from a patient who was having a crown made by Manford. According to Calem, Krauss "felt that this was such a basic thing, and that a man who had a lot of years of experience should not have made that mistake. And therefore, if he made the mistake, he felt that it might have been deliberate." Calem interjected and stated that "I don't think that Dr. Manford would have done it deliberately to either harm Dr. Krauss, the department, or the patient. I think that if it was done, it was strictly a human failure, a human mistake, and that he -either was careless or forgot but, but he never would have done it deliberately."¹⁵ In the course of this conversation, the subject of unionization arose. According to Calem's undenied testimony, Goldberg turned to Krauss and said, "Look, Dr. Krauss, I want you to know that we are not out for your job. We are not trying to get you fired or for anybody to get you out of your job. We know that you are a good administrator and we know that nobody else could do as good a job and we are not out for your job." Krauss rejoined, "I'm sorry, but I have to disagree with you. I feel that it was a personal vendetta against me, and that the reason that the whole thing started is that—because a lot of the men dislike me or dislike my manner and my way of talking" Krauss added that "the reason that the men decided to join a union or to get some local to represent them was because some of the men disliked him or hated him" Krauss further stated that "at the time Local 3 received the initial telegram that [the Union] was

going to represent the men, he was asked to come upstairs, and he was shown the telegram" and was queried as to whether he knew anything about the Union's campaign. When Krauss responded that he did not, his superiors inquired, "How come you are supposed to have your finger on everything going on and you know everything that is going on, how come you did not know that this was happening?" Unable to reply to this inquiry satisfactorily, Krauss felt foolish or stupid. Krauss concluded his recount of what had transpired "upstairs" by telling Calem and Goldberg that he had been stripped of his powers as director of the dental clinic and that "everything was out of his hands, whatever was going to occur now between Local 3 had nothing to do with him, it had to do with D'Angelo and Local 3, he had nothing to say anymore."

In his testimony, Dr. Gus Goldberg essentially corroborated Dr. Calem.¹⁶ However, Goldberg testimonially added without contradiction, and I find, that during the meeting Krauss received a telephone call from the laboratory and gained the intelligence that Manford had indeed dispatched the bridge item to the laboratory. Goldberg also remembered that a few days after the meeting with Krauss and Calem, D'Angelo assembled the dentists in the lounge and announced that "he would consider anything that Dr. Krauss felt was a malicious or sabotage act against him, Dr. Krauss would be the sole judge whether this was a malicious act or whether it was or not."

Krauss testimonially recalled that after the filing of the Union's petition on March 15 he undertook to check the dentists' work tickets more closely. While admitting that "there is no man practicing dentistry that's perfect in every detail. It's an impossibility," Krauss noted that a Dr. Rudy Falkin had been filling teeth improperly. According to Krauss, he "said nothing about it, because it was one individual, and it didn't mean that much, but I had notice of it." When asked whether Falkin had experienced this problem with restorations prior to March, Krauss replied that "The percentage wasn't that great."

Krauss further recounted that on April 8 he noticed from the work tickets and X-rays made by Dr. Lester Katz that the latter had restored a tooth in an unsatisfactory fashion. Krauss called Katz to his office, pointed out the deficiency, and advised Katz that "I didn't care to see him do it again."

On April 5, Krauss discovered that Dr. Jules Manford sent a faulty crown casing to the laboratory, which required its resubmission to that operation for repair. Krauss met with Manford, Goldberg, and Brunetto on that day to discuss the matter. Following this meeting, Krauss unsuccessfully sought to report this incident to D'Angelo.

Krauss left for his vacation on or about April 8 and returned to work on April 19. Upon his return he again reviewed the dental work tickets that had accumulated during his absence and discovered that Dr. Vierno's records indicated that Vierno had filled perfectly normal teeth.¹⁷ Summoning Drs. Brunetto and Goldberg, Krauss showed them the X-rays for confirmation of his observation. The follow-

¹⁵ Both Calem and Goldberg testified that Manford had been the victim of a recent stroke, an event which was known to Krauss.

