

**Northport Health Services, Inc. d/b/a Estes Nursing Facility-Oak Knoll and United Steelworkers of America, AFL-CIO and Donna Beverly.** Cases 10-CA-23146, 10-RC-13604, and 10-CA-23222

February 12, 1991

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On December 29, 1989, Administrative Law Judge Robert A. Gritta issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Northport Health Services, Inc. d/b/a Estes Nursing Facility-Oak Knoll, Birmingham, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that Case 10-RC-13604 be severed and remanded to the Regional Director for Region 10 for further proceedings.

DIRECTION

It is directed that the Regional Director for Region 10 shall, pursuant to the Board's Rules and Regulations, within 10 days from the date of this Order, open

<sup>1</sup>The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We agree with the judge that *Wright Line*, 251 NLRB 1083 (1980), is applicable to the discharges of the eight nursing assistants. We also agree with his ultimate determination that the discharges violated the Act. We find, however, that his description of the *Wright Line* analysis is only partially accurate. The judge correctly found that the General Counsel must establish, and did establish, a prima facie case by showing that protected concerted activity was a motivating factor in the discharge of the eight nursing assistants. The judge then should have found that the Respondent had to rebut the prima facie case by proving that it would have discharged them even in the absence of their protected concerted activities. For the numerous reasons stated by the judge, we find that the Respondent failed to prove that it would have discharged them for the missing call-light bulbs even if they had not been perceived as union proponents. We thus agree with the judge's finding that the discharges were unlawful.

We also note that the judge found that employees Jessica Hand and Mattie Sanders "expressed union sentiments at company meetings" and "were vocal during the company's antiunion meetings and complained of basic wage, vacation and other benefit discrepancies." Our review of the record does not disclose that they were vocal at company meetings, but this does not alter our decision. The record shows that they were perceived as being prouion by Administrator Jack Barnes, who effectuated their discharge.

and count the ballots of Ruby Norris, Mary Moore, Cathy Gulley, Jessie Warren, Bessie Sanders, Mary Presswood, Mattie Sanders, Jessica Hand, and the yardman, and shall thereafter prepare and cause to be served on the parties a revised tally of ballots and issue an appropriate certification.

*J. Howard Trimble, Esq.*, for the General Counsel.  
*Fredric Ingram, Esq. (Burr & Forman)*, of Birmingham, Alabama, for the Respondent.

*Ms. Buddie Watson King*, of Birmingham, Alabama, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. GRITTA, Administrative Law Judge. This case was tried before me on May 19 and 20, 1988, in Birmingham, Alabama, based on charges filed by Donna Beverly and United Steelworkers of America (individual and the Union, respectively) on January 26 and February 24, 1988, and a consolidated complaint issued by the Regional Director for Region 10 of the National Labor Relations Board on April 1, 1988.<sup>1</sup> The complaint alleged that Northport Health Services, Inc. (Respondent) violated Section 8(a)(1) and (3) of the Act by interrogating, threatening, and discharging employees because they engaged in union activities. Respondent's timely answer denied the commission of any unfair labor practices.

All parties hereto were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence, and to argue orally. Briefs were submitted by the General Counsel and Respondent. Both briefs were duly considered.

On the entire record in this case and from my observation of the witnesses and their demeanor on the witness stand, and on substantive, reliable evidence considered along with the consistency and inherent probability of testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION AND STATUS OF LABOR  
ORGANIZATION—PRELIMINARY CONCLUSIONS OF LAW

The compliant alleges, Respondent admits, and I find that Northport Health Services, Inc. d/b/a Estes Nursing Facility-Oak Knoll is an Alabama corporation engaged in the operation of a nursing home facility in Birmingham, Alabama. Jurisdiction is not in issue. Northport Health Services, Inc. d/b/a Estes Nursing Facility-Oak Knoll, in the past 12 months, in the course and conduct of its business operations derived gross revenue in excess of \$100,000 and purchased and received at its Birmingham, Alabama facility goods and materials valued in excess of \$10,000 directly from suppliers located outside the State of Alabama. I conclude and find that Northport Health Services, Inc. d/b/a Estes Nursing Facility-Oak Knoll is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

<sup>1</sup>All dates herein are in 1988 unless otherwise specified.

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

## II. OVERVIEW

Northport Health Services, Inc. is composed of 16 nursing facilities. Four of the facilities are in the immediate Birmingham area and styled: Civic Center, Northway, South and Oak Knoll. Ross M. Taylor, regional administrator of the Birmingham area facilities offices at the Civic Center and he administers that facility. The Civic Center facility houses a central laundry which supplies all four homes in the Birmingham area with laundry service.

The corporate offices are located in the Northport facility at Northport, Alabama. Northport also houses a central pharmacy which supplies drugs and medicines to each facility in the group. Albeit each of the individual facilities in the Northport group keeps individual time records for its employees, the actual accounting and making of all payrolls is handled by the corporate office. Likewise the individual home's clerical staff handles billing for parts A & B of medicare and the State medicaid, however, the corporate office processes and collects all accounts receivable.

A representation election was held on February 4, 1988, which resulted in 10 determinative challenged ballots. The resolution of those challenges is in part to be decided by the unfair labor practice charges filed herein.

The parties stipulated that Ruby Ann Williams, house-keeping supervisor and a subject of the General Counsel's trial amendment to paragraph 7 of the complaint, is a supervisor within the meaning of Section 2(11) of the Act.<sup>2</sup>

## III. ALLEGED UNFAIR LABOR PRACTICES

Jack D. Barnes Jr. testified he is the administrator of the facility. This facility is one of 16 owned by the parent, Northport Health Services. Four of the facilities are in Birmingham. Barnes reports to Regional Director Ross Taylor who in turn reports to James Turnipseed, vice president of operations. President Norman Estes is also owner and oversees the entire operations. None of the facilities are unionized.

At a Christmas party in 1987 Barnes gave a motivational speech and expressed concern about the employees' attitudes as it relates to quality care for the patients. Barnes has heard from a source that state inspections were to be more stringent. Barnes neither expressed concern for the union campaign nor did he think about the union campaign. The facility did however campaign against the Union in numerous meetings, individual and group, leaflets, and other written materials. Supervisors were instructed to report employees' responses about the Union to Barnes. Meetings were at least each week and frequently daily. Barnes met with all the employees in the bargaining unit many times except for the second floor nursing assistants with whom he only met one time. Barnes after making a presentation to employee groups would judge the receptiveness of the group to the Company's views and thereby schedule further meetings. He decided not to include the second floor nursing assistants in additional meetings.

<sup>2</sup>The substance of the above is based on uncontroverted testimony and record exhibits.

Barnes also testified that he thought Taylor, Turnipseed, and Estes held some meetings for second floor personnel. He was not sure, however, if the nursing assistants attended those meetings. Barnes stated that the groups were selected at random with no plan to exclude the day-shift second floor nursing assistants. The meetings were geared for employee participation and many employees voiced complaints about low pay, vacation benefits, and vacation scheduling, cost of insurance, and unpaid workmen's compensation claims which resulted in garnishment of the employees. Barnes denied that in any meetings he threatened loss of jobs if the Union came in. He also denied saying wages would be cut to the minimum wage. Barnes did tell employees that as a result of collective bargaining wages could either go up or down.

With regard to the union campaign in September, Barnes denied seeing employees with union handbills on the porch of the home or going outside to the porch while the handbilling was in progress. He was aware of the handbilling because either Holmes or Sullivan reported the circumstances to him.

Several employees, Eutsey, Bell, and Mae Ferguson acted as union observers at the election and are still employed at this facility.

In 1987 Phyllis Jacquemin was director of nursing. On January 1, 1988, Sue Jones replaced Jacquemin. Until the state inspection, January 19-21, 1988, Sandra Hunter, a LPN, functioned as the charge nurse on several shifts. As charge nurse she has the responsibility of medications and making sure the nurses assistants perform their jobs properly.

The state inspection team consisted of three registered nurses. Each registered nurse was responsible for one of three specific areas of the home, physical plant and dietary, nursing, and pharmacy.

Barnes had participated in two prior state inspections and was familiar with the procedures. The State categorizes deficiencies found in inspections under three headings which are cumulatively interrelated: Conditions, which are major and must be corrected first; Standards, which are measured against accepted medical practices or mandated procedures by the State; Elements which basically covers the lesser practices or procedures that may be violated. In all inspections several deficiencies in a Standard can be cited as a condition violation and several deficiencies in Elements can be cited as a Standard violation. Call-lights deficiencies are Elements within the State's procedures. Barnes when asked why the State's inspection report did not list any missing call-light bulbs stated that it was not unusual for the inspectors to not list all of what is a multiple infraction. Barnes added that the state inspectors did not find that patient Maddox's medical charts were missing, but the State would have included the omission in the inspection report if they had been found missing.

Tuesday, the first day of the inspection, Vickery reported to Barnes that bulbs were missing in: No. 41, Norris' room; 45, 47, and 48, Presswood's rooms; 50, Gulley's rooms and 57 and 58. Vickery told Barnes that he replaced all the bulbs. Wednesday, the second day of the inspection no bulbs were missing. Thursday, the final day of the inspection, Vickery reported bulbs missing in rooms 45, 47, 48, 49, and 50 on the west wing, Gulley's section. Gulley was out sick. Jessica Hand and Mattie Sanders, in addition to their own duties, covered Gulley's rooms and patients. Barnes checked the

maintenance log to see if any entries of missing bulbs had been made but found none. He also solicited the aid of Dr. Woodruff to attempt to get more information from patient Marshall on the burned call-light bulb reported by housekeeper Bridges. Marshall was incoherent and not helpful. Later that afternoon Barnes spoke to Moore, Warren, Norris, and Sanders about the missing bulbs. He asked each of them: "Do you know anything? Did you do it? Would you tell if you knew?" None of the four knew anything and all were willing to tell if they knew anything. Barnes said they were cooperative. He also spoke with LPN Hunter, but she did not know anything. Barnes reported to Taylor that he suspected the missing bulbs were sabotage. He, Taylor, and Turnipseed agreed to meet the next day to discuss the situation. Friday morning Vickery reported a call-light bulb missing in room 50 again. Barnes assembled all employees from both floors into two groups and he, Taylor, and Turnipseed met separately with each group. They solicited any information from any employee concerning the missing call-light bulbs. None of the employees in either group meeting had any knowledge of the missing bulbs. Later Barnes, Taylor, and Turnipseed divided the second floor nursing assistants and spoke individually to them. Each recorded the substance of the interview. Barnes spoke to Hand, Moore, Warren, and Norris. Taylor spoke to Gulley and Turnipseed spoke to B. Sanders, Bell, and Presswood. Barnes later spoke to M. Sanders by phone. Of those nursing assistants Barnes interviewed, only Hand was aware that any bulbs were missing. She had noticed the bulbs were removed from four cords when she was making the beds. She saw Vickery up and down the hall and she figured he was fixing the bulbs. Hand laid the bulb-less cord across the top of each bed. Barnes asked her if she reported the missing bulbs and she said, "No," because she thought Vickery was in the process of fixing them. Barnes also asked each nursing assistant if they knew anything about the previously missing patient records. None of the employees offered any information. Barnes stated he also interviewed nursing assistants on the first floor about the missing bulbs without success. However, Barnes only recorded the responses of the second floor nursing assistants. No one interviewed any second-shift or third-shift employees.

Barnes, Taylor, and Turnipseed met to compare findings of the interviews. The three concluded that the removal of the bulbs by an employee or employees was deliberate. Their conclusion was based on the sheer number (13) of bulbs, the short period of time, one room had a bulb missing three times, patient Marshall's claim that her bulb was burned off, and the fact that none of the bulbs were found. Notwithstanding they could not determine what time, day or night, that any bulbs were removed from their cords or the fact that the call-light was associated with a bed not occupied by a patient, the three managers chose the second floor day-shift nursing assistants as the culprits. They did so because none of them had filed any report that bulbs were missing on their shift between 9 and 10 a.m. They concluded that a stand must be taken for the home and the patients by terminating some employees. Termination was chosen as a strong decision to make sure every employee realized that management was not going to tolerate that kind of activity in the nursing facility. Patients lives were in jeopardy and the decision to discharge employees was made to protect the lives of the patients. Union sentiment of the employees was not considered,

it was simply a patient-quality decision. There were no prior disciplines or discharges of employees relating to missing call-light bulbs as far as Barnes knew, however, he did not review any personnel records as part of the investigation.

Barnes, in response to why only the day-shift second floor nursing assistants were terminated, responded: they did not terminate dietary employees because they do not work on the halls; they did not terminate any first floor employees because no bulbs were missing on the first floor; they did not terminate any housekeeping employees because they were cooperative, and the responsibility for the bulbs rest with the nursing assistants. Barnes added that the nursing assistant on the east wing day-shift second floor was selected for termination because a bulb was missing in her room No. 41.

Barnes used on-call relief people and full-time people working double shifts until he could begin hiring replacements, Monday, January 25. Within 2 weeks the second floor day shift was manned by replacements.

Following the state inspection disclosing many discrepancies in patient care Barnes held Hunter accountable for the poor showing. During the last week in January Hunter resigned.

