

Louton, Inc. t/a The Original Oyster House and Dolores DeGeer. Case 6-CA-15962

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 29 September 1983 Administrative Law Judge James T. Youngblood issued the attached decision. The Respondent filed exceptions and a supporting brief on 24 October 1983 and the General Counsel filed cross-exceptions and an answering brief on 17 November 1983.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.

The judge found violations of Section 8(a)(1) of the Act by the Respondent's reduction of hours of three employees¹ and by its discharge of two employees.² The judge also found that an interview of one employee by the Respondent and the Respondent's attorney immediately prior to the employee's giving testimony at a Board hearing violated Section 8(a)(1) of the Act because the Respondent failed to give adequate assurances to the employee that no reprisals would take place.³ The judge dismissed complaint allegations that the Respondent had instructed its employees to refrain from discussing matters of mutual aid and protection and that the Respondent had imposed more onerous working conditions on Dolores DeGeer. The Respondent has excepted to the judge's findings of 8(a)(1) violations and the General Counsel has excepted to the recommended dismissal of the two complaint allegations.

We agree with the judge's findings of 8(a)(1) violations and his conclusion that the evidence was insufficient to establish that the Respondent had in-

structed its employees to refrain from discussing matters of mutual aid and protection.

We disagree with the judge's finding that the record evidence fails to establish that the Respondent imposed more onerous working conditions on Dolores DeGeer. Witnesses for both the Respondent and the General Counsel testified that in late October 1982 new work rules were imposed requiring that work stations be assigned by supervisors and be rotated among waitresses. Undisputed testimony also establishes that Dolores DeGeer was assigned only the least desirable work station, number 3, and that she alone among the waitresses was not rotated. There is no evidence or assertion that Dolores DeGeer was less capable of handling the other work stations (in fact the opposite was established). We find that the assignment of Dolores DeGeer to work only station 3 and the failure to rotate her to the more favorable work stations in the circumstances here constitute the imposition of more onerous working conditions in violation of Section 8(a)(1) of the Act.

Accordingly we shall adopt the judge's recommended Order to the extent it finds violations of Section 8(a)(1) of the Act except that we shall modify it to reflect the finding that the Respondent imposed more onerous working conditions on Dolores DeGeer in violation of Section 8(a)(1) of the Act and to include narrow rather than broad cease-and-desist language.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Louton, Inc. t/a The Original Oyster House, Monroeville, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c).

"(c) Discharging its employees, removing its employees from its work schedule, or otherwise altering its employees' working conditions because they engaged in protected concerted activity."

2. Insert the following as paragraph 1(d) and reletter the subsequent paragraph.

"(d) Imposing more onerous working conditions on its employees because of their protected concerted activities."

3. Substitute the following for paragraph 1(e).

"(e) In any like or related manner interfering with, retraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act."

4. Substitute the attached notice for that of the administrative law judge.

¹ The judge's finding of reduction of hours is supported by the Respondent's exhibits of employee payroll records. The "gross fluctuations" referred to by the Respondent are in fact minimal and the judge's conclusions regarding hours worked specifically cite the Respondent's payroll records and do not rely on the recollections of employees.

² The judge found *inter alia* that the Respondent violated Sec. 8(a)(1) by discharging or constructively discharging Dolores DeGeer. We find in the circumstances here that the Respondent's cancellation of DeGeer's schedule in its entirety constituted a discharge. Hence we do not adopt his alternative finding that DeGeer was constructively discharged.

³ In adopting the finding of this violation we rely on the fact that statements of a clearly coercive nature were made to the employee by the Respondent during the interview and therefore we find it unnecessary to rely on the judge's rationale under *Johnnie's Poultry Co.*, 146 NLRB 770 (1964).

APPENDIX

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

WE WILL NOT interrogate our employees concerning their protected concerted activities guaranteed them by Section 7 of the Act.

WE WILL NOT reduce the working hours of our employees because of their protected concerted activities guaranteed them by Section 7 of the Act.

WE WILL NOT impose more onerous working conditions on our employees because of their protected concerted activities.

WE WILL NOT discharge our employees, remove our employees from our work schedules, or otherwise change the working conditions of our employees because of their protected concerted activities.