¹⁶ On the stand, Goldberg mistakenly placed Dr. Ralph Corliss, another opponent of the Union, rather than Dr. Calem, at this meeting with Krauss concerning the Manford matter.

¹⁷ Krauss testified, and I find, that prior to March 15 he had never inspected the dentists' work records in any detail. According to Krauss, he inspected "maybe a dozen" during 1975.

ing day Krauss sought out D'Angelo and recited his critical findings regarding Vierno's work. D'Angelo inquired whether the entire matter might have been a mistake, and Krauss answered in the negative. D'Angelo then asked, "what would you normally do," and Krauss responded, "throw him through a window." At this juncture, D'Angelo advised Krauss to "play it cool, go back downstairs . . . keep a close eye on him, see what he's doing, and see if he's attempting to set a pattern here." Krauss dutifully returned to his office and made a further check of Vierno's records. In doing so Krauss discovered that Vierno had been a derelict in his dental duties on March 24, twice on March 30, and on April 6, 7, and 19, almost all of which incidents occurred prior to Krauss' absence on vacation and which were readily available to him before April 8. Despite these newly found deficiencies, Krauss admitted that he never relayed this information to D'Angelo.¹⁸

Finally, Krauss claimed on the witness stand that on April 28 he received a telephone call from the laboratory informing him that Dr. Jules Manfred had sent over a faulty crown. On April 29, Krauss beckoned Drs. Goldberg, Calem, and Manfred to his office. When they arrived, Krauss asked Manfred, "Jules, are you trying to [provoke] me into firing you?" Thereupon, Krauss berated Manfred about the quality of his work, at which point Manfred angrily left the office. Turning to Goldberg and Calem, Krauss inquired, "what am I supposed to do with this man?" Goldberg responded, "Sid, this is not directed against you." When Krauss pressed for the purport of this comment, Goldberg stated, "well, organizing." Krauss retorted, "don't talk to me about organizing," and Goldberg rejoined, "This is not directed against you. We don't want you to lose your job. You know, it's nice working here." Krauss shot back, "look, don't give me that, because I've taken this thing as a very, very personal thing, ever since it first started, because from the minute I got that telegram, I knew you gentlemen had absolutely no confidence in me, and you looked for someone else to help you out in your dealings with the Pension Committee. Since I've been the one to go pushing for your increases in salary every year, and the first time, because of an economic situation, there's nothing doing in the way of an increase, you go out and you organize; if that's what you want, you go ahead. . . . I'm going to have to thank you for this, too. Because there's going to be a certification election here, and if you gentlemen certify any organization to represent you, it means you're off my back, I don't have to have a damn thing to do with your welfare and with you."

Dr. Theodore Eiges, a dentist who had been employed by Respondent for several years, testified that on May 1 the day following the closure of the dental clinic, he reported for work under the mistaken impression that the facility was still in operation. As he entered the elevator, he encountered Dr. Krauss and exchanged greetings with the latter. When the two men disembarked on the second floor, Eiges noted that the clinic was darkened and deserted. Turning to Krauss, Eiges inquired as to what had happened. Krauss handed Eiges an envelope which contained

the latter's paycheck and an explanatory letter, and stated that "it will all be explained in this envelope . . ." Eiges pressed Krauss on the matter, and the clinic director remarked, "You fellows joined the Teamsters . . . now you get jobs as truck drivers." In his testimony Krauss acknowledged that he had engaged in a conversation with Eiges on May 1 at the clinic, but denied that he mentioned anything about the Union or told Eiges to seek employment as a truck driver. Eiges impressed me as a sincere and honest witness, and I credit his testimony in this regard.