The nursing home has an east wing and west wing of patients' rooms on two floors with special care rooms in each of the four wings. Most ambulatory patients are housed on the first floor. Patients needing constant nursing care are housed on the second floor. Of the 50 patients on the second floor, about half are bedridden and half can service themselves in the dining room and bathroom.

All patient rooms are required to have a call-light switch and cord. About 75 percent of the call-lights are of the air bulb variety and 25 percent are the newer models with a button encased in a plastic switch. The call-light when used by a patient energizes a light at the nurses station and also a light above the patients room door in the hallway. In addition to the need for nursing, patients use the call-lights for drinks, snacks, cigarettes, or anything else they want served to them. On occasion prior to the state inspection bulbs have been disconnected from the tube or damaged in some way, but no call-light apparatus has been totally missing.<sup>3</sup> Frequently a bulb is clamped to a bedrail in the lower position and when the rail is raised the bulb is disconnected without being noticed. Since the state inspection and the discharges Barnes is not aware of any instances of missing or disconnected call-lights. At all times the nursing assistants are responsible for the condition of call-lights. If a call-light needs repair or replacement, the nursing assistant should make an entry in the maintenance log at the nurses station. The maintenance man checks the log at least once or twice daily for items needing attention. Housekeeping employees have no responsibility for patient call-lights. All call-lights plug into the wall and a simple tug removes them. Barnes denied any past reports to him that patients have removed bulbs and denied ever seeing patients with the call-lights in the hall or wearing them around their waist like a belt. Barnes recalled one situation where a call-light was inoperative and could not be immediately repaired. A part had to be ordered. The patient was bedridden and in a semiprivate room. Barnes relied on the patients' roommate and periodic checks at least every hour

<sup>3</sup>A sample call-light was supplied by Respondent for use during the trial. After several witnesses were asked to remove the bulb and could not, it was revealed that the bulb was glued to the cord.

by the nursing assistant to supplement the inoperative call-light for the time period awaiting an interim repair. The second floor has five or six semiprivate rooms located approximate to the nursing station which is centered between the wings. Many of the patients housed on the second floor are infirm to the extent that they physically cannot operate a call light, however, the state does require that each patient have one.

A typical day on the second floor begins with a wake up and cleanup of patients' face and body in preparation for feeding. Bathing and whirlpooling patients is done on a schedule less than daily and usually later in the day. If a patient's bed needs cleaning, the housekeeping crew does it. A bed only requiring to be made up is done by the nursing assistant. The medications are administered only by licensed nurses who begin their rounds at 7 a.m. Bed patients are fed in their rooms by nursing assistants and other patients eat in the dining room. In addition to these employees mentioned above the maintenance employees, supervisors, other parties, and visitors have occasion to visit the patients' rooms. Not all patients are bathed or whirlpooled on the day shift. Some patients are scheduled for the second-shift bath and whirlpool. Barnes does not have an assistant administrator, but he does have a receptionist, Doris Sullivan, whose office is next to his at the front of the facility.

On February 10 Supervisor Williams reported to Barnes that Beverly was not cleaning bedsprings and when she asked if Beverly intended to lift the mattress and clean the springs Beverly replied that she would not because the lifting hurt her back. Williams told Barnes that Beverly was refusing to perform a job duty.

Barnes told Williams to summon Beverly. Barnes asked Beverly if there was a problem. Beverly said the problem was lifting the mattress and cleaning because it hurts her back. Barnes asked Beverly why she was not lifting the mattress to clean the bedsprings. Beverly said it hurt her back, she was not able to do it, and she was not going to do it. Barnes asked her if she hurt her back before she came to Oak Knoll or hurt her back while working at the home. Beverly said she did not hurt her back either before or during her employment at Oak Knoll. Beverly added that she was glad to do all the cleaning required except the bedsprings. Barnes told her that part of the job requirement was to clean bedsprings. Beverly told Barnes she understood it was part of the job requirement but she was not able to do it. Barnes asked Beverly if she was refusing to do that particular job assignment and Beverly replied that she was refusing because she was not able to do it. Barnes said if she could not fulfill her job duties then she was resigning employment. Beverly responded that she was not resigning because she could do all the work except cleaning the bedsprings under the mattress. Barnes stated, "You are required to do it; you're not able to do it; you're not going to do it," and asked, "Are you going to resign." Beverly said, "Yes, I'm going to resign because I'm unable to lift the mattress and clean the springs." Williams said nothing and the meeting ended with Beverly escorted from the premises.

Elizabeth Bridges testified that she worked approximately 9 years in the housekeeping department and was supervised by Ruby Williams. Bridges was aware of the union campaign in late 1987 and voted in the election in February 1988. Bridges was working during the state inspection of the facil-

ity in January 1988. Bridges had no prior knowledge of call-light bulbs missing during the inspection, but on Thursday, the last day of the 3-day inspection, Williams alerted her to double check for missing bulbs explaining that the day before several were missing. Bridges did find bulbs missing from patients, Gilliland, Debardeleben, Ingram, and Marshall's rooms. Bridges reported a particular call-light apparatus to Williams in the presence of maintenance man Vickery. The three proceeded to patient Marshall's room. The bulb was missing and the end of the rubber card was somewhat gummy prompting Vickery to say it appeared the cord was burned with a cigarette. Marshall stated that the ladies (nurses) had burned that bulb. Bridges continued cleaning the room and on opening the closet a call-light bulb, gummy on its connecting end, rolled out onto the floor. Bridges picked it up and took it to Williams explaining it was found in Marshall's closet. Generally, Bridges had no cause to check any call-light bulbs but on occasion she would notice a call-light tied to the side rail when she was cleaning the bed.

On one occasion a week or so after the inspection, Williams told Bridges that call-light bulbs were still missing in patients' rooms, particularly patient Gilliland's room. Both went to Gilliland's room where Williams stated that she did not think the patients were removing the bulbs. Bridges suggested they put the bulb in place and asked Gilliland if she can get it off. Williams attached the bulb and asked Gilliland if she could remove it. Gilliland immediately removed it and handed it to Williams who then explained to Gilliland that the bulbs were there for patients to call the nurse and should not be removed. Gilliland told Williams to shut up. Bridges stated that bulbs are not always easy to remove. Some have been in place longer, like Gilliland's, and can be easily removed. Bridges agreed that the missing bulbs during the inspection were a strange occurrence that she could not recall happening before.

Shortly after the second floor nurses assistants were discharged management scheduled a meeting with employees in the breakroom. Barnes, Turnipseed, and Estes were present. Estes told the group why the nurses assistants had been discharged and asked what the group thought about it. The grouped employees told Estes the discharges were unfair because not all the eight were guilty. Estes said he discharged all the eight because no one would tell who did it. Estes added that he would give all the nurses assistants a chance to come back to work by taking a polygraph test. If the test showed they were innocent they could have their jobs back with pay for the time they were off.

Within the week after the discharges Bridges was summoned to Williams' office by Barnes. Lawyer Richard Freese was present with Turnipseed and Barnes. Freese told Bridges he wanted to talk to her about the missing call-light bulbs and wanted to take a statement from her concerning the call-lights. Bridges did not recall Freese stating that her response was voluntary but she would not say that Freese did not. Bridges gave the requested statement and signed it after Freese read the statement to her. Bridges also signed a typed acknowledgment that the statement was voluntary and she would suffer no reprisals as a result of her interview. Bridges can read and write, but she did not have her reading glasses with her in the office.

Before the election Estes spoke to Bridges about the upcoming vote. Bridges had previously told Estes that she sup-

ported the Company in the campaign. Estes said, "Well, Ms. Bridges you've been here longer than any of the other housekeepers. I'm quite sure you can convince housekeepers to vote no for the Union." Bridges told Estes she would do so and Estes asked her, "What do you think about a union." Bridges told Estes her husband was military and did not need a union and Estes responded that he was sure of that. As Bridges prepared to leave Estes stated, "Well, Ms. Bridges, I think we've got all the housekeepers. I am concerned about Ms. Beverly and Mr. Askew that they may vote for the Union." Estes then asked Bridges to represent the Company at the election and she agreed to do so. After Bridges had left the office Cassandra Holmes, an eligible voter, who works in Barnes office, asked to talk to Bridges. Holmes said she was curious but Bridges did not have to answer unless she wanted to. The two went to the breakroom. Holmes said she was surprised that Bridges was going to represent the Company. Bridges asked why and Holmes said she did not really know, she was just surprised. Bridges asked if it was because Holmes had seen her at union meetings and Holmes said, no, that was not the reason. Bridges told Holmes that she went to union meetings or any other meetings to see what is going on so she can make her own decision. Holmes replied that she had decided when they started talking about taking money out of her paycheck.

Gloria Jackson Bell testified she has been a nurses assistant approximately 2 years. At the time of the inspection she was assigned to the first floor but did not work during the inspection. She presently works the second floor. The day of the discharges all employees on the first floor were called to a morning meeting. Barnes told the employees there had been sabotage in the nursing home and some employees would not be working by the end of the day. He added that as time went on more people would be discharged.

Bell had a second meeting on January 22 with an unknown tall man with dark hair. The apparent sabotage was discussed and the man asked Bell what her feelings were about the Union. Bell said her feelings were personal and she had not said one way or another whether she was for or against the Union. The man said \$20 would be deducted from our paychecks for union dues but he did not say how often. The man also told Bell that she and other employees were under suspicion of patient neglect because of the incidents surrounding the people discharged.

Before the inspection Bell only noticed one call-light bulb that was damaged and it was repaired with black tape. With the tape applied the bulb was operable.

After the inspection and the call-light bulb incidents, Bell began checking the call-lights in all her rooms to make sure they all operated. On January 25, 1988, after she had checked a particular patient's room and all was well Bell saw Williams and Vickery enter the room. Williams and Vickery only stayed a short while then left. Bell went back in the room and found the call-light bulb split at the seam and it was inoperable. Bell reported the damaged bulb to Williams and Williams said she would have it taken care of.

Sometime after the discharges Bell was transferred to the second floor where she worked with several on-call relief personnel and one transferred second-shift full-time nurses assistant.

While Bell was on the witness stand the parties stipulated that the tall dark haired man she met with was James Turnipseed.

Bell made a habit of recording dates that incidents occurred which she felt were important. She did not record the entire substance of any incident.

Cathy S. Gulley testified she worked at the nursing facility for 11 years. She began as a housekeeper and a year later became a nurses assistant on the second floor. Gulley received a union leaflet the first day that the union people made a distribution at the entrance road between shifts. Later Barnes and Taylor assembled all the employees to discuss the upcoming election. Barnes told the employees he did not know they wanted a secret union.

A Christmas party was held December 15, 1987, in the dining room on the first floor. Barnes used the occasion to remind employees that everyone must work together to pass the upcoming state inspection. Gulley asked Barnes what made him think the facility was not going to pass the inspection since in past years they always had. Barnes replied that the employees' attitudes and the fact that employees were not talking to each other caused him concern. Gulley told Barnes, "We should have an attitude, when we come in in the morning time and didn't have anything to work with, have to wait until 10 o'clock sometime before we could start working; didn't have anything to bathe the patient with, that's enough to give you an attitude, but we still tried to do the best we could."

In mid-January Barnes and Taylor met with employees in the second floor dining room. Barnes told the group that because there was some bad people he had to send names and addresses of employees to the union. Gulley objected to her name and address being supplied to the Union. She stated that she did not want to wake up the next morning with a flat tire. Gulley told Barnes that her husband said the Union was the best thing that ever happened to him. Barnes told the group that if the Union came in they could no longer come to him and talk to him like they were doing now. Whatever problem an employee had would have to be discussed with the Union. Barnes said each employee would have to pay \$20 a month union dues. Gulley stated that \$20 a month dues would mean the employees are making \$10 an hour. Gulley knew from her husband that union dues are based on an employee's hourly rate.

Later Estes and Taylor met with the second floor nursing assistants in the breakroom. Estes was reading to the employees from a little book. Several employees, including Gulley, questioned the fairness of the present benefits. Gulley complained that a new employee with 1 year's work was receiving the same vacation as she and that same new employee who did not have her 11 years' experience with patients was making about the same wage. Gulley remarked that because she worked with the more difficult patients because of her experience she should also be making \$5 an hour. Estes replied that the facility was the highest paying nursing home there was in the area. All the employees had a worksheet which outlined benefits employees were to receive based upon time in service and each was questioning Estes about benefits the employees were not presently receiving.

After the inspection the nursing assistants were talked to individually. Gulley spoke with Taylor in Jones' office. Taylor told Gulley that before the day was over some employees

would be dismissed because no one would come forward and tell what had happened. Taylor then asked if she would tell management about the missing bulbs if she knew anything. Gulley replied that she had put 11 hard years at the facility and if she saw a person doing such a thing she would not jeopardize those years for anyone. Taylor told Gulley that on January 21 a call-light bulb was missing in 50-B, patient Beasley's room. Gulley told Taylor she did not work January 21 and should not be responsible for what happens when she is not there. Jackie Miller worked in Gulley's place January 21 and was still working after Gulley's employment ceased. Taylor remarked that the employees did not seem to be trying to pass the state inspection. Gulley said she did chores outside her duties, such as cleaning closets, furniture, and floors because she knew from past experience in inspections, what the State looked for. Gulley also alerted the housekeepers to what she saw the inspectors emphasizing in their rounds. Taylor commented that 3 years ago he highly respected the nursing assistants but now he did not trust anyone at the facility. Gulley said she was sorry he felt that way and had no respect for the employees now. Taylor told Gulley that a determination of what to do about the call-light situation would be made at 3 o'clock and the interview ended.