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

WE WILL offer Dolores DeGeer and Doreen DeGeer Dunmire immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL make whole, with interest, Dolores DeGeer, Doreen DeGeer Dunmire, and Denise DeGeer Churchel for any loss of earnings they may have suffered as a result of our reduction of their hours.

LOUTON, INC. T/A THE ORIGINAL
OYSTER HOUSE

DECISION

STATEMENT OF THE CASE

JAMES T. YOUNGBLOOD, Administrative Law Judge. The complaint which issued on February 1, 1983, and was amended at the hearing, alleges that Louton, Inc. t/a The Original Oyster House (herein the Respondent) retaliated against its employees because its employees engaged in concerted activities with each other and other employees for the purpose of mutual aid and protection, in violation of Section 8(a)(1) of the Act. The Respondent filed an answer admitting certain allegations of the complaint but denying the commission of any unfair labor practices. This matter was tried before me on May 3, 24, and 25, 1983, in Pittsburgh, Pennsylvania. Follow-

ing the hearing the parties submitted posttrial briefs which have been duly considered.

On the entire record, from my observation of the demeanor of each witness while testifying, and having considered the briefs filed herein, I make the following

FINDINGS AND CONCLUSIONS¹

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Pennsylvania corporation engaged in the operation of public restaurants selling food and beverages. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Only the Respondent's restaurant facility located in Monroeville, Pennsylvania, is involved in this proceeding. The employees at the Respondent's Monroeville facility are not represented by any labor organization and no labor organization is involved in this proceeding.

The record clearly shows that the most senior waitress at the Respondent's Monroeville facility is Charging Party Dolores DeGeer (herein DeGeer) who was hired on May 10, 1976. DeGeer has five daughters who, during the course of the Charging Party's employment with the Respondent, were employed by the Respondent. The five daughters are Debbie DeGeer, Dana DeGeer, Diane DeGeer Hill, Denise DeGeer Churchel, and Doreen DeGeer Dunmire. The record also adequately demonstrates that DeGeer, the Charging Party, was considered by the daughters as well as other employees at the Monroeville facility to be the natural leader and the person to whom they brought their problems and complaints so that she could intercede on their behalf with management. There is little doubt that there existed a special relationship between Charging Party DeGeer and the management of the Respondent evidenced by the fact that the Respondent employed all five of her daughters at its Monroeville facility.

Diane DeGeer Hill was employed by the Respondent as a waitress at the Monroeville facility from November 13, 1980, until she resigned on October 16, 1982. Hill credibly testified that on April 9, 1982,² Good Friday, she arrived at work between 3:30 and 4 p.m., approximately an hour or so prior to her 5 p.m. scheduled starting time. Hill had arrived early so that she might obtain something to eat prior to her shift, as Good Friday was a very busy day and she knew she would not get a break. While sitting at a table in the rear of the restaurant she

¹ The facts found herein are a compilation of the credited testimony, the exhibits, and stipulations of fact, viewed in light of logical consistency and inherent probability. Although these findings may not contain or refer to all of the evidence, all has been weighed and considered. To the extent that any testimony or other evidence not mentioned in this decision may appear to contradict my findings of fact, I have not disregarded that evidence but have rejected it as incredible, lacking in probative weight, surplusage, or irrelevant. Credibility resolutions have been made on the basis of the whole record, including the inherent probabilities of the testimony and the demeanor of the witnesses. Where it may be required I will set forth specific credibility findings.

² Unless otherwise specified, all dates refer to 1982.

ordered a fish sandwich from waitress Tiana Leyland which was paid for by Hill. While she was eating Benny Pettica, the Respondent's manager, who is entrusted with the responsibility of supervising and operating all the Respondent's restaurants, approached Hill in the crowded restaurant and using profanity told her to go to some other restaurant, he did not want her business. Hill said she was sorry, that she did not realize she was not allowed to eat in the restaurant. Hill stood up and left the restaurant as Pettica had ordered her to do. According to Hill, she immediately came back because she had forgotten her purse and told Pettica that he could "shove it up his ass" because she did not need this job. Hill left the restaurant and did not work either April 9 or April 10. On April 10, Hill received a telephone call from Supervisor-Manager³ Donald Loporfito, who asked her if she had quit her job and, when she responded that she had, Loporfito asked her if she was coming back. Hill reluctantly agreed to return to work, explaining that her husband was laid off and she needed the money. She reported to work the following Monday, April 12. It is uncontested that other than the conversation of Loporfito asking Hill to return to work no member of management ever spoke with Hill about the incident nor was she ever disciplined in any way as a result of the confrontation.

