

Delta Health Center, Inc. and Charlotte Mosley and Priscilla Susette Hill. Cases 26-CA-14218-1 and 26-CA-14218-2

January 7, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On March 20, 1992, Administrative Law Judge Richard J. Linton issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in response to the Respondent's exceptions and in support of the judge's decision.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ 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, Delta Health Center, Inc., Mound Bayou, Mississippi, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹The 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.

In adopting the judge's finding that the Board should assert jurisdiction over the Respondent, Member Devaney notes that there were no exceptions to this finding.

Donna Osborne Griffin, Esq. and *Chevella R. Brown, Esq.*, for the General Counsel.

Carlton H. Petway Sr., Esq., *Julian W. Blackshear Jr., Esq.* (brief only) (*Petway & Blackshear*), of Nashville, Tennessee, and *Willie L. Bailey, Esq.* (*Bailey & Griffin*), of Greenville, Mississippi, for Delta Health Center.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. This is a concerted activities discharge case. Stipulating that the activities (memos containing allegations and criticism written partly in harsh language) of the employee group were concerted, Delta contends that the activities were not protected because they (1) invaded the exclusive province of management, and (2) in any event, were so disloyal, reckless, or maliciously

untrue as to be impermissibly abusive. Finding that the language falls within the permissible range of harshness, the employee witnesses more credible and persuasive than the management representatives, and the concerted activities to be protected by the Act, I order Delta to offer immediate and full reinstatement to Charging Parties Hill and Mosley and to pay them backpay, with interest.

I presided at the trial of this case in Cleveland, Mississippi, for 6 days, beginning June 3 and concluding August 28, 1991, on the January 31, 1991 order consolidating cases and consolidated complaint (complaint) issued by the General Counsel of the National Labor Relations Board through the Regional Director for Region 26 of the Board. The complaint is based on charges filed December 17, 1990, by Charlotte Mosley (Mosley) in Case 26-CA-14218-1 and on the same date in Case 26-CA-14218-2 by Priscilla Susette Hill (Hill) against Delta Health Center, Inc. (Delta, DHC, or Respondent). All dates are for 1990 unless otherwise indicated.

The General Counsel alleges in the complaint that Delta violated Section 8(a)(1) of the Act about September 6 by threatening Charging Party Hill with unspecified reprisals, about September 30 by issuing written reprimands to Charging Parties Mosley and Hill, and about October 22 by terminating Mosley and Hill because about September 5 Mosley, Hill, and others, during a monthly staff meeting, concertedly complained about Delta's clinic at Greenville, Mississippi, and the effect of that clinic on the wages, hours, and working conditions of Delta's employees.

By its answer, as amended, Delta admits certain facts, denies the allegation of statutory employer, and denies violating the Act. For affirmative defenses, Respondent DHC asserts that (1) the Board lacks jurisdiction respecting the two discharges; (2) the two discharges do not constitute a violation of Section 8(a)(1); (3) the charges by Mosley and Hill are deliberately or maliciously false, in bad faith, and for the improper motive and intent "to coerce and intimidate the Respondent's efforts to expand its facilities in Greenville, Mississippi"; and (4) the bad-faith charges by Mosley and Hill were "politically motivated," and with malice, as a result of the personal disagreement of the charging parties with Delta's managerial guidelines and policies.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel¹ and Delta,² I make the following

FINDINGS OF FACT

I. JURISDICTION

The pleadings establish that Delta is a corporation with an office and facility in Mound Bayou, Mississippi, where it has been engaged as a health care institution in the operation of medical clinics in Mound Bayou and Greenville, Mississippi, providing outpatient medical and professional care services. Annually Delta purchases and receives goods valued at \$50,000 or more direct from points and places located out-

¹The General Counsel attached a proposed order and a proposed notice to the Government's brief.