In mid-January Sue Jones, director of nursing, came into room 50 while Gulley was servicing patient Shapiro. Jones asked her what she thought about the Union. Gulley asked Jones what she meant. Jones said, "Well, if y'all need a raise or anything y'all need to go and talk to Mr. Barnes." Gulley told Jones it would not do any good because every time a raise is mentioned Barnes says this is the highest paid nursing home here. Jones then asked Gulley whether certain other employees were pronoun. Gulley told Jones she did not know who was for or against the Union.

The housekeeping employees on second floor were in meetings with management every other day, but the second floor nursing assistants were only called to two meetings. Gulley did not know anything about the missing call-light bulbs and only one of her rooms was reported to have a missing bulb. She was not personally aware that a bulb was missing from her room.

Barnes called all but two of the nurses assistants to the office. He told Mason and Parnell to stay on duty because he did not want to see them. Barnes told the employees assembled in the office that management had come to a decision on what to tell the State about the "sabotage" and endangerment of patients' lives. The decision was to discharge the second floor nurses assistants. Gulley told Barnes that she would sleep well that night because she was not guilty of anything.

After the employees were discharged management had a meeting and King, Gulley's sister-in-law, was given a letter which was also mailed to the discharged employees. King gave the letter to Gulley who had not received one in the mail because she had changed her home address. Gulley read the letter and was enthused because she was ready to return to work. Pursuant to the letter's instructions she made an appointment for the polygraph test. On reflection Gulley changed her mind and canceled the test. She was not guilty of anything and felt the test should have been given before all the employees were discharged.

Jessica Hand testified she started her employment as a nurses assistant in November 1987 on the day shift second floor. During this November, about midmonth, she was bathing a patient in the room and Jones, nursing supervisor, came into the room. Jones said she had heard about the Union and asked Hand if she planned on joining the Union. Hand replied she did not. Jones stated that the Union was not going to do anything for employees and added that Jones worked at Lloyd Nolan for 5 years and had not gotten a raise.

During the 3-day inspection Hand only worked 1 day, Thursday, starting at 7 a.m. First thing that morning about 7:10 a.m. she noticed the bulbs missing in three patients' rooms. She did not report it because Vickery was in and out of all the rooms fixing things and she assumed he was replacing the bulbs. Williams' housekeeping supervisor, about 8:45 a.m., asked Hand if she knew the bulbs were missing and whether she reported it. Hand told her she thought Vickery was doing the replacement already. Williams told Hand that if the missing bulb is not reported the state inspectors will write up housekeeping for the omission. On Friday Barnes called Hand to his office. Barnes asked her if she knew about the several call-light bulbs missing and she replied, yes. Hand said she made the beds and tied the cord to the railing like she always does. He asked Hand why she did not report them and she told him Vickery was working the floor during the inspection and she thought he was replacing them. Barnes then asked Hand if she removed the bulbs and she said, no. Barnes asked if she knew who did it. Hand said, no. Barnes also asked Hand if she did know who had done it would she tell him. Hand said she would. Barnes then said he was going to discharge some of the nurses assistants that afternoon. Hand said he was wrong because those accused had not done anything. Barnes replied that he was sorry but the good would have to suffer with the bad.

Hand had 10 years' experience as a family care specialist with the Children's Aid Society where she dealt with patients as she did in the nursing home.

At Oak Knoll the standing instructions to nurses assistants were to log anything in a patient's room that is not working properly. However, in Hand's 15 months of employment she had no occasion to log any entries because nothing had happened to any of her rooms.

Mary Janice Moore testified she worked as a nurses assistant for 7 years on day shift second floor. Moore recalled that the union campaign involved union meetings of employees. She attended the meetings and solicited other employees to sign union cards. One such employee was Betty Blue.

Moore attended the Christmas party in December 1987. Barnes spoke to the employees about the upcoming inspection. He said he hoped what happened at Riverchase Nursing Home did not happen here. Moore asked Barnes what happened and he said the employees failed in their attitude. Moore was worried about Barnes because she thought he was upset about the coming inspection. She later thought he was upset because the union campaign would be in progress during the inspection.

Moore worked the second and third day (Wednesday, Thursday) of the inspection. Bessie Sanders was her relief on Tuesday. There were no call-lights missing in Moore's rooms on Wednesday or Thursday but she was told that on Tuesday her room, 36A, had a bulb missing, however no patient was

in that bed on Tuesday. The patient had previously been moved to isolation for an indefinite time.

Thursday afternoon Barnes told Moore he needed her help. She was on the way to a patient's room to make the bed and suggested to Barnes that they could talk there. Barnes told Moore that something had to be done about the sabotaging in the building. Barnes said, "If they don't like me, they shouldn't take it out on the old people around here." Moore asked what he was talking about. Barnes stated that a patient had said two ladies in white burned a call-light bulb off its cord. Moore said she did not know anything about it. Barnes said he wished Moore could help him but Moore said she could not because she did not know anything. Barnes also said pages were missing from patient's charts. Moore asked which patients and Barnes said, Maddox. This was the first Moore had heard about any disruption in the building. Barnes told Moore that her section looked good but the other end where Gulley, Sanders, and Presswood worked was having trouble. Moore stated that all employees wear white uniforms except housekeepers who sometimes wear blue. Friday afternoon Barnes held a meeting of employees but Moore could not attend because her daughter was sick. Barnes called Moore at home to tell her about the meeting and while he paused, Moore said, "Well, Jack I heard that the whole second floor was fired." Barnes said he was sorry but that's what he called for and the conversation ended. Cathy Gulley had previously called Moore and told her that the employees had been fired.

Moore did receive two letters from the Company about taking a polygraph examination but Moore elected not to take the test. She figured if Barnes had wanted her to keep her job he would have suggested the polygraph before he discharged her.

Ruby Mae Norris testified she worked as a nurse assistant for 4-1/2 years. On one occasion during the union campaign handbills were being distributed at the front sidewalk. Norris and Donna Beverly were seated on the front porch after work. Both got up and went to the union representatives for handbills and brought them back to the porch to read them. As Norris and Beverly were walking back to the porch Barnes was watching them through his office window. After they got back to the porch they were joined by Lilly Farrell, Cathy Gulley, and Bessie Sanders. Norris gave Farrell one of the handbills and Sanders went down to the walk to get her own. They all sat on the porch to read the handbill. As the nurses assistants were reading the handbill, Sullivan, the receptionist, came out on the porch looked around then went back inside. Each handbill had a union card attached. Barnes stood at his window for awhile watching the union people handing out the literature.

On November 29 Norris was bathing a patient in the whirlpool and Sue Jones walked in. Jones asked, "Ruby, what you think about the Union?" Norris said, "What Union?" Jones replied, "The Union ain't no good, because the employees at Lloyd Nolan was in the Union and a lot of them got out of it because they didn't get a raise." Norris stated, "I don't know nothing about no Union." Jones left and Norris finished bathing her patient.

Norris attended the Christmas party in 1987. Barnes said it was time to get serious because the yearly inspection was close. Farrell made a funny noise and Barnes asked her what was funny. Barnes said the state inspection was nothing to

play with, "You'll be like the people at Riverchase, you be in the butter and cheese line." Barnes said employees were going to have to straighten up their attitude. Mary Moore asked him what attitude and he said some employees pass by supervisors and do not speak to them. Moore told Barnes that he should straighten his attitude before he talks about anyone else's.

Norris recalled that Estes and Taylor held two meetings with the second floor nurses assistants in the breakroom. Vickery, the maintenance man, attended one of the meetings. The employees were given copies of the union constitution with certain sections highlighted. Taylor instructed the employees to read along with him as he pointed out the highlighted areas. Taylor stated that the Union was no good and would take half your paycheck and could not guarantee a job or higher pay. He said, "If anything the Union would cut your pay and then you wouldn't be making that much." Taylor told the employees to turn to page 83 and Gulley told him if the employees were going to pay \$20 union dues they would be making \$10 an hour. Taylor said, "No, you're not going to make \$10 an hour; I would like to pay you \$10 an hour but the budget won't allow me to pay that." Norris asked why the employees were allowed to put in for vacation time but were not allowed to take vacation until management decided to give it. Taylor said he was not aware that vacations were handled that way and the person responsible for fixing vacation schedules was not in the facility at this time. Norris said, "Barnes is here and he has to approve it doesn't he?" Taylor replied that he was unaware and asked why the employees had not gotten in touch with him about the vacation problem. Norris said the employees do not have a number to call for his office. After Taylor and Estes were through talking Vickery said, "The union ain't going to do a damn thing for you; come strike time you ain't going to get anything, until you come off the strike; Don't fool with no union because its no good." When Vickery finished Jessie Warren asked Taylor if the nurses assistants were ever going to make \$5 an hour. Taylor asked her how much she made and Warren replied \$4.65. Taylor said "that ain't bad." Warren said "it is bad because people behind her are coming up to \$4.65." Warren asked, "I want to know why peoples that's been here just a year can get two weeks vacation time and I've been here 10 years and I'm getting two weeks vacation time? I don't think its right." Taylor told Warren he would check it out and get back in touch with her.

Norris worked Tuesday and Thursday during the inspection with Wednesday her day off. Tuesday during the inspection, at 10:15 a.m. a state inspector came in patient Branner's room No. 42 where Norris was servicing the patient. The inspector was checking the call-lights and having Vickery watch the light above the room door in the hall. The inspector squeezed Branner's bulb but the inside room light did not come on. She asked Vickery if the hall light worked. Vickery said it worked beautifully. The inspector said, "No its not, cause the light's not on in here. The light is not working." The inspector told Vickery to replace the call bulb and he removed the bulb saying he would replace it. Norris worked until 3 p.m. that day and Vickery did not return to replace the bulb in patient Branner's room. When she reported to work the next day the bulb was in place. Norris had previously reported an inoperable call-light in room 41, patient

Erskin King, bed B. A metal piece was broken and had to be ordered but it had not come in by inspection time. Norris stated the patient had been without a call-light for 2 months.

Norris was not aware that several call-light bulbs were missing during the inspections. Thursday when she reported for work Barnes asked her if she knew who had taken some call-lights out of patients' rooms and pages from patient Maddox's charts. Norris told him she did not know. Barnes said someone was trying to sabotage the nursing home so it would not pass the state inspection. Barnes pleaded with Norris to help him know who was doing it. Norris again told Barnes she did not know who was doing it but if she did she would tell him. As a rule nursing assistants have no responsibility for patients' charts and are not allowed to make entries on the charts.

The following Sunday, an off day for Norris, Evelyn Weeks, the assistant director of nursing, called Norris at home. Weeks told Norris that Barnes had left instructions to dismiss her and tell her not to report for work on Monday. During late January Norris received a letter from the Company offering her an opportunity to take a polygraph test and later received a second letter repeating the offer. Norris declined both offers because she had not done anything requiring her to take a polygraph.

Mary Presswood testified she worked as a nurses assistant for 3 years and 5 months on the second floor day shift. She attended union meetings and signed a union card. Presswood attended an employee meeting after the Christmas party with three nursing assistants from the first floor and all the housekeeping personnel. Barnes told the employees that the Union could help them lose their job but could not help employees find a job. He said the deduction of union dues would in effect put the employees pay at minimum wage. Barnes also stated that employees who lost their job would find it hard to get another on their own. He suggested the employees try to hold on to their job. Barnes referred to Presswood, Donna Beck, and Joann Eutsey by name citing their long service with the Company and the availability of supervisors to handle any employee problems. Barnes handed out company campaign literature for employees to read and the meeting ended.

Later at quitting time Barnes was sitting downstairs by the timeclock. As the employees clocked out Barnes handed them company campaign literature. When Presswood received hers she stated that she would light her heater with it, however, she was not sure that Barnes heard her remark.

Presswood worked Tuesday and Wednesday, 2 days of the 3-day inspection. During the inspection on the days that she worked there were not any call-light bulbs missing in any patients' rooms that Presswood had responsibility for. Presswood was not questioned about missing call-light bulbs nor did she attend any meetings of employees during the inspection with reference to the call-light bulbs.

On Friday Presswood returned to work. About 11 or 11:30 a.m. Barnes called all second floor nurse's assistants, LPN Dickens and housekeepers to a meeting. Barnes told the group that the State cited the Company for two infractions which had to be corrected within 30 days. He stated that call-lights were missing and he would have to find out who did it. Barnes added that if he had to fire the whole second floor to find out who did it he would do so.

After the meeting Turnipseed spoke individually with Presswood about the problem of missing call-lights. Turnipseed told her that bulbs were missing in three of her rooms during the inspection. Presswood did not have any knowledge of the missing or damaged call-light bulbs during the state inspections and she so informed the Company emphasizing that she saw none damaged or missing in her patients' rooms.