During the week following her return to work, Hill discussed the incident among the employees, including her mother and her sisters, and following these discussions arrangements were made with management for a meeting where they could sit down and discuss the employees' problems.

On April 21, a meeting was held at the Monroeville facility as requested by the employees. The management representatives at the meeting included President Louis J. Grippo, Pettica, Loporfito, and Assistant Manager Pat Parme. The employees present at the meeting included DeGeer, Churchel, Dunmire, Hill, Sue Rohrbaugh, Lorraine Kalbaugh, and Tiana Leyland.

At this meeting the employees were assured by President Grippo that they could speak freely without fear of reprisals. DeGeer, the primary spokesperson for the employees, advised Grippo that they were there to talk about Bennie Pettica's foul mouth in the restaurant and his treatment of waitresses while they were on duty, especially in front of customers. Diane Hill related to Grippo the incident which had occurred with Pettica on Good Friday. Pettica called Hill a liar and stated that she had used profanity with him first, either calling him a "mother fucker" or telling him to "get fucked." The waitresses jumped up and responded that Pettica was lying. DeGeer, Hill, Rohrbaugh, Churchel, and Dunmire each spoke out concerning incidents between themselves and Pettica. All of the witnesses agreed that employee Tiana Leyland did not speak out at this meeting. Grippo informed the employees that he did not want this type of conduct in his restaurant from the employees or from Pettica. He emphasized that Pettica was their boss and it was important for them all to get along. The employees

then brought to Grippo's attention certain other matters concerning the operation of the restaurant which they felt were deficient such as the quality and quantity of the food and problems with service. The meeting lasted about an hour and a half. It appears that, prior to April, meetings between the employees and management were held on a regular basis several times a year. However, no meetings were held between management and the employees thereafter.

The complaint alleges that, in April, the Respondent's employees began to concertedly complain to the Respondent about wages, hours, and working conditions; that, since April, these employees engaged in other forms of concerted activities in that they requested the Respondent to meet with the employees concerning wages, hours, and working conditions; and that, in late October or early November, they requested the Respondent to meet and complained to the Respondent concerning the reduction of hours of employees. The complaint further alleges that, as a result of the continued complaints and other concerted activities on behalf of the Respondent's employees, the Respondent reduced the hours of employees Dolores DeGeer, Doreen Dunmire, and Denise Churchel; that in mid-October the Respondent instructed employees to refrain from discussing matters of mutual aid and protection; that in late October the Respondent imposed more onerous working conditions on Dolores DeGeer; that thereafter on October 19 the Respondent removed Doreen Dunmire from its work schedule; and that on November 19 the Respondent removed Dolores DeGeer from its work schedule.

In support of these charges the General Counsel called Dolores DeGeer and her daughters to testify along with certain other employees of the Respondent.

The record reflects that, around June 1, the Monroeville facility began offering breakfast for the first time. This resulted in an extension of the operating hours of the restaurant and changes in the schedules of certain employees. Prior to the institution of breakfast on June 1, Dolores DeGeer had worked throughout the course of her employment a regular schedule from 10:30 a.m. until 5 p.m., Monday, Tuesday, Wednesday, Friday, and Saturday. During that time she performed all of the setup work for the restaurant. According to the uncontradicted and well-corroborated testimony of DeGeer, following the institution of breakfast she began to work a regular schedule from 11:30 a.m. until 5 p.m. Two other employees worked from 8:30 a.m. until 3:30 p.m. and 9 a.m. until 4 p.m. Thus, DeGeer's schedule was reduced 1 hour per day. The complaint does not allege this reduction in work as a violation. On July 26, DeGeer entered a hospital for repair work on a disc in her back. She was discharged from the hospital on August 4, and was not to return to work for 30 days. Thereafter, sometime prior to September 4, DeGeer went to the restaurant and spoke with Benny Pettica. She informed him she was able to return to work and requested that he put her on the schedule. She explained she wanted to start out working only a couple of days a week until she saw how she was feeling and could determine whether she could handle the work or not. Pettica agreed. The first week