Dr. Ralph Corliss, who had been employed by Respondent as a dentist in the clinic for approximately 9 years prior to its elimination on April 30, testified without contradiction, and I find, that he had never signed a union authorization card, that he had never attended a union meeting, that he opposed the unionization of the clinic, and that he enjoyed a close personal relationship with Dr. Krauss, the clinic's director. Corliss related that on or about May 7 he spoke with some of the dentists who were greatly disturbed by the elimination of the dental facility because it was their main source of income. Knowing that Corliss was on friendly terms with Krauss, his colleagues asked him to query Krauss about the prospect of reopening the clinic. Corliss thereupon met with Krauss, and in the ensuing conversation, the former stated that "I mentioned the fact that I was there at the request of some of the men and asked him whether there was any chance of re-opening the clinic." Krauss replied that "he was very doubtful about whether anything could be done and we started to talk and he said that he felt that negotiations between the Teamsters union and Local 3 would get nowhere." By this statement, according to Corliss, Krauss meant that "the decision was not his and that if the men were willing to accept reduced hours — in other words, he claims that he had to cut the payroll because of the budget, then he felt he could go upstairs and try to convince them to open the clinic, no assurances that he would be successful."¹⁹ Krauss added that "they wouldn't be able to negotiate a settlement and pursuant to the conversation he felt that if the vote, when we had the vote to accept or reject, the Teamsters, was against the Teamsters union and if this, this was all his feeling."

Sometime after May 7, Krauss and Corliss again met to further discuss the matter of the resumption of dental operations. During their dialogue, Corliss "asked him [Krauss] again whether anything new, any chance of re-opening the clinic, because again everybody including myself need this income. He said nothing much had changed and that what we discussed the last time still held." According to Corliss, "it was a question of not getting anywhere with the Teamsters and I mentioned, do you think that they would accept meeting the Joint Board, or the Joint Board would accept an AFL CIO union and he said he didn't know, we could ask. He felt it would have been a better choice originally." Krauss reiterated that any attempt to arrange a bargaining session between the Teamsters and the Joint Board would not abound with success.

Following his May 7 conversation with Krauss, Corliss, whose antiunion feelings were well known to the dentists,

¹⁸ I would note that Krauss' criticism of the work deficiencies of the dentists and other improprieties in their department after March 15 was directed exclusively to dentists who had signed union authorization cards.

¹⁹ The Flushing, Queens, installation, a four-story structure, houses the medical and dental clinics. The third and fourth floors are occupied by the officials of Local 3. By the use of the term "upstairs," I find that Krauss had obvious reference to the Local's officialdom.

relayed the results of his discussion with Krauss to his colleagues. Corliss opined that because of his known opposition to the unionization of the clinic the proponents of the Union's cause never approached him to join that labor organization due to their fear that Corliss might "go back and sort of squeal" However, "after they [the Union adherents] had the majority, I think they came out in the open" Rounding out Corliss' testimony, he reported that at no time during his conversations with Krauss did the director ever mention that the dental clinic would be closed because of economic difficulties, nor did any official of Respondent ever tell the dentists prior to its termination on April 30 that the dental operation would be eliminated.

Based upon the foregoing, I find that Dr. Paul Brunetto warned Respondent's dentists on several occasions during the month of April that Respondent would inspect their work records more closely for ostensible dental errors because they had joined and assisted the Union. I conclude that Respondent thereby violated Section 8(a)(1) of the Act. I further find that on May 1 Dr. Sidney Krauss informed Dr. Eiges that because he and the other dentists had supported the Union they should search for work as truckdrivers. I find that by this statement Krauss unlawfully threatened Eiges in order to wean him away from casting his lot with the Union in the forthcoming election, and I conclude that Respondent thereby offended the provisions of Section 8(a)(1). I also find that following the filing of the Union's representation petition on March 15 Respondent, through its supervisors and agents Krauss and D'Angelo, accused its dentists of circulating rumors that the dental clinic would be closed, of sabotaging the operation of the clinic, and of performing inadequate dental work, and subjected the dentists to closer and stricter supervision of their work, all in an attempt to dissuade them from joining the Union and supporting it in the election scheduled for May 21. By this conduct, I conclude that Respondent violated Section 8(a)(1) of the statute. Finally, I find that on May 7 and thereafter Clinic Director Krauss warned the dentists that the selection of the Union as their collective-bargaining agent to obtain more attractive employment benefits would be an act of futility, and encouraged them to forsake the Union and embrace a labor organization affiliated with the AFL CIO in order to better themselves. I conclude that by the foregoing statements of Krauss Respondent violated Section 8(a)(1) of the Act.