That afternoon just before 3 p.m. Jones told the second floor nurses assistants to remain at the facility because Barnes wanted to see them. They all went downstairs to Barnes' office. Barnes told the assembled nursing assistants that he could not find a solution to the problem on the second floor so he would have to let the whole second floor day shift go. Jessica Hand spoke up and told Barnes he was getting rid of the wrong people because the nursing assistants were not the ones engaging in sabotage. Therefore, it could continue because the guilty ones would still be working. Hand also asked what reason would the Company give for the discharges. Barnes said he would put on our record that each nurses assistant was dismissed for patient abuse and it would be hard for us to get another job.

Bessie Nell Sanders testified she worked as a nurses assistant on the second floor day shift for 31 months. During September 1987 Sanders signed a union card and attended union meetings. She also solicited her coworkers to sign union cards and to attend meetings. Sanders knows Betty Blue but she did not solicit her for anything. On one occasion in September after shift Sanders went to the front porch to await her ride home. Nursing assistants Norris and housekeeper Beverly were sitting on the porch discussing the Union and reading union literature. Sanders asked where they got the union literature and they said from the union people down on the sidewalk. Sanders went to the walk, talked to the union representatives for 5 or 10 minutes, then came back to the porch with several of the union leaflets. As more employees came out on the porch Sanders gave them copies of the union literature. Norris warned Sanders that Barnes was watching and Sanders said she did not care because she was clocked out.

Of the 3 days the inspection was in progress, Sanders worked the first two, Tuesday and Wednesday. She was off Thursday. The next day, Friday, Sanders began work as usual. Between 9:30 and 10 a.m. Barnes called the nurses assistants into the dining room. He said he was going to let some of the nursing assistants go because he could not put up with sabotage and someone was sabotaging. Barnes told the group that call-lights had been burned and missing and some of the patients charts were missing. Barnes' remarks were the first Sanders had heard of any missing or damaged call-lights or missing patient charts. Barnes said that some nursing assistants would be dismissed at the end of the shift. Wanda Dickens, an LPN, was present and said to the group, "If anybody knew who was doing it [they] should come forward, because she had a certificate she could fall back on and we didn't have a certificate and it would be hard for us to get a job."

Later Turnipseed called Sanders to the housekeeping supervisors office. He asked her if she knew anything about the bulbs and the patients' charts. Sanders told him she did not know anything. Turnipseed said he had a witness who claimed that two nurses came into her room and burnt her

call-light. Turnipseed mentioned several rooms which had missing or damaged call-lights but they were not rooms that Sanders worked and she told him so. Turnipseed said about eight or nine call-lights had been missing. Sanders did not know of any call-lights missing before the inspection nor did she know of any missing during the inspection. Sanders stated that she thought Turnipseed had her confused with Mattie Sanders, no relation to Bessie.

Edith Watson testified she had worked as a housekeeper 4 years. Her latest work station as a full-time employee was the second floor east wing. She is supervised by Ruby Williams. Watson worked all 3 days of the state inspection. During her workshifts while the inspection was in progress she did not see any call-light bulbs missing or damaged. When cleaning beds Watson must remove the call-light from the bedrail or pillow depending on whether the bed is made up or not. Beds are cleaned on Tuesdays and Wednesdays by schedule. One room 42B, patient Erskin King's room, had an inoperative call-light but it had been out of service for several months due to a part which had to be ordered. Patient King is bedridden and immobile and could not use the call-light himself. Following the inspection Williams spoke to the housekeepers and told them the inspection went well and there was nothing to be concerned about. Williams did not say anything about missing or damaged call-light bulbs. Watson was not interviewed by management concerning the call-lights following the discharge of the second floor nursing assistants.

Watson stated that there were occasions before the inspection and after the inspection when call-lights were disconnected or otherwise inoperative. As a housekeeper she has found call-light bulbs under beds, under dressers or on the floor across the room. Watson simply replaces the bulb whenever she finds it disconnected or reports it if the bulb is damaged and will not fit properly. Such incidents occur two or three times a week off and on. Just before the inspection Williams alerted Watson to patient Preyor who was wearing her call-light around her waist like a belt. Williams had tried to retrieve the call-light from the patient but was unable to do so. Williams told Watson to keep an eye on the patient and if she laid it down, get it and replace it in the room receptacle. Preyor was not one of Watson's patients and she did not know if or when the call-light was replaced. Another patient, Branch, the week before the inspection had her bulb disconnected from the cord and was playing with it like a toy. Nursing Assistant Moore was dressing her and tried to get the bulb from the patient but she refused to let it go.

After the inspection Watson found bulbs disconnected in the rooms and found two or three bulbs with cords in the hallway. Watson reported the call-lights in the hallway to Williams. One day Watson accompanied Williams on a room-by-room check for call-light bulbs. All the bulbs were in place on top of the beds. A short time later Watson passed patient Streeter's room, which they had previously checked, and the bulbs were hanging loose, partially disconnected. Watson rather than fixing the bulb went to Williams and reported it. The two went to the patient's room and Williams connected the bulb to the cord.

Watson attended several union meetings and saw Betty Blue and Cassandra Holmes at two of the meetings. One of the two meetings was for card signers only and neither Blue

nor Holmes had signed a card. Union Representative King invited both Blue and Holmes to leave the meeting and both refused threatening King with their lawyers. Blue and Holmes insisted that as employees they had the right to attend the meeting. King insisted that the two leave the meeting. Both Blue and Holmes did finally leave the meeting.

Mattie Lorene Sanders testified she worked as a nursing assistant, day shift second floor for 6-1/2 years. She was supervised by Jones, director of nursing. Sanders worked all 3 days of the state inspection and was off on Friday. During the inspection there were not any call-light bulbs missing in any of the rooms she was responsible for. Noone spoke to her during the inspection about missing call-light bulbs nor did she know at the time that any were missing. On Thursday after the inspection while the nursing assistants were having lunch the subject of missing call-light bulbs during the inspection came up. Several of the nursing assistants said the State wrote up the facility due to the missing bulbs according to Barnes. That afternoon Barnes called Sanders to the office. He said some strange things are going on around here. Sanders asked what things? Barnes said some call-light bulbs and records from patient charts were missing. Sanders told Barnes that rooms 54, 55, 56, 57, and 58 in her section 6 all had call-light bulbs in place. The other sections she did not know anything about. Barnes said someone took them and he was going to find out who it was. Sanders repeated that she did not know anything about it. Barnes asked Sanders if she did know who did it would she tell him? Sanders told Barnes if she found out who did it she would report it to him. The meeting ended.

Sanders was off the next day but came to work Saturday as usual. She began by bathing her patients and getting them ready for breakfast. While she was working Sandra Hunter, LPN, came to her and told her to report to Weeks' office. Sanders went to Weeks' office and Weeks told her that Barnes left instructions for weeks to fire her. Sanders asked Weeks why she was being fired and Weeks said she did not know the reason other than Barnes told her to do it. Sanders went home and on several occasions while at home she tried to call Barnes to find out the reason for her discharge. Each time she called she was told Barnes was not in.

Sanders did not know anything about the missing call-light bulbs or patient records and never found out anything about either. She was shocked when she learned that the facility was written up for call-light bulbs.

Sanders did not sign a union card or attend any union meetings before she was discharged.

Sanders received the company letter offering to return her to work if she passed a polygraph test. She called the polygraph company and made an appointment for the following Monday. Within an hour the polygraph person called Sanders and asked who was going to pay for the tests? Sanders said she assumed Barnes would pay since he wanted the employees to take it. The polygraph person said she had talked to Barnes and he was to talk with her about the tests on Monday. She added that she should change Sanders' appointment to another day. Sanders told the polygraph person to forget the appointment because she was not going to pay for the test.

Jessie Warren testified she worked as a nursing assistant on day shift second floor East wing. She was supervised by LPN Hunter and RN Jones. Warren signed a union card and

attended union meetings during the union organizing campaign. At one meeting both Blue and Holmes attended and the union person asked them to leave. They left the meeting. Warren also attended one company meeting called for all the nursing assistants on the second floor. Estes and Taylor chaired the meeting. Taylor told the group that any employees who joined the Union would have to pay \$20 dues. One of the employees, Guley, stated, if employees paid \$20 dues it would mean they were making \$10 an hour. Warren asked Estes, "I know I've been here ten years, when will I make \$5.00 an hour?" Estes replied that they were among the best paid nursing homes in Birmingham. Warren asked, what about the other benefits as far as vacation time? Estes said he was working on it but he could not guarantee anything about that. The employees' concern stemmed from the fact that Warren with 10 years got 2 weeks' vacation and new hires after a year also get 2 weeks. Maintenceman Vickery was also in the meeting. He asked Taylor if employees fool around and join the Union and get fired or sent out the door will they get anything. Taylor said they would get nothing. Other employees had many meetings with management concerning the union campaign.

Warren worked all 3 days of the state inspection. With her experience Warren knew what the State looked for so she made a point to check on the call-lights that she was responsible for. During the inspection none of the call-lights she was responsible for were missing. Warren has in her 10 years listed many items in the logbook that needed repair or replacement.

On January 22, Warren's day off, she was called back to the facility to attend a meeting with Barnes. She arrived at 2 p.m. for the meeting and looked around for the other employees. Warren saw Barnes and he asked her into his office for a one-on-one meeting. Barnes asked if she had heard about the missing call-lights and patient charts. Warren answered that she had heard something about it the day before. Barnes then asked if she knew anything about the missing items. Warren told him she did not. Barnes said he was going to have to do something about it. Warren told him to do what he had to do because she did not know anything about it. Warren stated that she had been there 10 years and never heard of anything like that going on. Barnes said it is going on and Warren asked who he thought was doing it. Barnes said he knew who was doing it. He said it was the day shift. Warren asked Barnes if he found any call-lights missing in her rooms. Barnes replied that he did not. Warren asked Barnes when the patient charts were missing and he said in December. The nursing assistants did not have access to patient charts and were not authorized to make any entries on the charts. Barnes said he would have to dismiss someone that day. Warren told him to do what he had to do and the meeting ended. Warren left the facility and went home. About 6 p.m. that day she got a call from Barnes. He said he called to let Warren know that he terminated her that day. Warren only said, "thank you" and hung up. Several weeks later Warren got two letters from the Company offering a polygraph examination but she did not accept the test. Warren felt that since she had already been fired there was no need to take the polygraph. The first letter was received February 2 and the second letter was received February 8.

Donna Beverly testified she worked as a housekeeper for 1-1/2 years on day shift. She started as part-time, working

both floors. When she became full time she was assigned to the second floor. Her supervisor was Ruby Williams.

In September during the union campaign Beverly, Ruby Norris, and Farrell went to the front porch after shift. They saw two people handing out union leaflets at the end of the driveway. She and Norris went down to get the leaflets and returned to the porch. As they returned to the porch Beverly saw Barnes sitting at his desk. At that moment Sullivan came out on the porch. Beverly told the other ladies that she was sure Barnes saw them get the leaflets.

From the time the union campaign started through January Beverly attended as many as 15 meetings of employees called by Barnes, Turnipseed, Estes, or Taylor. Although nursing assistants from the first floor were present at the meetings no nursing assistants from the second floor ever attended. The management told the assembled employees about unions and some employees asked questions or made comments. At one such meeting Beverly asked why management was so concerned about the Union hurting employees if it could not hurt the Company. She also asked about the higher dues that management said the Union would charge. Beverly had spoken to other unionized employees who informed her that the dues payments are structured on the wages received. LPN Dickerson spoke up at a meeting saying she did not feel like grownups should have someone speak for them.

Beverly signed a union card and attended union meetings but never talked union on the job. Beverly sat next to Union Representative King when the ballots were counted after the election. Betty Blue also attended a union meeting that Beverly was present at. Blue was trying to get the Union representative King, to sign a paper stating what the union was going to do for employees. Blue was seeking such a signed promise from the Union at the suggestion of Barnes.

In October while Beverly was working in the hopper room Williams came into the room and asked Beverly if she knew anything about the Union or the people that were trying to start a union. Beverly said, "Yes," and Williams said, "We really don't need a union because it really not gonna help us any." Beverly replied, "People are gonna do what they want to do and think how they want to think. So, if they want a union, they're gonna get it." Williams then told Beverly that she had missed a company meeting at which Barnes had distributed some company literature and Williams told Beverly to come by the office after work and pick up the literature.

In November after Beverly reported for work, Williams permanently reassigned her to the first floor. She traded work stations with Elizabeth Bridges whom Williams moved to the second floor.

Williams had a meeting with housekeeping before the inspection and alerted all the housekeepers to be sure to check the call-lights each morning when they came into the hall.

During the state inspection Beverly worked the first floor. She was not aware of any call-lights missing in any of the rooms she was responsible for. Beverly daily checked the call-lights because she had to remove them from the bedrail to clean or dust the bed. Usually all the call-lights were tied to the bedrails. Beverly was never singled out by management for a discussion about the missing call-lights. Beverly was never told that the state inspector made any claim against the facility for unclean beds or unclean bedsprings.

About a week before the election Turnipseed called Beverly and Glen Askew, a floorman, to the office. Turnipseed said he called them together because he understood they were lovers. Turnipseed compared the facility with others that had been unionized and concluded that the Union hurt the other nursing homes. He also said the Union has dues of \$15. Beverly told him that \$15 dues meant the employees were making \$7 an hour. Turnipseed replied that he had not heard about any \$7 wages. After several more questions from Beverly, Turnipseed remarked that Beverly seemed to have been thinking about the Union a lot. Beverly said she had. Turnipseed then told her he had some pamphlets he wanted her to read and Beverly accepted them. Beverly asked why he felt the employees did not need a union. Turnipseed responded, "Why would you need someone to talk for you. You could speak for ourselves."