³ Although the Respondent denies Loporfito's agency status, this record adequately demonstrates that Loporfito is a supervisor and agent of the Respondent.

back DeGeer worked a Friday and a Saturday and the next week she was scheduled to work Monday, Friday, and Saturday. According to the uncontradicted testimony of DeGeer, that is the schedule she continued to work until she was removed from the schedule in November. She testified that after working the reduced schedule for several weeks she complained to Pettica and told him that she was feeling good and could handle a full 5-day schedule. Pettica said he could not take care of this for her and told her she would have to speak to Grippo. She explained that she had already called Grippo to speak with him and that he had never returned her calls. Pettica suggested that she call Margaret Jean Faust, the secretary and Grippo's sister. DeGeer did so and Faust responded that she should have a doctor's certificate stating that it was all right for her to return to her regular schedule. DeGeer complied with this request. She obtained a doctor's certificate which certified that she had recovered sufficiently to return to her regular duties on September 21.

In the latter part of September or early October, DeGeer approached Loporfito and requested a meeting with management. The reason for this request was because of the alleged reduction in hours and scheduled days suffered by DeGeer and others, and because the individual requests for an explanation to Loporfito had been unsuccessful. As indicated earlier no meeting was held.

After the restaurant began serving breakfast in June, DeGeer would have breakfast in the restaurant each morning before she began to work. One day in mid-October DeGeer was having breakfast prior to the start of her shift while employees Kalbaugh and Leyland were on duty. They were not busy and they were talking to DeGeer. They were discussing DeGeer's cut in hours and the fact that she was unable to make a living because she was not given a 5-day schedule as she had before her illness. DeGeer testified that she and the other waitresses frequently discussed matters such as schedules, hours, and other matters of mutual concern while she was having breakfast and as she spoke very loudly she was certain that Loporfito had heard their discussions many times. On this particular occasion in mid-October, Loporfito overheard their conversation as he approached the table where DeGeer was sitting and speaking to Kalbaugh and Leyland. According to the uncontradicted testimony of DeGeer, Loporfito addressed Leyland and Kalbaugh stating, "I do not want you talking to Dolly; stay away from her here; don't go near her." After the waitresses walked away, Loporfito told DeGeer, "I don't want you talking to the waitresses anymore; don't talk to anyone."

Following this occurrence in mid-October, management announced new rules which prohibited employees from eating any meals at the facility; prohibited them from being in the facility more than 5 minutes before scheduled to punch in; and required them to leave the facility immediately after their schedule was completed. The rule provided for 3 days' suspension for violation.

In late October, DeGeer checked the work schedule and observed that her daughter Doreen Dunmire was not scheduled to work the same number of days that she

had been working in the past. Her schedule had been cut down to 2 days a week. DeGeer was upset because her daughter Doreen was scheduled to be married on November 13 and, as DeGeer's hours had been cut, she would be unable to assist her daughter Doreen in paying for the wedding." She approached Loporfito and stated, "Don, why are you cutting everybody's hours; what is going on? . . . Why would you do this to Doreen?" Loporfito shrugged his shoulders. On October 19, Doreen Dunmire worked her last day as she was removed from the schedule by the Respondent.

According to the consensus of the General Counsel's witnesses, prior to late October or early November the Respondent had no policy with regard to the assignment of work stations for the waitresses. It appears that this was worked out among the waitresses and throughout the course of her employment, prior to September, Dolores DeGeer worked station 1 in the front of the restaurant. This station was preferred by DeGeer and her daughter Denise Churchel because it was the busiest station and provided the best opportunity for tips. This record clearly shows that from the time DeGeer returned to work after her illness she worked the back station and was never returned to work in the stations in the front of the restaurant. While initially there may have been some reason for this because DeGeer had requested light duty, certainly after she presented her doctor's certificate on September 21, indicating that she could return to full duty, there was no reason the Respondent could not have returned her to the front station as she requested.