I turn next to a consideration of the legality of the closure of the dental clinic on April 30. The General Counsel urges that the elimination of the clinic on that date was prompted solely by Respondent's desire to punish the dentists for having selected the Union as their collective-bargaining representative and to avoid dealing with the Union in collective-bargaining negotiations. On the other side of the barricades, Respondent maintains that it terminated operations at the dental clinic purely out of economic considerations and that the closure lacked any discriminatory overtones.

For some 20 years, Respondent maintained medical, optical, and dental clinics on the second floor of its building in Flushing, Queens, where it provided health care for its members and their families with funds provided under collective-bargaining agreements with various employers and employer associations. In the 1970's, because of depressed conditions in the construction industry, Respondent com-

menced to experience deficits in its health and welfare funds, which its pension committee controlled and disbursed. This happenstance prompted the joint board to explore various avenues to effect monetary savings in order to achieve solvency and to continue the provision of health care for its members. Several audits were taken of Respondent's financial resources for the year 1975, and these indicated that the health and welfare fund had suffered a loss of approximately \$2,400,000. At a meeting of the pension committee in February, it was estimated that the loss for the fiscal year 1976 would be even greater due to worsening economic conditions, in consequence of which the trustees of the pension committee instructed Director of Health Services Joseph D'Angelo and his father, Armand D'Angelo, the chairman of the joint board, to embark upon an in-depth study of areas where savings could most effectively be garnered. As a result, and according to Joseph D'Angelo's testimony, he commissioned his assistant to contact participating hospitals to ascertain whether Respondent could achieve any monetary gain by paying the medical hospitalization benefits directly to the institutions rather than to the members. D'Angelo also approached the director of the medical department as well as Dental Clinic Director Krauss during that month and encouraged them to explore the ways and means of cutting down on the costs of the operation of their respective clinics. However, by his own admission, Joseph D'Angelo conceded that no decision was reached to close the dental clinic until April 29, and that this action was spuriously undertaken.

Thus, D'Angelo testified that on April 28 the pension committee met to consider the prospect of reducing benefits to its members and their families. When questioned as to whether the subject of closing the dental clinic arose at this conclave, D'Angelo responded in the negative. Indeed, D'Angelo volunteered that at this meeting the pension committee had surveyed the feasibility of constructing a retirement home for members at its location in Bayberryland, Long Island, a venture which would have entailed considerable expense. In his testimony D'Angelo further recited that he and his father, Armand, attended a charity luncheon at a New York City hotel on April 29. When the affair ended, he and Armand repaired to an anteroom and, after several hours of deliberation, unilaterally decided to terminate the dental operation.²⁰ This decision was communicated to the dentists for the first time on April 30, when the clinic was shut down. According to D'Angelo's own admission, the decision to close the facility was made without prior consultation with, or approval by, the pension committee, the joint committee, Local 3, or the various contributing employers.²¹ When questioned as to what considerations were given to the economic feasibility of phasing out the dental clinic, D'Angelo responded that "it really didn't make any economic sense to phase it out." Moreover, he acknowl-

²⁰ While D'Angelo acknowledged that both he and his father were aware that the Regional Director had ordered an election among the dentists by decision of April 21, he proclaimed that this official order played no role in their determination to cease dental operations.

²¹ That the D'Angelo decision to close the clinic was violative of the terms of the trust agreements creating the facility is demonstrated by a perusal of those agreements, which provide that the elimination of a benefit created thereunder must be premised upon the unanimous vote of the pension committee, with the consent of Local 3 and the participating employer-members.

edged that he had never made any in-depth study of the monetary amounts which might be saved by a reduction in benefits at the dental clinic, that he and his father, Armand, gave no consideration during their deliberations on April 29 to the curtailment of medical benefits or the elimination of the medical department as a means of saving money, and that the closure of the dental clinic resulted in shaving only 20 percent of the deficit which the health and welfare funds had incurred.

Viewing the entire record made in this proceeding, I am convinced and find that Respondent elected to close its dental clinic on April 30 not because it was impelled to do so in order to correct its health care funding problems, but because it decided to punish its dentists for selecting the Union as their collective-bargaining representative.