As the election approached Williams would ask, "Donna have you thought about the union." Beverly usually said to her, "I've thought about it and I still haven't quite made up my mind yet." Williams generally added that her husband had been in a union and it did not do any good for him. She also said the Union would not do any good for the employees because it would only hurt not help.

Turnipseed later met with Beverly and Askew again. He had a union constitution which had certain things underlined. Turnipseed discussed the underscored sections with them. Beverly took the constitution and told Turnipseed she would look it over that night.

Beverly followed the procedure she learned during training and on occasion Williams would emphasize the bed springs under the head and foot of the bed. The daily cleaning was accomplished with rags and cleaning liquids. The springs were dusted with a toilet brush. Springs usually only got dusty whereas the bedrails and sides were soiled with food spills. To clean the springs Beverly would raise the head of the bed and prop it up. She then rolled the mattress to expose the springs which she would clean with a brush. The foot of the bed was cleaned in the same manner. Beverly had a handwritten work schedule given to her by Williams outlining her job functions which she followed daily. Beverly neither saw a typewritten work schedule nor was such a schedule mentioned to her. No one ever told Beverly that she was supposed to pull the mattress off the bed on to the floor to clean the springs.

On February 10 about 9:30 a.m. Williams was on the floor checking the rooms. She came out of one of Beverly's rooms and approached Beverly down the hall. Williams said, "Well, Donna, this bed is not clean." Beverly said the bed was clean. Williams said the springs were dirty. Beverly replied, "Well, maybe the middle part of the spring is dirty because I cannot get to that." Williams said, "It has to be done." Beverly told Williams, "I can't, you know, it's a difficult job to do and I can't do it." Williams walked off saying, "It has to be done." About 10 a.m. Williams returned and told Beverly that Barnes wanted to see her. When Beverly got to Barnes' office he said, "Williams says you cannot perform your job duty." Beverly told Barnes, "That is not true because what she's wanting me to do, I told her I could not do it because it was difficult." Barnes asked what Williams had wanted her to do. Beverly stated, "She wanted me to clean the middle parts of the springs on the bed, which I could not get to. The bed is clean, you can go down and

check it for yourself." Barnes responded, "But you cannot clean around a spot. You have to clean that spot." Beverly said, "Well, you know, to lift that bed I could possibly hurt myself trying to get to the part where she wants me to clean." Barnes said, "What you're saying is you cannot perform the job." Beverly said, "No, I'm not saying that, because the job is done." Barnes told Beverly to get up, go back down the hall and clean the springs. Beverly said she could not. Barnes then told Beverly that she was resigning. Beverly again said, "No, because the bed is clean." Barnes stated, "Well, if you cannot go back down there and perform this job, as of today, February 10, you are no longer employed by Estes-Oak Knoll." Barnes said Williams would escort her to the timeclock. Beverly stated that this was the only time the subject of cleaning bedsprings had ever come up. To her knowledge other housekeepers did not clean the bedsprings.

Buddie Watson King testified she has been on staff with Steelworkers Union since 1979. The last couple of years she has concentrated on organizing health care facilities. King and a union member, Randy McGregory, handbilled Estes-Oak Knoll in late September. Most of the employees as they left the facility took a leaflet. King recalls that Bessie Sanders and Ruby Norris took several leaflets when they came down to the handbilling site.

King represented the Union at the representation case hearing and the election. After the election when the Board agent began counting the ballots Ring and Donna Beverly were seated together on the union side.

Richard Arthur Freese testified he is an attorney associate in the firm of Burr and Forman. On February 22 he was instructed to take an affidavit from two employees, Elizabeth Bridges and Edith Watson. Freese met Barnes and Turnipseed at the facility and conducted the interviews in Barnes' office with both Barnes and Turnipseed present.

When Bridges came to the office Freese directed her to one of two chairs in front of Barnes' desk. The two chairs are separated by a small table. Freese sat in the other chair, introduced himself as counsel for the Company and told Bridges he wanted to ask her some questions about the call-light bulbs that had been destroyed. Freese then displayed a typewritten page (p. 3, G.C. Exh. 12) on the table between he and Bridges and asked her to read along with him. Freese read the typewritten page aloud. After reading the page Freese told Bridges her participation was voluntary and if she wished to leave she could do so. Bridges replied that she was willing to remain and speak with Freese. Freese then asked Bridges questions about a burned bulb and patient Marshall in room 49. Freese recorded Bridge's responses and had her sign the statement and the typewritten page. After Bridges signed both documents Freese notarized each. That ended the interview.

Sue Curtis Jones testified she worked as assistant director of nursing for 2 years and as director of nursing for 3 months at Oak Knoll. She resigned in February due to health problems and was employed by Beverly Enterprises in April.

Jones was a supervisory employee at Respondent's facility during the union campaign. Barnes and Turnipseed instructed Jones to initiate conversations about the Union with employees to discourage employees from engaging in activities on behalf of the Union or voting for the Union. She was further instructed by Barnes and Turnipseed during staff meetings

not to ask employees how they felt about the Union or how other employees felt about the Union. Most of Jones' conversations with employees pursuant to the instructions were one on one. She spoke with both first floor and second floor employees in all departments particularly Gulley, Norris, and Hand, and she spoke to most employees more than once. Jones more or less stated her opinion of unions in the conversations. Jones' husband is a doctor at Lloyd Nolan Hospital and she had seen a copy of the employees petition for an election to get the Union out. Jones told the employees she spoke to that the same union was at the Lloyd Nolan Hospital and hospital employees were disenchanted because they had not gotten a raise in 5 years. She also told her employees that the hospital employees had filed a petition to get out of the Union because they thought they were not being represented. Jones recalled that Gulley said the Union would be good because it would help ensure the salaries of the nursing staff and the other people working in the nursing home. Jones told her that she did not really need a union to talk to Barnes. Jones added, "Mr. Barnes door is open and you need to go down and talk to him if you're not happy with your salary." Jones stated that she would start the conversation about the Union but she never asked the employees how they felt or what they thought about the Union. She just expressed her opinion and that was all.

Johnny Vickery testified he has been a maintenanceman in health care facilities for 15 years with the last 6 years at Estes-Oak Knoll. During the state inspection in January he was assigned to accompany Dunham, the state inspector on Tuesday. Dunham went from room to room with Vickery. He guessed she was checking the life safety code. While making rounds they found 13 rubber bulbs missing from patients call-lights with the tubes still plugged into the wall. On Tuesday there were seven missing in rooms 41, 45, 47, 48, 50, 57, and 58. Although a search was made of each room none of the bulbs were found. Vickery replaced each missing bulb with a new bulb. He has on occasion simply taped a bulb with electrical tape. He also checked the maintenance log but did not find any entries of missing bulbs on the log from any shift. Each shift makes entries with a different color ink so he can tell what shift makes an entry. Any one on shift can and do make entries on the maintenance log. Vickery stated that Dunham, although she was keeping written records of the inspection results, did not record the first two missing bulbs. On finding the third missing bulb Vickery testified Dunham said, "This is getting ridiculous. It will have to be wrote up." Vickery did not see what Dunham recorded, but he kept his own record of missing bulbs and reported it to Doris Sullivan in the front office. He could not state what time of day the bulbs were missing or on which shift the bulbs were removed. Vickery checked all the rooms on the first floor on Tuesday and no bulbs were missing. The next day he checked both floors and did not find any bulbs missing on either floor. On Thursday Williams, housekeeping supervisor, and one of the housekeepers told Vickery of a missing bulb. He replaced the missing bulb. Vickery and Williams then made a check of other rooms and found bulbs missing in 45, 47, 48, 49, and 50. The missing bulb in room 49 appeared to have been burned off the cord because a portion of the bulb was still attached to the cord and was sticky and soft. Both Vickery and Williams reported the missing bulbs to the front office with room 50's bulb replaced on

three different occasions and 45, 47, 48, and 39 missing twice. More than one of the missing bulbs was in a room where the bed was not occupied by a patient.

Seventy-five percent of the call-lights are of the rubber bulb variety and the other 25 percent are plastic electrical devices. At least two of the electrical devices were faulty during the inspection and were written up by the state inspector. Vickery recalled one such device was in room 42. In addition to the rubber call-light bulbs Vickery found six electric light sockets empty with missing light bulbs.

In Vickery's experience he has never found so many call-light bulbs missing in a 3-4 day period. Usually one missing bulb each 6 months was average. Vickery stated that bulbs can be removed by someone raising or lowering a bed side rail when the bulb is attached to the rail. The bulb can be pulled off as the rail moves past the mattress. On occasion patients have pulled the call-light cord out of the wall, but Vickery is not aware of any patients pulling rubber bulbs off the cord. Vickery checks the operation of all the call-lights each Wednesday. Since Vickery has worked at Oak Knoll his original replacement bulb inventory of 25 bulbs has been sufficient to maintain the call-lights.

Ruby Ann Williams testified that she authored both the handwritten and typewritten schedules and work functions list that were kept on housekeepers' carts or posted in the housekeeping and cart supply rooms. The handwritten list was typed and posted to prepare for the state inspection. She has supervised housekeeping for 10 years and beds have been cleaned the same way during her tenure. The head of the bed is cranked up and the mattress is rolled toward the foot and held while the springs are dusted. The same is done to clean the foot of the bed after cranking the foot up. Between the two rolls of the mattress all the springs are cleaned. Beverly was shown the cleaning procedure when she was hired. About a month before her discharge Beverly complained that she could no longer move the mattress because she had hurt her back. Williams suggested she report to her doctor and explain her job duties. If the doctor told her not to perform such duties Williams wanted a written statement from the doctor. Beverly did not bring in a doctor's slip.

During the inspection on Thursday Williams and Vickery checked rooms for missing call-light bulbs after Bridges had reported one missing. She and Vickery found three more bulbs missing and she reported the four missing bulbs to Barnes. Later Williams asked Hand if the bulbs were missing when the beds were made and Hand said they were. Williams asked Hand why she did not make a report and Hand said she thought they were supposed to be that way.

On February 10, as Williams was walking the hall she reminded Beverly that it was bed cleaning day. Beverly told Williams that she was not cleaning beds that day because her back hurt. Williams told Beverly that bed cleaning was her job and it had to be done and continued down the hall. When Barnes came to work Williams reported to him the conversations with Beverly.

When Barnes interviewed Beverly he asked if she was refusing to do her job of cleaning the beds and Beverly replied, "Yes." She told Barnes it hurt her back and she was unable to do it. Beverly said she could clean the rest of the bed but not the springs. Barnes did all the talking, Williams remained silent.

Doris A. Sullivan testified she is the assistant administrator responsible for the clerical and general office function at Oak Knoll. Albeit she has the title of assistant administrator—she does not have any authority. Sullivan was an eligible voter in the election and voted.

Sullivan recalled the handbilling in September when employees were between shifts and waiting on the porch. She went out onto the porch to see what was going on and then went back inside. She did not make any mental note of any employee receiving or passing handbill material while she was outside. Sullivan thinks Barnes came out to the porch for a short while. She did not make any report to Barnes of employees involved in the handbilling, but she did discuss the situation with him.

Sullivan also recalled that Vickery, during the state inspection, made a report to her of call-light bulbs missing. However, he reported to her she recorded the information. Vickery made such a report on two separate days of the inspection. Sullivan did not recall Williams making any report of missing call-light bulbs during the inspection.

James Norman Estes testified he is president of Northport Health Services. He participated in the union campaign by holding group meetings with employees and also spoke individually with some employees, including Bridges, about the Union. The conversations were general, the “how is everything going,” kind of thing. Bridges had voiced support for the Company and told Estes that the housekeepers had decided to vote as a block. Estes told Bridges that he was not as comfortable with the housekeepers as she was. He told Bridges that he was particularly concerned about Beverly and Askew. His concern stemmed from the fact that neither had voiced any commitment one way or the other and he concluded they had not made up their minds or they needed additional information. Estes did not recall asking Bridges how Beverly or Askew might vote or asking Bridges to find out how they were going to vote. Also Estes did not recall asking Bridges to talk to anyone about the union situation.

Estes was not at the facility during the inspection nor did he have advance notice of the discharges. He was told by Barnes what had happened after the events had taken place including the fact that the floor was covered by replacement employees. Sometime the following week he was in the facility and employees voiced opinions about the discharges. Some supported the Company and others were concerned that some employees who were terminated were innocent of any wrongdoing. Barnes however had told Estes that he was certain the guilty employees were discharged. Estes after reflection conceived the idea of the polygraph test. Estes knew that somebody or some group of people were guilty but which ones were actually guilty was not certain. He decided those terminated employees who passed the test would come back to work. Estes informed the employees in the facility of the polygraph test and sent letters to all the terminated employees. Estes did not consider calling the employees back to work and then testing them.

Within a week before the election Estes asked Bridges to serve as an election observer and she agreed to do so.