The testimony of the General Counsel's witnesses indicates that, in the latter part of October, Manager Loporfito announced to the waitresses that they could no longer pick their own stations. He informed them that he would designate each morning the station where each waitress was to work. From that time forward Loporfito would designate each morning at 9 a.m. where the waitresses were to work. Unlike the other waitresses whose stations were in fact rotated on a daily basis, DeGeer's station was never rotated and she remained at the back station throughout the last day of her employment. She requested to be off on Saturday, November 13, to attend the wedding of her daughter Doreen Dunmire. The next week she was not scheduled to work her Saturday, November 20, and was thereafter reduced to 2 days per week. On November 19, DeGeer reported to work at noon as scheduled. The restaurant was very busy at that time and DeGeer asked her daughter Denise Churchel which station she was assigned to work. Her daughter told her to work station 2. DeGeer worked station 2 and as time passed she realized there must be a problem because Loporfito was pacing the floor and watching every move she made. It was not until she took a break at 3 p.m. that she learned from employee Lorraine Kalbaugh that she was supposed to work station 3 in the back and not station 2. At 3:30 p.m. Mary Wakefield arrived to relieve Tiana Leyland and at this point Loporfito instructed Wakefield to take station 2 from DeGeer and instructed DeGeer to take station 3 in the back. There is no question but that November 19 was the last

day that DeGeer worked at the Respondent's facility. There is also nothing in this record to indicate that management ever reprimanded DeGeer or informed her that she was being suspended or that she had been taken off the schedule as a result of this incident on November 19.

On November 21, DeGeer went into the kitchen of the Respondent's facility where the schedules are posted in order to see the schedule for the following week. DeGeer stopped by on Sunday because she was no longer working Saturdays and she wanted to check the work schedule. She said that she and her daughter Denise Churchel were not scheduled for work that week. Once her name was removed from the schedule she did not contact the Respondent any further.

Doreen DeGeer Dunmire was first employed by the Respondent as a waitress on July 26, 1978, and worked for the Respondent until October 19. Dunmire is one of the daughters of Dolores DeGeer and was one of the employees present at the Good Friday meeting on April 9. Prior to September, Dunmire worked 4 to 5 nights per week from 5 until 11 p.m. and always worked on the weekends. Beginning in September, she observed that her hours and her days were cut back progressively until, after October 19, she was no longer on the schedule. In September, Dunmire approached Loporfito and asked him why her days and hours were being cut. He told her that there were some new girls and that he had to give them some hours. Dunmire testified that no supervisor or member of management had ever told her that she was being taken off the schedule or why she was taken off the schedule. She testified that, on the Sunday following October 19, she called in to get her schedule and was told that she was only working on Saturday. She relayed this to her mother, Dolores DeGeer, who told her that she had checked the schedule and she was not on the schedule at all. Because Dunmire had received conflicting information she went to the Monroeville facility herself and checked the schedule. She confirmed that she was in fact not on the schedule at all for the following week. Dunmire testified that approximately 2 weeks before October 19 she overheard Pettica and Loporfito talking at the bar approximately 4 feet away from where she was getting her drinks. She testified credibly that Benny Pettica told Don Loporfito, "I want Doreen DeGeer out of here, out of the Oyster House, within 2 weeks."

Employee Susan Rohrbaugh testified that she had been employed by the Respondent since October 1979. She testified credibly that 2 days prior to the hearing in this matter on May 1, 1983, she received a telephone call at her home from Andrew Schifino, the Respondent's counsel in this matter. She testified that Schifino stated that he understood that she had been subpoenaed for this hearing on Tuesday. She stated that was correct and he asked her if she knew why she was being subpoenaed. When she said she had a general idea Schifino asked if she would meet with him. She agreed to meet with him at 3 p.m. at the Oyster House in Monroeville as proposed by Schifino. At no time during this telephone conversation did Schifino explain to her the purpose of the proposed meeting or why he wanted to speak with her. He gave her no assurances that her attendance was vol-

untary and no assurances that there would be no reprisals or that her job was not in jeopardy. He did not inform her that any other person would be present at the meeting nor did he explain that he wanted to speak with her in order to prepare for the unfair labor practice hearing.