In *Textile Workers Union of America v. Darlington Manufacturing Co., et al.*,²² the United States Supreme Court announced that "By analogy to those cases involving a continuing enterprise we . . . hold . . . that a partial closing [of a business] is an unfair labor practice under §8(a)(3) if motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may reasonably have foreseen that such closing would likely have that effect." In *George Lithograph Company*,²³ the Board noted:

With respect to the correct formulation of the test established by the Supreme Court in *Darlington* and its application to the facts of this case, we believe our observations in the Supplemental Decision on Remand in *Darlington*, 165 NLRB 1074, are relevant. We stated there that in determining whether a purpose to "chill" existed we would rely on the "fair inferences arising from the totality of the evidence considered in the light of then-existing circumstances." We noted that proof of the requisite motivation to "chill" could be provided by something less than the direct evidence "rarely available in these cases."

Thus we concluded that only on the facts of *Darlington*, wherein it had been found that the plant was closed because of opposition to the union, the incidence of such directly causative antiunion motive strengthened the probability of a second antiunion purpose—i.e., the "chilling" of remaining employees in the exercise of their Section 7 rights. We pointed out that while proof of one antiunion motive would not *ipso facto* establish the other, depending on all the facts and circumstances, it would indicate a disposition toward the other and be sufficient to support a logical inference.

Applying the rationale developed in *George Lithograph Company* to the instant proceeding, it is clear that the closure of the dental clinic on April 30 and the consequent discharge of the dentists and the supporting clerical personnel fell within the proscriptive ambit of Section 8(a)(3) of the statute. The evidence chronicled above preponderantly establishes that Respondent terminated the dental clinic in order to avoid recognizing and bargaining with the Union as the collective-bargaining agent for the dentists. The rec-

ord demonstrates that, as in the *George Lithograph Company* case, Respondent operated a health care unit on the same floor of its Flushing, Queens, building, consisting of medical, dental, and optical departments and supporting clerical employees, which building also housed Respondent's business offices. All clinics were under the direct and immediate supervision of Director of Health Services Joseph D'Angelo. The doctors who worked in the medical and optical clinics were unrepresented by any labor organization, while the clerical personnel who serviced the various departments were represented by a union affiliated with the AFL-CIO. To paraphrase the Board's pertinent language in *George Lithograph Company*, Respondent's closure of its dental clinic on April 30 with the openly avowed purpose of blocking the Union's organizational activities in that area could not but operate as a deterrent to the exercise of Section 7 rights by the remaining employees. Given the proximity of the dental facility and Respondent's other health care operations, as well as the frequency and vehemence with which Respondent proclaimed its opposition to the Union, it may reasonably be inferred, and I find, that the "chilling effect" of the conduct in issue on other employees was entirely a foreseeable, and hence intended, consequence of that conduct. Moreover, the fact that the clerical employees were currently represented by another labor organization does not negate a finding that Respondent's action in terminating the dental clinic was aimed at "chilling" the exercise of Section 7 rights by those employees. For, as the Board commented in *George Lithograph Company*, "Employees have the right to replace their current bargaining representative with another representative. This right lies exclusively with the employees and is one that employees should be free to exercise without interference or pressure from their employer."²⁴

In sum, I find that Respondent closed its dental clinic on April 30 in order to discourage membership in and organizational activity on behalf of the Union and to chill the exercise of Section 7 rights by its other employees. I therefore conclude that by discharging its dentists on April 30 and terminating the dental clerical employees in May Respondent violated Section 8(a)(3) of the Act.

I have heretofore found that on March 14, 16 of Respondent's dentists attended a union meeting at which they designated that labor organization as their collective representative to bargain with Respondent concerning their wages and other terms and conditions of employment.²⁵ With the exclusion of Dr. Paul Brunetto, whom I have found to be a statutory supervisor and agent of Respondent, the Union thus represented 16 out of 30 dentists in an appropriate unit, clearly a majority showing. On March 15, the Union made a telegraphic demand upon Respondent for exclusive representation of the latter's dentists, which demand the Respondent ignored. On March 17, the Union filed its petition for an election with the Board in Case 29-RC-3343. The record amply demonstrates, and I have found, that

²⁴ *Id.* at 432.