Estes had feelings about certain groups of employees and their sentiments for the Union based on reports from his supervisors about comments made by employees. Supervisors had been instructed to talk to the employees about the union situation. He had concluded that the second floor nursing as-

sistants were willing to talk and exchange information and concluded that they would support the Company. However, Estes only met with the second floor nursing assistants one time, but he did not think that they were precluded from further meetings for any reason other than timing before the election. Estes did not think that the terminated group of employees were met with less than any other group of employees.

Ross M. Taylor testified he is regional administrator for the four nursing homes in the Birmingham area. He participated in group meetings of employees during the union campaign at the facility and attempted to talk to employees on a day-to-day basis during the campaign. Taylor personally spoke to the second floor nursing service employees, including nursing assistants, on the day shift (7 a.m. to 3 p.m.) and the night shift (11 p.m. to 7 a.m.). He could not recall any meetings with the afternoon shift (3 to 11 p.m.). Taylor also initiated one-on-one meetings with day-shift second floor employees concerning the Union but the second floor day-shift nursing assistants were not included. However, Taylor stated that he treated the second floor day-shift nursing assistants as he treated all other employees pursuant to the facilities policy of talking to employees. The substance of each meeting was substantially the same for all employees and the complaints raised by the day-shift nursing assistants second floor were no different than those raised by any other shift or any other floor.

After the state inspection Taylor was disappointed with the employees, some he had known for years. He felt that the situation during the inspection was one the home could not tolerate. Taylor interviewed Gulley individually in an attempt to learn something from her about the missing call-light bulbs. Gulley was unable to give him any information.

Taylor took part in the tripartite discussion about how to deal with the inspection situation. He, Barnes, and Turnipseed discussed the situation but did not discuss the union activity of employees. There was no specific proof that any one of the nursing assistants on day-shift second floor were guilty. However, the three felt that they were the most likely to have done it. Most of the second floor nursing assistants on day shift said the bulbs were in place when they started their shift and the bulbs were found missing on the day shift. The decision to terminate was made based on what was known at the time and Taylor concurred in the decision.

Taylor testified about the part-time painter and yard maintenanceman. The painter was hired in May 1987 by Barnes and it was a second job for the painter. He was usually scheduled for 3 days per week at 20 hours per week. The painter did not work every week but consistently worked 15–20 hours per week. He only worked at the Oak Knoll facility and was carried on its payroll. His pay was hourly at \$5 to \$6 an hour. He was a part-time employee with none of the benefits received by full-time employees or part-time employees working at least 32 hours per week. Part-time employees working less than 32 hours per week had no benefits conferred. However, the regular part-time employees working less than 32 hours per week were eligible to vote in the election and were on the eligibility list. The painters' work schedule was not weekly, but rather he was called in when needed. His work was frequently performed in evenings or on weekends due to less disruption of home services. For example, patient rooms, the dining room, or halls could not be

painted while being used by patients or employees. The painter was supervised by Administrator Barnes.

The yard maintenanceman worked at all four facilities 1 day each week. He may sign in or clock in at whatever facility he worked at each day or he may clock in at the Northway facility. He was a full-time employee receiving the same benefits as other employees, was hourly paid, and carried on Oak Knoll's payroll. During bad weather he was supposed to work inside the facility he was scheduled for. Taylor, however, never saw him working inside the Oak Knoll facility when the weather was bad. The yard maintenanceman is supervised by the administrator at each facility where he is working.

James Turnipseed testified he is vice president of Northport Health Services in charge of operations. Turnipseed was not at the facility during the inspection but did meet later with Barnes and Taylor. Turnipseed told the Oak Knoll employees in a group meeting that the facility was in a terrible bind; we have had a bad survey; part of it was due to the destroyed or missing bulbs and the facility was in a position where management has to fix it. He said the facility had to assure the State Health Department that the situation is fixed and "is gonna stay fixed." Turnipseed added that somebody's gonna lose their job because of it. He stated that he had to tell "the people in Montgomery [Alabama] that the facility has taken care of it and it's not gonna happen again." Management considered the missing and damaged call-light bulbs a very serious situation. Following the group meetings Turnipseed spoke individually with Gloria Bell, Mary Presswood, and Mattie Sanders seeking information about the call-light bulbs.

During the union campaign Turnipseed was involved with group meetings of second floor day-shift nursing service employees. He recalled four or six meetings with those employees. The meetings were in the large dining room with all employees attending. Half would meet at one time and the other half met later. Turnipseed made it a point to talk to all employees either in group meetings or individually including the 11 p.m. to 7 a.m. shift. He did not plan to talk less or more to any one group, particularly the second floor day-shift nursing assistants.

Turnipseed participated in the discussion with Barnes and Taylor that led to the termination of the eight second floor day-shift nursing assistants. He was concerned that a number of the nursing assistants had worked at the home for a lot of years. He did not personally know all of them but he knew Cathy Gulley. Knowing Gulley made it real difficult. He had terminated people before in his 10 years' experience in nursing homes but never that many at one time. However, based on what was known he did not see that they had any choice. There was a problem and it had to be fixed. That is the reason the decision to terminate was made. There was no discussion of union sentiments of any employees during the deliberations leading to the terminations. Management did not have proof that any one individual had anything to do with the missing call-light bulbs. The best evidence was that each of the nursing assistants was in charge of five rooms; equipment had either been taken or destroyed; and he felt if the individual did not do it they at least knew who did. If they did not know who did it they knew it was taken or destroyed and should have reported it. All the nursing assistants were interviewed and each said the bulbs were in place when

they started their shift. The bulbs were missing between 9 and 10 a.m. with some at 11 a.m. as reported to Turnipseed by Barnes, Williams, and Vickery. Either Barnes or Taylor told him that at least one bulb was missing in each section on the second floor, however, Turnipseed did not check to see that every nursing assistant that was terminated actually had a bulb missing in a room she was responsible for. There is nothing to prevent one nursing assistant from simply going into another section while both are working. He thinks it most likely that a second floor employee was responsible, but not any dietary, housekeeping, or certified nursing employees. Turnipseed found it very hard to believe that the nursing assistants had no knowledge that anything had happened on their section.

Turnipseed did not recall what statements dealing with the call-light bulbs were made on the facility's report to the State Health Department following the inspection. He personally did not author the report.

#### Analysis and Conclusions

The General Counsel contends that the eight nursing assistants working day shift on the second floor were discharged because of their union sympathies rather than Respondent's asserted reason of sabotage. The General Counsel argues pretext and discriminatory motivation on the part of Respondent to support his complaint allegation of violation of Section 8(a)(3) of the Act.

Further, the General Counsel alleges the discharge of housekeeper Beverly as discriminatory and in violation of Section 8(a)(3) of the Act. Respondent defends the discharge on the basis of cause due to insubordination.

The determination of both allegations must rest on Respondent's motivation for the discharges. Thus, the causality test of *Wright Line*, 251 NLRB 1083 (1980), is applicable.

The General Counsel must first establish a prima facie case of discrimination and he must preponderate on the basis of all the evidence to prevail. Respondent must go forward with its evidence of asserted reasons for each of the discharges. If Respondent's evidence sufficiently negates the presence of protected activity in the discriminatees, the General Counsel's prima facie case is rebutted and the General Counsel has failed to sustain his burden of proving discrimination.

In addition, the General Counsel alleges various 8(a)(1) violations based on threats to employees and coercive interrogations of employees by Respondent's supervisors.

*Housekeeper Beverly.* Beverly signed a union card and attended union meetings of employees. She also was one of several employees who after shift and while waiting for rides home on the front porch of the facility, accepted union literature from two union representatives handbilling employees at the front curb in September 1987. Respondent denies any knowledge of the employees activities on the porch and particularly the identity of any of the employees involved. However, Doris Sullivan, titled assistant administrator, left her office and went onto the front porch to see what was going on. Albeit Sullivan testified she did not make any mental note of employees receiving or passing handbill material she did discuss the situation with Administrator Barnes. Sullivan did recall that Barnes went to the porch for a short while. Barnes denied seeing employees with handbills on the front porch or going outside while the handbilling was in progress.

However, he was aware of the handbilling because Holmes or Sullivan reported the circumstances to him. Barnes, in part, denied any interest or concern for the union organizing campaign but the admitted effort of Respondent to resist unionization and campaign among its employees to defeat the Union's efforts belies any lack of interest or concern by Barnes. In addition, supervisors were instructed by Barnes to initiate conversations about the Union with employees for the express purposes to discourage employees from engaging in activities on behalf of the Union and to discourage employees voting for the Union. Based on the undisputed facts of the employees assemblage on the front porch, Respondent admitted antiunion posture and Barnes' equivocation while testifying I discredit Barnes' denials of knowledge of the union sympathies of the employees on the front porch. It is well established that circumstantial evidence may supply the predicate for a finding of knowledge. I, therefore, conclude and find that Respondent had knowledge of the union sentiments of Ruby Norris, Donna Beverly, Bessie Sanders, Lilly Farrell, and Cathy Gulley as manifested in the handbilling incident of September 1987.

Beverly testified to two conversations about the Union initiated by Housekeeping Supervisor Williams. One occurring in October 1987 and the other in January 1988. The General Counsel alleges both conversations to contain coercive interrogation of Beverly. As I view the incidents, particularly in light of Beverly's cross-examination on the incidents it becomes clear that no interrogation took place. Not all union conversations between supervisor and employee are violative. In my view the Williams conversations with Beverly do not constitute coercive interrogation and therefore do not violate Section 8(a)(1) of the Act.

Beverly's discharge on February 10, 1988, is alleged to be discriminatory. The General Counsel presented evidence of Beverly's union activity sufficient to satisfy the statutory requirement. As previously found the Respondent had knowledge of Beverly's union sentiments as early as September 1987. Contrary to Respondent's argument I do not conclude that the union activity of Beverly is too remote or trivial to be probative of the General Counsel's case. The Union's organizational drive began in September 1987 and shortly thereafter the Company began its campaign against the Union including the statement to employees, "that because of some bad people the company had to give names and addresses of all employees to the Union." The Respondent continued its campaign against the Union on a weekly and sometimes daily basis up to the election on February 4. There was no sterile period of time during which any past campaign activity could become stale or separated from the ultimate fact, the election. At one company meeting conducted by Regional Administrator Taylor, he commented to employees that he no longer trusted employees at Oak Knoll, particularly the nursing assistants. Accordingly, I conclude and find that Respondent's concentrated antiunion efforts aimed at its employees through directed conversations between supervisors and employees and the many group meetings of employees held by management to counter the Union's organizing activity supplies the necessary animus to support the General Counsel's case of discrimination. The determination, however, does not end there. The record must show there was a discriminatory motive behind the employees' discharge and without regard for whether all would

agree with the Respondent's proffered reason for the discharge. I am mindful that the Board has held repeatedly that if an employee provides the employer with sufficient cause for termination by committing some act which, of itself, could have resulted in discharge, the discharge cannot be found discriminatory merely because the employee engaged in union activity. That is to say, employees are not insulated from discharge by their involvement in union activity. Here the General Counsel has shown that Beverly engaged in union activity known to Respondent and that Respondent had the necessary animus against the Union to support its prima facie case but I cannot infer that Beverly's union activity was a motivating cause for her discharge. The events of February 10 are basically undisputed. Beverly does testify that cleaning bedsprings was never part of her job duties but in describing her functions as a housekeeper it is clear that bedsprings were within her cleaning duties. Beverly's testimony of her hurting back is instructive to any conclusions of housekeepers' job duties. Other housekeeping employees as well, testified to methods and means of cleaning bedsprings. Even without the supporting testimony it would be difficult to imagine a housekeeping function not including the cleaning of bedsprings at least weekly. Taken as whole, the record evidence shows conclusively that Beverly, for reasons known only to her, chose to defer the cleaning of the bedsprings to someone else in spite of the risk involved. Barnes made it clear to Beverly that she could not remain employed unless she cleaned bedsprings and in fact gave her a final opportunity to save her employment. Beverly opted to assume the risk and refused to clean the bedsprings as directed by Barnes. As a result of her refusal she was discharged immediately. I conclude and find that the discharge of Beverly was precipitated by her ardent refusal to clean bedsprings as part of her housekeeping duties and therefore was for good cause. The General Counsel has failed to sustain his burden of proving discrimination in the discharge of Beverly. Accordingly, I shall dismiss paragraph 7c of the amended complaint and that portion of paragraph 8 relating to Beverly.

*Attorney Freese.* The record evidence shows that in preparation for trial Respondent's attorney interviewed employees concerning the disputed events. The General Counsel's allegation is based on the interview of housekeeper Bridges by Attorney Freese. Although Bridges' testimony appears to evince a failure of Attorney Freese to give her the required safeguards and assurances of no reprisals prior to any interrogation, as a whole it falls short of such an indictment. Bridges would not say for sure that Attorney Freese did not express the voluntary nature of the interview or did not assure her that no harm would come to her whatever decision she made or answers she may give. Bridges confirmed Attorney Freese's use of the written preliminary statement and her written affidavit, both executed by Bridges with acknowledgements. There is no evidence in the record that Attorney Freese interrogated any employees concerning their union sympathies or the union sympathies of other employees. In sum, the General Counsel simply has not proven any violation as an outgrowth of Attorney Freese's interviews of employees. Paragraph 7a of the amended complaint will therefore be dismissed.