Rohrbaugh met Schifino at the Oyster House at 3 p.m. Also present were Respondent President Grippo and Manager Pettica. According to Rohrbaugh, the meeting lasted about 3 hours. Rohrbaugh credibly testified that during this interrogation Grippo told her that, if her testimony should be favorable to him, he could not promise her either her job back as it had been before or more hours. He also stated that he wanted to let her know "that he thought that Denise Churchel was very much mistaken, that she could come here and give testimony because her job was protected and that he, in turn, could fire her tomorrow if he wanted to but, in fact, she was a very good waitress and he had no reason to let her go but, if he wanted to he certainly could and that he felt that she would not be there after this trial was over, that she would quit." Rohrbaugh testified that during this time Grippo took a small tape recorder out of his pocket, placed it on a table, and pointed out to her that it was not on.

Discussion and Conclusions

This record adequately demonstrates that, as early as April at the Good Friday employee-employer meeting, the employees aired their grievances and complaints to the Respondent. They complained about Manager Pettica and his foul mouth to Respondent President Grippo, who reprimanded Pettica and the waitress involved. Throughout the period from April until November, the waitresses at the Monroeville facility continued to discuss their problems and complaints of the Monroeville restaurant among themselves and in the presence of the Respondent's supervisors, Loporfito and Pettica. The record reflects that during this period complaints were made to management about working conditions and meetings were requested but none was ever held. The complaint alleges that, because of these concerted activities among the employees for their mutual aid and comfort, the Respondent began to retaliate in violation of Section 8(a)(1) of the Act. As I have indicated, there is no doubt that these employees had engaged in protected concerted activities within the meaning of the Act, and I so find.

The record reflects that following the April meeting with management the restaurant started serving breakfast, which it had not done before. As a result of this institution of breakfast, new employees were hired and hours were changed, which resulted in some of the employees working less hours. There is no allegation in the complaint alleging any violations of the Act with regard to any of these reductions in hours up until at least September.

The record reflects that, in the latter part of July, Dolores DeGeer was hospitalized for an operation and did not return to work until mid-September. On returning to work in mid-September she requested that she only work

a couple of days a week. She was given this number of days to work, and assigned to work in the back of the restaurant, the least busy part of the restaurant.

After working the reduced schedule for 2 weeks, DeGeer approached Pettica, told him that she was feeling fine, and requested to work 5 days a week. Pettica said he could not arrange this, that she would have to talk to Grippo. DeGeer explained that she had tried to call Grippo but he did not return her calls. Pettica then suggested she talk to Grippo's sister, the secretary. This resulted in the Respondent's requesting DeGeer to produce a doctor's certificate indicating that she was able to work full time. A doctor's certificate was obtained and presented to the Respondent on September 21, but DeGeer's hours did not change. She continued to work Monday, Friday, and Saturday, until she was removed from the schedule on November 19, 1982.

Because she could not get her schedule changed and because she had heard complaints of other employees relating to their reductions in hours, DeGeer approached Loporfito in late September or early October and requested a meeting with management. No meeting was ever held. It was shortly after these requests for a meeting, and after Loporfito obviously heard DeGeer's conversations with other employees in the restaurant, that Loporfito informed employees Leyland and Kalbaugh that he did not want them talking to Dolly DeGeer and to stay away from her. At the same time Loporfito told DeGeer that he did not want her to talk to the other waitresses anymore.

The Respondent argues that these conversations between DeGeer and the employees were taking place on company time and that the Respondent's only gripe was that DeGeer was bothering the employees while they were working. I do not believe that this was the reason that Loporfito was angry. It is my conclusion and finding that Loporfito was angry at DeGeer not because she was talking to the employees on company time but because of the things that she was talking about, the reduction in hours and their other complaints relating to their work. Loporfito was angry and did not want DeGeer to discuss these problems with these employees. At no time did he complain about the employees talking on company time; his gripe was that they were talking to DeGeer.