²⁵ The following dentists executed union designations on that date: Joseph Alcalay, Gus Goldberg, Irving Nachbar, Gerald Nesse, Joseph Vierno, John Warren, Monte Greenwood, Jules Manford, Edgar Nash, Sidney Miller, Lawrence Miller, Seymour Levine, Robert Kramer, Lester Katz, Rudolph Falkin, and Martin Garfield.

²² 380 U.S. 263, 275 (1975).

²³ 204 NLRB 431 (1973).

between March 15 and the middle of May Respondent indulged in a continuous and deliberate campaign of coercive interrogation, threats, and harassment of its dentists. Moreover, on April 30, Respondent closed its dental clinic and discharged all its dentists and the dental clerical employees in order to avoid recognizing and bargaining with the Union.²⁶

In view of the nature and pervasiveness of the Respondent's unfair labor practices, as described above, the establishment of the Union's majority status on the date of its recognitory demand upon Respondent, and Respondent's refusal to deal with the Union as the representative of its dentists, I conclude that Respondent violated Section 8(a)(5) of the Act by refusing to recognize and bargain with that labor organization as the majority representative of its dentists. As Respondent's misconduct rendered it impossible to hold a fair election in which to test the dentists' representational desires, I conclude that a bargaining order is warranted to best protect the dentists' rights. I shall therefore order that Respondent, upon request, recognize and bargain with the Union.²⁷

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described 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 thereof.

V. The Remedy

I have found that Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed to them under Section 7 of the Act and thereby violated Section 8(a)(1) of the statute. I shall therefore order that Respondent cease and desist therefrom.

Having found that Respondent closed its dental clinic and discharged its dentists on April 30 because they joined and assisted the Union, and discharged its dental clerical employees in May in order to chill their ardor for unionism, all in violation of Section 8(a)(3) of the Act, I shall recommend that Respondent be ordered to resume its dental operations.²⁸ I shall also recommend that Respondent offer

²⁶ During the month of May, Respondent severed the following dental clerical employees from its employment rolls: Barbara Bernstein, Phyllis Chenrick, Sheryl Furman, Clair Gallagher, Sylvia Grubert, Sharon Hutcherson, Joan Kershak, Pam Levy, Airlia Paul, Bonnie Rauch, Billie Reinhart, Sylvia Sporn, Sherry Strauss, Helen Thompson, Leanne Williamson, Rita Casey, and Donna Gardenfeld.

²⁷ *Trading Post, Inc.*, 219 NLRB 298 (1975); *Curtin Mathieson Scientific, Inc.*, 228 NLRB 996 (1977).

²⁸ The resumption of the dental clinic should impose no undue hardship

immediate and full reinstatement to the dentists and dental clerical employees, whose names are listed in the Order below, to their former jobs or, if they no longer exist, to substantially equivalent employment and make them whole for any loss of pay which they may have suffered as a result of the discrimination practiced against them. The backpay provided for herein shall be computed in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon at the rate of 6 percent per annum in the manner prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

I have also found that Respondent violated Section 8(a)(5) by refusing to bargain with the Union on and after March 15 and that a bargaining order can best effectuate the representational desires of the dentists, which were once expressed through a majority card showing. I shall therefore recommend that Respondent, upon request, bargain collectively with the Union and, if agreement is reached, reduce said agreement to writing.

Upon the basis of the foregoing findings of fact and conclusions, and upon the entire record made in this case, I hereby make the following:

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 interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By closing down its dental clinic and discharging employees for the purpose of discouraging membership in, sympathy for, or activity on behalf of the Union or any other labor organization by employees of such operation and in order to discourage such activity by other employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

5. By refusing to recognize and bargain with the Union regarding the unit of dentists herein found appropriate since March 15, 1976, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices within the purview of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

upon Respondent, for Director of Health Services Joseph D'Angelo testified, and I find, that the dental equipment had not, at least up until the time of the hearing, been removed from the dental clinic.