*Threats by Barnes.* Paragraph 7b of the amended complaint deals with Barnes' Christmas party speech to employees and in some measure with the group meetings Barnes

held with all employees to express Respondent's views on the Union and the upcoming election. Several employees testified about Barnes' speech at the Christmas party and the content of the discussions at group meetings. It is clear from the record evidence that Barnes used the Christmas party as a platform to instill in the employees' minds the necessity for cooperation in getting the facility ready for its annual state inspection. The record does not contain any direct or implied threats of discharge if employees selected the Union as their collective-bargaining representative. Barnes did make several references to loss of employment but his remarks were clearly related to state sanctions that can and do sometimes result from a poor inspection report. Barnes remarks to employees about "attitude" were unrelated to the union organizational drive and therefore not subject to further scrutiny.

Of the seven odd witnesses who testified about the group meetings of employees conducted by Barnes, Taylor, Turnipseed, and Estes only one recalled any statements made that bordered on a threat to employees because of their union sympathy. Witness Presswood testified that Barnes said the Union would cause the employees to lose pay and their resulting wage would be the Federal minimum. However, on cross it became clear that the reference to a minimum wage was explained as *pay* the employees' would be taking home if union dues were deducted as usual. The statement by Barnes falls short of a threat of reprisal and therefore will not support the General Counsel's allegation of a violation. There is no record evidence of any threats of discharge for selecting the Union as a collective-bargaining representative. Accordingly, paragraph 7b of the amended complaint is unsupported by record evidence and will be dismissed.

#### Interrogation: Jones, Estes, and Turnipseed

*Jones.* Respondent's planned and implemented antiunion campaign admittedly included initiation of union conversations with employees to discourage union activity among employees and to discourage votes in favor of the Union. Director of Nursing Sue Jones did as she was instructed albeit she denied asking any employee she spoke to any questions about the Union or any questions of employees union sympathies. Contrary to Jones' denial several employees credibly testified that Jones did ask about union sympathies of employees. Gulley, a wholly credible witness and an employee with an 11-year clean record of service stated that Jones asked, "what she thought about the union," and "whether other employees were pronounion." Hand, an equally credible witness testified, "Jones said she had heard about the union and asked Hand if she planned on joining the Union." Norris, who impressed me with her demeanor and genuine attempt to recall the events, credibly testified that Jones asked, "Ruby, what do you think about the Union?" All the union conversations were initiated by Jones, one on one, and were extemporaneous while the employees were engaged in work functions. Jones spoke to all employees, in all departments, on both floors of the facility and testified she only stated her opinions of unions. Given the structure of the Respondent's antiunion campaign and Barnes' admitted purpose to evaluate employees union sympathies to determine their receptiveness to procompany comments I cannot accept Jones' version of the events and I discredit her denial of any interrogation. Staff meetings were held to school supervisors on the Company's antiunion campaign and undoubtedly as the campaign

progressed the supervisors and managers compared notes to determine the relative success of the plan. Jones was the highest level of supervision for all the nursing services staff, having been recently promoted to director, and the only level of supervision for the nursing assistants. She would therefore have sole responsibility for successfully campaigning among the nursing services employees on a daily basis. A responsibility that could only be realized, if she as Barnes, had substance from which she could evaluate employees' union sympathies. Such substance would require more than simply stating opinions of unions to employees. Notwithstanding that Barnes and Turnipseed may have instructed supervisors to not ask employees how they felt about the Union or how other employees felt about the Union, I conclude and find that Jones did question employees about their union sympathies and the union sympathies of other employees. Respondent is bound by the statements of its supervisors particularly its department heads. Therefore, Jones' interrogation of employees is violative of Section 8(a)(1) of the Act and I so find.

*Estes.* President Estes' participation in the Company's campaign against the Union left him uncomfortable about the housekeeping group. He individually expressed concern to employee Bridges that two other housekeeping employees had not voiced any commitment one way or the other. Estes did not recall asking Bridges to talk to any of the employees about the union situation. However, Bridges uncontroverted and credible testimony is quite clear. Estes told Bridges that he was sure she could convince the housekeepers to vote "No" for the Union and then asked Bridges, "What do you think about a Union." Bridges responded that she and her husband did not need a union. Estes admittedly had formed opinions about employee sentiments for the Union from reports about comments made by employees. He likewise formed an opinion about Bridges, who had expressed company sentiment previously, following his conversation about the housekeepers. He not only felt comfortable that she could help the Company in the campaign but enlisted her aide as an observer for the election. The fact that Bridges had expressed company sentiments to management in the past does not lessen the impact of Estes' interrogation. Bridges was put in a position by Estes where she had to declare allegiance. Section 7 of the Act gives employees the absolute right to be free of any restraint, coercion, or interference in deciding their sentiments for company or union. *Rossmore House*, 269 NLRB 1176 (1984), cited by Respondent does not validate interrogation between supervisor and employees but merely establishes a basic test. Under all the circumstances, if interrogation reasonably tends to restrain, coerce, or interfere with employee rights, it is violative of the Act. Here, during a union campaign of several months and as election time was only days away, the corporate president, who otherwise is unknown to employees, requires an employee to expose her feelings for the Union. The employee is the most senior housekeeper among 10 and lacking in sophistication one could expect from skilled or technical employees on the payroll. In my view the impact is obvious. President Estes restrained and coerced Bridges by interrogation of her union sympathies in violation of Section 8(a)(1) of the Act, and I so conclude and find.

*Turnipseed.* The General Counsel alleges that Vice President Turnipseed interrogated employees about union activi-

ties several days before the election. The record evidence shows that Turnipseed participated in the employee meetings and individual interviews during the Company's antiunion campaign. He also conducted several individual interviews of employees following the state inspection of the facility and kept meager notes of each employee's responses. Gloria Bell, a first floor nursing assistant, attended company campaign meetings and was interviewed by Turnipseed following the state inspection. During the campaign Bell kept a cryptic diary of events she felt were important, however, she did not record the full substance of any single incident. Bell testified about Turnipseed's individual interview with her on January 22 dealing with the apparent sabotage occurring during the state inspections. Bell recalled that Turnipseed told her that she and other employees were under suspicion of patient neglect because of the incidents surrounding the people discharged. Bell also recalled that Turnipseed asked what her feelings were about the Union. Bell responded to Turnipseed that her feelings were personal and she had not said whether she was for or against the Union. Respondent argues that Turnipseed's notes do not contain any reference to the Union during the interview nor do Bell's notes mention the Union or any questions concerning the Union. The failure of Turnipseed's notes to disclose a discussion about the Union I do not find probative or helpful. The failure of Bell's notes to reflect the question about the Union, particularly since Bell's sensitivity to the subject is personal, I do find helpful. Obviously Bell is confused about meetings or interviews but considering the numbers of meetings held with employees about the Union, any confusion is understandable. Bell's confusion, however, limits the General Counsel's proof of the interrogation by Turnipseed. If the evidence does not support interrogation on or about February 1, 1988, then the allegations must fall. I cannot find from Bell's testimony that interrogation as alleged took place. I do conclude and find that Turnipseed did not engage in coercive interrogation during the one-on-one interview with Bell on January 22, 1988, and therefore that portion of paragraph 7 of the General Counsel's complaint dealing with Turnipseed will be dismissed.

#### Discharge of Eight Nursing Assistants

The record evidence evinces 11 nursing assistants work the day shift (7 a.m. to 3 p.m.) on the second floor. Of the 11 nursing assistants, 8 were discharged immediately following the state inspection. The eight were Ruby Norris, Mary Moore, Cathy Gulley, Jessie Warren, Bessie Sanders, Mary Presswood, Jessica Hand, and Mattie Sanders (no relation to Bessie).

The record evidence also shows that Moore, Presswood, Bessie Sanders, and Warren signed union cards and attended union meetings. In addition Bessie Sanders was one of the employees present on the front porch with Ruby Norris when the Union handbilled the facility. Cathy Gulley although not on the porch took a handbill from the union representative as she drove out the driveway. Mattie Sanders, Gulley, and Hand did not sign a union card or attend union meetings, but they did express union sentiments at company meetings and aligned themselves with the other five nursing assistants who did engage in union activity. The evidence is clear that the eight discharged nursing assistants were vocal during the Company's antiunion meetings and complained of basic

wage, vacation, and other benefits discrepancies. Barnes' testimony that other employees complained to management during the meetings is nothing more than an unsupported self-serving attempt to enlarge the pool of complaining employees beyond the eight nursing assistants on the second floor. Management admittedly engaged in colloquies with the eight nursing assistants during the Company's antiunion meetings and I find it instructive that Barnes after only one such meeting labeled the "8" nursing assistants (day shift, second floor) as the only employees beyond reach of the Company's campaign propaganda and therefore did not include them in any of the subsequent meetings. Contrary to Respondent's argument in brief and Estes' testimony that the nursing assistants on the second floor were not treated differently than other employees during the Company's campaign meetings, I conclude and find that 8 of the 11 day shift nursing assistants on the second floor were considered by management to be hard core union sympathizers incapable of change and on whom campaign rhetoric would be wasted. Where, as here, management is convinced that a group of employees are prouion it is inconsequential that not all employees in the group may have engaged in actual union activity. My conclusion that only 8 of the 11 nursing assistants made up the dissident faction is further supported by the fact that when the discharges occurred Barnes specifically excluded the 3 remaining second floor nursing assistants from consideration for discipline, notwithstanding, his expressed explanation to the group of 8 about to be discharged, "the good would have to suffer with the bad." The General Counsel has thus satisfied his burden of showing the existence of union activity by the alleged discriminatees and Respondent's knowledge of their union activity.

My previous finding of Respondent's animus applies with more than equal vigor to the discharges of the nursing assistants, when one considers that Barnes identified the very discriminatees as intractably prouion as a result of his antiunion campaign meetings with employees. Moreover, Barnes' appraisal of the nursing assistants' sympathies was extant throughout the entire circumstances culminating in the discharges. I, accordingly, conclude and find that Respondent has manifested sufficient general bias and hostility toward employees engaging in union activity to support the General Counsel's prima facie case of discrimination against the day-shift nursing assistants on the second floor.

What remains is the determination of whether the union activity of the day-shift nursing assistants on the second floor was a consideration in management's decision to discharge. If the discharges were motivated by antiunion design they are violative of the Act even though the employees may have performed misdeeds warranting termination. However, even a finding that the nursing assistants were not discharged for cause would not establish a violation of Section 8(a)(3) as alleged. The true motivation must be found and more often than not the finding is based on inferences.

The record evidence clearly establishes that Respondent's intent was to attempt to persuade employees to vote "no" right up to the election and Respondent admittedly met with employees as often as possible up to the election. It is just as clear that once the second floor nursing assistants were eliminated from Respondent's rotational employee meetings they remained so. Testimony of Estes, Taylor, and Turnipseed to the contrary I do not credit, because it was

couched in speculative or general terms whereas Barnes' testimony of his evaluation of the receptiveness of the subject nursing assistants was specific and concise. There is no evidence in the record to suggest that Barnes changed his mind about their status. Thus there remained a continuing coincidence of union activity of the second floor nursing assistants up to the time of their discharge.

The record also shows a degree of disparity of treatment between the eight nursing assistants discharged and the three nursing assistants not receiving any discipline. All worked the day shift on the second floor with identical duties. There is nothing in the record to explain the separation. The only references to the other three nursing assistants were in testimony that several nursing assistants from the second floor day shift did continue attending the joint meetings of employees after Barnes had decided to discontinue including the eight and in testimony that when Barnes instructed the charge nurse to assemble the second floor nursing assistants responsible for the bulb discrepancies he specifically precluded the other three from participation without explanation. Further, the distinction cannot be found in any analysis of nursing assistants responsibility for certain rooms where bulbs ostensibly were missing. Several of the discharged nursing assistants were never identified as having bulbs missing from their rooms or bulbs were missing on days they were not working. Barnes did not explain the wholesale inclusion of the eight nursing assistants in the group to be discharged other than his choices of personal interviews during his investigation into the matter. It is not inconsequential that Barnes did not interview the other three nursing assistants. The inescapable conclusion is that Barnes arbitrarily decided that the culpable nursing assistants were only those eight who had expressed union sympathy and protested the existing working conditions during the campaign and prior to the union election. In my view, Barnes' selection process was subjectively unlawful.