In any event, within a week after this occurrence new rules were announced which prohibited the employees from eating any meals at the facility, and required them to be in the restaurant only 5 minutes before scheduled to punch in and to leave the facility immediately after the schedule was completed.

It is my conclusion that the Respondent, knowing that Dolores DeGeer was the ringleader and spokesperson for the employees, looked for an opportunity to rid itself of her. Therefore, when DeGeer, on returning to work, requested that she work only a short number of hours, the Respondent was more than glad to comply with this request. However, once the Respondent had put DeGeer on light duty it absolutely refused to give her back her old schedule of 5 days per week. The Respondent knew that DeGeer could not live on this amount of money, and, when DeGeer continued working the short schedule, the Respondent canceled her schedule entirely.

I do not accept the varying reasons that the Respondent assigns as to why DeGeer was no longer on the payroll. It appears to me and I find that the Respondent retaliated against DeGeer by reducing her working hours in September, and by failing to provide her with a full schedule and ultimately removing her from this schedule, thereby discharging her or constructively discharging her because of her protected concerted activities on her own behalf and on behalf of her fellow employees in violation of Section 8(a)(1) of the Act.

Doreen DeGeer Dunmire was first employed as a waitress by the Respondent on July 6, 1978, and held that position until October 19, at which time she was taken off the schedule and was not thereafter requested to work by the Respondent. Prior to September, Dunmire worked four to five nights per week from 5 to 11 p.m. and always worked weekends. Beginning in September about the time her mother returned to work following her illness, her hours and days were cut back progressively until about October 19, when she no longer appeared at all on the schedule. In September Dunmire approached Loporfito and asked him why her days and hours were being cut. He informed her that there were some new girls and that he had to give them work. The records submitted by the Respondent indicate that, for the payroll period ending August 28, Dunmire⁴ had 59.25 hours for that period. The next pay period being the one in which her mother, Dolores DeGeer, returned to work after her sick leave, her hours dropped to 37.50. For the payroll period ending September 25, she had 36 hours; for the payroll period ending October 9, she had 35.75 hours; and, for the payroll period ending October 23, she had a total of 19 hours, having been taken off the schedule entirely on October 19.

The Respondent would have us believe that this decrease in hours had no relation to the fact that Dolores DeGeer and her daughters, along with several other employees, had been making protests beginning in April with regard to Pettica and Loporfito or the fact that these employees had sought to have their grievances resolved by the Respondent, and on a number of occasions had asked employer representatives to have further meetings which were never held. It goes without saying that the simplest way to solve problems is to get rid of the people who create the problems. This, it appears to me, is exactly the course taken by the Respondent. I find that the Respondent did in fact cut the hours of Doreen DeGeer Dunmire as alleged in the complaint and that, on October 19, the Respondent totally removed Dunmire from its schedule, thereby terminating her employment. I further find that the reason for this was because of the concerted activities on behalf of the employees, which activities were protected by Section 7 of the Act. Therefore, I conclude that the cutting of the hours of Dunmire as well as the removing her from the schedule were violations of Section 8(a)(1) of the Act.

The complaint also alleges that, since on or about November 21, the Respondent reduced the hours of work for Denise DeGeer Churchel.

⁴ The Respondent's records are in the name of Doreen DeGeer.

The record is clear that Denise Churchel, until the payroll period ending November 6, was receiving a substantial number of hours which, with two exceptions, averaged more than 40 hours for the payroll period. However, beginning with the payroll period ending November 20, her hours were cut to 28.5 and, for the period December 4, her hours were reduced to a paltry 16.25. There is no doubt that she had been removed from the schedule as alleged by the complaint. She was removed for approximately 1 week. The Respondent has offered no explanation for her removal from the schedule and her own records indicate that she was in fact not working during that period. In view of the background of this proceeding and the fact that I do not credit the denial of the Respondent's witnesses that they acted in total good faith and were not in any way attempting to injure their employees because of their protected concerted activities, I find that the Respondent did in fact reduce the hours of work of Denise DeGeer Churchel on or about November 21, and that this reduction in hours was because of the employees' protected concerted activities guaranteed by Section 7, in violation of Section 8(a)(1) of the Act.

Because I find the evidence insufficient to establish that the Respondent instructed its employees to refrain from discussing matters of mutual aid and protection and that the Respondent imposed more onerous working conditions on Dolores DeGeer, I shall recommend that these allegations of the complaint be dismissed.

As indicated, at the hearing the General Counsel amended the complaint to allege that on or about May 1, 1983, the Respondent, acting through Louis Grippo and Benny Pettica at its Monroeville facility, interrogated its employees with regard to their protected activities and the protected activities of their fellow employees. In support of this allegation of the complaint the General Counsel offered the testimony of employee Rohrbaugh, who testified to her conversations with President Grippo.

Without elaborating on the testimony offered to prove this allegation and the testimony of the Respondent in this respect, it is my conclusion that, although the employer had a legitimate right to interrogate its employees on matters involving their Section 7 rights without 8(a)(1) liabilities, the Respondent did not properly communicate to the employee involved the purpose of the questioning or ensure her that no reprisals would take place. Therefore, I conclude that the Respondent here transgressed the boundary of the safeguards which have been set up by the Board and that the Respondent lost its privilege of the benefit of interrogating employee Rohrbaugh. Therefore, it is my conclusion that the Respondent illegally interrogated employee Rohrbaugh on May 1, in violation of Section 8(a)(1) of the Act.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth above, occurring in connection with the Respondent's operations, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States

and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

As I have found that the Respondent reduced the hours of work of Dolores DeGeer, Doreen DeGeer Dunmire, and Denise DeGeer Churchel because of their concerted activities, I shall recommend that the Respondent make them whole for any loss of earnings they may have suffered as a result of the Respondent's conduct, with interest.

As I have found that on or about October 19, 1982, the Respondent removed Doreen DeGeer Dunmire from its work schedule and on or about November 19, 1982, removed Dolores DeGeer from its work schedule because of their concerted activities in violation of Section 8(a)(1) of the Act, I shall recommend that the Respondent be ordered to offer them immediate and full reinstatement, unless reinstatement has already been offered, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered as a result of the Respondent's conduct, until such time as the Respondent makes them a valid offer of reinstatement, with interest. See *F. W. Woolworth Co.*, 90 NLRB 289 (1950); *Florida Steel Corp.*, 231 NLRB 651 (1977).

On the foregoing findings of fact and the entire record, I make the following

CONCLUSIONS OF LAW

1. Louton, Inc. t/a The Original Oyster House, the Respondent, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By interrogating employee Rohrbaugh without communicating to her the proper safeguards, the Respondent has violated Section 8(a)(1) of the Act.

3. By reducing the hours of work of Dolores DeGeer, Doreen DeGeer Dunmire, and Denise DeGeer Churchel because of their protected concerted activities, the Respondent has engaged in conduct violative of Section 8(a)(1) of the Act.

4. By discharging, constructively discharging, by removing Doreen DeGeer Dunmire and Dolores DeGeer from its work schedule because of their protected concerted activities, the Respondent has engaged in conduct violative of Section 8(a)(1) of the Act.

The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On the basis of the entire record, the findings of fact and the conclusions of law, I issue the following recommended⁵

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended

ORDER

The Respondent, Louton, Inc. t/a The Original Oyster House, Monroeville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their protected concerted activities guaranteed them by Section 7 of the Act.

(b) Reducing the working hours of its employees because of their protected concerted activities.

(c) Discharging, constructively discharging, removing its employees from its work schedule, or otherwise altering its employees working conditions because they engaged in protected concerted activities guaranteed them by Section 7 of the Act.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

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

(a) Offer immediate and full reinstatement to Dolores DeGeer and Doreen DeGeer Dunmire, unless reinstatement has already been offered, to their former jobs or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or other rights and privileges, and make them whole for any loss

Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

of earnings they may have suffered as a result of the Respondent's conduct against them.

(b) Make whole Dolores DeGeer, Doreen DeGeer Dunmire, and Denise DeGeer Churchel for any loss of earnings they may have suffered as a result of the reduction of hours, with interest.

(c) Post at its Monroeville facility, and at all of its other restaurant facilities, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 6, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt be maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

⁶ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."