Respondent argues that the investigation into the missing bulbs was as thorough as could be expected under the circumstances albeit nursing assistant Presswood was not questioned about any missing call-light bulbs at any time. Apparently the circumstances relied on by the Respondent is the state inspection and the union election. Although Barnes at one point in his testimony stated that the discharges were not based on any discrepancies found during the state inspection, the state exit interview, or the written state report which issued several weeks after the discharges, he later stated that the discharges were based on the "sabotage" effected by persons unknown to make the home fail the state inspection. Taylor and Turnipseed also made statements to employees linking the "8" nursing assistants, call-light bulbs, and the state inspection. Barnes, however, in his investigation focused on both missing bulbs and missing patient records and told the employees he spoke to that someone if not all would lose their jobs over the missing bulbs and/or the failure of nursing assistants to report bulbs missing. The missing patient records clearly predated the state inspection and discharges by several weeks or several months and were not disclosed by the state inspectors. Barnes testified that if the State had found the records missing the home would have been cited for the omission. Barnes did maintain in his testimony that the missing patient records were not considered by management in effectuating the discharges. Barnes reported

the missing bulbs to Taylor and Turnipseed. Turnipseed during his investigation of the missing bulbs told employees he spoke to that a portion of the bad report received from the State was the missing bulbs and someone was going to lose their job over the missing bulbs. Taylor investigated at least one day-shift second floor nursing assistant in an attempt to learn something about the missing bulbs. Only one employee, nursing assistant Hand, knew that bulbs were missing in her assigned rooms. In response to why she did not log or report the missing bulbs she told Barnes that Vickery was working in all the rooms during the inspection and she thought that Vickery was in the process of replacing old or damaged bulbs at that time. No other nursing assistant knew that bulbs were missing from their rooms during the inspection and told Barnes, Taylor, and Turnipseed they had no knowledge of missing bulbs. In fact several of the "8" nursing assistants did not experience missing bulbs in their assigned rooms.

Management's investigation was limited to the personal interviews of the nursing assistants because they had the responsibility to report the missing bulbs. Management's conclusion that the eight day-shift second floor nursing assistants would be disciplined was based on the failure of any nursing assistant to report the missing bulbs. Apparently the conclusion was also based in part on room responsibility because Barnes stated that the east wing nursing assistant, Norris, was included for discipline because a bulb was missing in her room, No. 41. Barnes did not explain the failure of Respondent to acknowledge that a nursing assistant could only be accountable for patient services on days they actually worked. Several of the accused nursing assistants did not work on days bulbs were supposed to be missing. The exclusion of the other three nursing assistants from discipline was not explained on any basis: number of missing bulbs in their rooms; absence or presence of reports of missing bulbs or work schedules during the inspection. The dietary employees were excluded from discipline because their work functions do not normally place them in the halls. The first floor nursing assistants were excluded from discipline because no bulbs were missing on the first floor. Housekeeping employees were excluded from discipline because they were cooperative and within their job functions have no responsibility for the bulbs. The only record evidence evincing housekeeping's cooperation is that related to Estes' successful attempt to solicit housekeeper Bridges' aid to ensure that all housekeepers vote no in the election.

Management chose termination for the eight nursing assistants to make sure everybody else realized that Respondent was not going to tolerate that kind of activity in the nursing facility. Although Barnes stated that the discharges were not a result of the State's findings but rather the result of the facility's file and findings he explained the abruptness of the discipline by alluding to the home's 30-day correction period for inspection discrepancies. Barnes added that it was a patient-quality decision since lives of patients were placed in jeopardy by the missing call-light bulbs. To implement his patient-quality decision Barnes told the discharged employees that their employment record with Respondent would reflect a discharge for patient abuse and for neglect which would make finding another job difficult.

As noted earlier not all "8" nursing assistants were cited by Barnes for missing bulbs in their assigned rooms there-

fore room responsibility is substantively incomplete as a basis for discipline. Only one of the eight (Hand) had knowledge that bulbs were missing in her rooms and did not file a report because she assumed that Vickery, who was at the time working in all the rooms, was in the process of replacing worn and damaged bulbs. The record shows that Vickery's assignment during the state inspection was to repair and replace in an effort to minimize violations. Assuming that Respondent acted properly by selecting Hand for discipline because of her failure to report missing bulbs, she is only one of eight to fit that mold. The other seven nursing assistants credibly denied any knowledge of missing bulbs in their rooms during Respondent's investigation and thereby do not run afoul of the reporting rule. Additionally, Respondent accepted their denials without further investigation. Such a ratio among nursing assistants raises questions regarding the missing bulbs. If in fact bulbs were missing during the critical time of the state inspection why were the nursing assistants not confronted with the omission at that time? Apparently, Vickery had an abundance of time to perform his repair and replace functions because he successfully replaced all bulbs and had time to make a secret report to Barnes of missing bulbs. If in fact bulbs were missing during the critical time of the state inspection why were they overlooked or missed by the state inspection team? The state report showed six call-light bulbs not functioning in several rooms duplicated by Vickery's report to Barnes of missing bulbs and two call-light bulbs not accessible in two rooms unrelated to Vickery's report to Barnes. Vickery's testimony of his presence with the state inspection team when several missing bulbs were encountered, I do not credit. His testimony on that point goes against all reason. The state inspector showed concern in her report for nonfunctioning call-light bulbs which would represent a lesser infraction than a missing call-light bulb. I think it incredulous that the greater of the two infractions would be passed over particularly if three missing bulbs in succession had been observed. Further, based on the specifics found in the state report in detailing infractions I do not credit Barnes' interpretation that non-function call-lights includes those with missing bulbs. The record evidence of the inspection detailed a nonfunctioning call-light which did not include any missing parts. In addition Barnes, at another part of his testimony, stated that if the state inspectors had found patient records *missing* the report would have cited the home for *missing* patient records. Logic would dictate that the state inspectors would likewise cite the home specifically for *missing* call-light bulbs. There is uncontroverted evidence in the record to show that call-light bulbs and entire call-light units are from time to time disconnected and on occasion used by patients as something other than a medical signal. In addition the defined use of a call-light is not limited to medical emergencies in that patients signal for drinks, snacks, and a myriad of other non-medical needs with their call-lights. Further, many of the second floor patients are bedridden and physically incapable of using a call-light. As Barnes testified the home relies on roommates to signal the nurses when a physically impaired patient may need assistance. Maintenance man Vickery's lax schedule of repairing items in the nurse's station log would contribute to those time periods during which call-lights do not function as they are designed. In the last analysis, the record evidence does not support Respondent's contention

that nonfunctioning call-lights present a life-threatening situation to patients on the second floor. There is no record evidence to show that patients' lives were placed in jeopardy by missing call-light bulbs or indeed that a second floor patient's life could be placed in jeopardy by a missing call-light bulb. There is evidence to show that a call-light in need of repair for a 2-month period was not considered a life-threatening situation for the patient. Respondent's policies respecting daily maintenance and patient care as reflected in this record are more subject to a patient-quality inquiry than the call-light bulbs. The state inspection was concentrated and the home was cited for many violations dealing with patient care. The violations ranged from failure to treat patients with respect to negligent medical treatment in real life-threatening situations. In addition many citations stemmed from the failure to follow standard medical practices of administering aide and lack of systematic dispensing of drugs including security and safe keeping of drugs inventory and critical followup on patients receiving drugs. Barnes' so-called patient-quality decision to discharge the "8" nursing assistants for call-light bulb irregularities pales by comparison. In short, I see no reason to place any more importance on call-lights or quality patient care than that shown by Respondent prior to the discharges. In my view Respondent seized on the state inspection and limited call-light irregularities to rid itself of its most prouion employees immediately before the union election. Respondent's discipline was precipitous without apparent reason. If the discipline was linked to the inspection there was a 30-day period in which Respondent could act and report to the State. If the discipline was not linked to the inspection and as Barnes stated, the employees were disciplined based on an independent investigation, there is no need to expedite action against the employees. Indeed, there was time for a more thorough investigation. Barnes' admitted purpose in selecting discharge as discipline was to show the remaining employees that certain activity would not be tolerated by management. The message was heard loud and clear by the employees. Accordingly, I conclude and find that the Respondent discriminatorily discharged the "8" nursing assistants in violation of Section 8(a)(1) and (3) of the Act.

#### IV. THE CHALLENGES

The Regional Director for Region 10 consolidated the challenges to ballots in Case 10-RC-13604 with the instant unfair labor practice cases. Of the 10 ballots challenged 8 were nursing assistants discharged before the election. Respondent's discipline was precipitous without apparent reason. If the discipline was linked to the inspection there was a 30-day period in which Respondent could act and report to the State. If the discipline was not linked to the inspection and as Barnes stated, the employees were disciplined based on an independent investigation, there is no need to expedite action against the employees. Indeed, there was time for a more thorough investigation. Having found the discharges of the 8 nursing assistants to be discriminatorily motivated they are therefore eligible to vote in any union election. Accordingly, the challenges to their ballot are overruled.

The remaining two challenges are to ballots cast by employees Nelson James and Michael Waites pursuant to the Regional Director's Decision and Direction of Election. One employee is a part-time painter and the other is a full-time yardman. The stipulated unit is: All full-time and regular

part-time service and maintenance employees employed by the Employer at its Oak Knoll facility in Birmingham, Alabama. Including nurses aides, housekeeping employees, laundry employees, dietary employees, maintenance employees, receptionist, medical records employees, and activities directors, excluding licensed practical nurses and all other technical employees, registered nurses, and all other professional employees, guards, and supervisors as defined in Section 2(11) of the Act.

The record evidence shows that part-time employees who worked less than 32 hours per week and therefore did not receive any employees' benefits were nonetheless placed on the election eligibility list for the election.

*Painter:* The painter only works on an oncall basis with no evidence in record to show the frequency of employment. In my view the lack of evidence to evince regularity is instructive that the painter's employment is irregular. Thus the painter's employment does not fall within the described unit. The cases cited by Respondent in brief, *Barnert Memorial Hospital Center*, 217 NLRB 775 (1975), and *St. Elizabeth's Hospital of Boston*, 220 NLRB 325 (1975), turn on the *regularly scheduled employment* of the part-time employees and the fact that they perform the same work as full-time employees. Neither basis applies to the painter in the instant case. Accordingly, the challenge to the ballot of the part-time painter is sustained.

*Yardman:* The record evidence shows that the yardman works 1 day each week at each of the four facilities within the Northport Health Services group, including Oak Knoll. His employment is full time and he receives the same benefits as other employees. Clearly the yardman is a full-time employee as defined in the stipulated unit description. Albeit he works at all four facilities he is carried on the Oak Knoll payroll and for that reason is more appropriately included with Oak Knoll employees described unit. The challenge to the ballot of the yardman is therefore overruled.

#### CONCLUSIONS OF LAW

1. Respondent, by interrogating employees about their union activities and sympathies, has violated Section 8(a)(1) of the Act.

2. Respondent, by discharging its employees, Ruby Norris, Mary Moore, Cathy Gulley, Jesse Warren, Bessie Sanders, Mary Presswood, Mattie Sanders, and Jessica Hand because of their union activities and sympathies, has violated Section 8(a)(1) and (3) of the Act.

3. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

4. The complaint allegations of interrogation by Vice President of Operations Turnipseed, Respondent's attorney, Freese, and Supervisor of Housekeeping Williams; the complaint allegation of threats by Administrator Barnes, and the complaint allegation of discriminatory discharge of employee Donna Beverly were not sustained by the General Counsel.

#### REMEDY

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

The Respondent having discriminatorily discharged Ruby Norris, Mary Moore, Cathy Gulley, Jesse Warren, Bessie Sanders, Mary Presswood, Mattie Sanders, and Jessica Hand, it must offer them full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, with backpay computed on a quarterly basis and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987),<sup>4</sup> from the date of discharge, to the date of proper offer of reinstatement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>5</sup>

#### ORDER

The Respondent, Northport Health Services, Inc. d/b/a Estes Nursing Facility-Oak Knoll, Birmingham, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union activities and sympathies.

(b) Discharging employees because they engage in union activities or form union sympathies.

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

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

(a) Offer Ruby Norris, Mary Moore, Cathy Gulley, Jesse Warren, Bessie Sanders, Mary Presswood, Mattie Sanders, and Jessica Hand immediate and full reinstatement to the jobs from which they were discharged on January 22, 23, and 24, 1988, 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 earnings they lost, plus interest, as outlined in the remedy section of this decision.

(b) Remove from its files any references to the discharges of Ruby Norris, Mary Moore, Cathy Gulley, Jesse Warren, Bessie Sanders, Mary Presswood, Mattie Sanders, and Jessica Hand and notify them in writing that this has been done and that evidence of this unlawful termination will not be used as a basis for future personnel action against them.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its four facilities in Birmingham, Alabama, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days

<sup>4</sup> See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

<sup>5</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>6</sup> 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."

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.

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

IT IS FURTHER ORDERED that Case 10-RC-13604 be remanded to the Regional Director with the direction, to open and count the ballots of Ruby Norris, Mary Moore, Cathy Gulley, Jesse Warren, Bessie Sanders, Mary Presswood, Mattie Sanders, Jessica Hand, and the yardman, to prepare a revised tally and to issue the appropriate certification.

#### APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice

- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate our employees about their union activities or union sympathies.

WE WILL NOT discharge our employees because they engage in union activities or form union sympathies.

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 Ruby Norris, Mary Moore, Cathy Gulley, Jesse Warren, Bessie Sanders, Mary Presswood, Mattie Sanders, and Jessica Hand immediate and full reinstatement to the job from which they were discharged on January 22, 23, and 24, 1988, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of earnings and other benefits resulting from their unlawful discharges, less any net interim earnings, plus interest.

WE WILL notify Ruby Norris, Mary Moore, Cathy Gulley, Jesse Warren, Bessie Sanders, Mary Presswood, Mattie Sanders, and Jessica Hand that we have removed from our files any reference to their discharges and that the discharges will not be used against them in any way.

NORTHPORT HEALTH SERVICES, INC. D/B/A  
ESTES NURSING FACILITY-OAK KNOLL