²On September 26, 1991, Delta's able lead counsel at the trial, Carlton H. Petway Sr., suffered an untimely death at 51. Joining Attorney Willie L. Bailey on Delta's posthearing brief is Julian W. Blackshear Jr., Attorney Petway's surviving law partner.

side Mississippi, thereby establishing legal jurisdiction. As Delta's revenues are \$250,000 or more per year, it meets the Board's discretionary jurisdiction standard. *East Oakland Community Health Alliance*, 218 NLRB 1270 (1975).

Although at trial the parties stipulated that Delta is a health care institution within the meaning of Section 2(14) of the Act, Delta adhered to the position in its answer denying that it is a statutory employer. (1:17.)³ Delta's position, as expressed at the hearing, is that it is exempt because it is controlled by a Federal agency. (1:21–25; 2:245.) In its posthearing brief, Delta does not expressly address the issue of jurisdiction.

Section 2(2) of the Act extends coverage of the Act to employers generally, and then excludes certain categories such as "any State or political subdivision." As Delta employs individuals who are employees within the meaning of Section 2(3), Delta clearly is a statutory employer. Because Delta is not a state or political subdivision, it does not fall within that exclusionary category. As in *Res-Care*, 280 NLRB 670 fn. 1 (1986), the question is whether the record demonstrates that the Board should decline to exercise its discretionary jurisdiction because an exempt entity (a Federal agency in this case) controls the working conditions of Delta's employees. The employer bears the burden of persuading the Board not to exercise its statutory jurisdiction. *Human Development Assn. v. NLRB*, 937 F.2d 657, 661 (D.C. Cir. 1991); *Firefighters*, 292 NLRB 1025, 1026 and fn. 9 (1989). I find that Delta did not carry its burden.

Delta receives 51 percent of its funds from fees for its services, and only 49 percent from the Public Health Service (PHS) division of the United States Department of Health and Human Services (HHS) under Pub. L. 100–386 § 330, the Public Health Service Act, 42 U.S.C. § 201, 254c, with the 1988 amendments, Pub. L. § 100–386, being the most relevant. (1:27; 2:222–223.) For its Federal funding, Delta must provide primary health care services to four Mississippi counties: Bolivar, Coahoma, Sunflower, and Washington. (1:27, 36.) Since November 28, 1988, Dr. L. C. Dorsey (Dorsey has a doctorate degree in social work, 1:61) has been Delta's executive director. (1:27; 6:1205; G.C. Exhs. 28, 38.) Delta's policy is set by a 15-member board of directors, with 51 percent (8, apparently) of the directors being elected by the patients and the 8 elected then selecting the other 7. (1:34.)

Luther Wayne Cutchens is the director of PHS' Atlanta regional office of the Office of Grants Management. Cutchens' Region 4 covers eight States, including Mississippi. (2:221–222.) His office handles the financial aspects of the health program, recommending approval/disapproval to the central office and otherwise administering and monitoring the funds. (2:222, 238.) PHS' Atlanta project officer for the health program is Paul Bond. (2:234, 267; 6:1209.) Their two offices, Cutchens testified, coordinate closely. (2:239.)

Section 330 funds are provided based on a grant application submitted by the health center and a notice of grant award. (1:60; 2:232, 241.) Central to the process is a line-item budget, which includes items for salaries and benefits. (2:229, 251, 275, 281.) As a health center partially funded

by the PHS, Delta files an annual report which Cutchens' office audits. If the audit finds an expenditure on an item not approved, that expenditure of section 330 funds would be disallowed. (2:274–275.) However, this is subject to three exceptions. First, Delta (the grantee) may switch funds among line items as long as the total (Federal) budget is not exceeded. (2:275.)

Second, Delta may use other sources to fund above what the PHS of HHS approves. For example, Cutchens explains, the number of paid holidays, a line item, must be reasonable in relation to those listed by other grantees in the eight-state area of Region 4. If 10 is a reasonable number and Delta gives 15, Cutchens would ask about the additional 5 and probably recommend that the central office not fund the additional ones. Delta nevertheless would be free to fund the additional five from other sources. (2:252, 254, 281–282.)

Third, if Delta generates more fees than estimated, it has excess income, or "EPI"—excess program income. Delta may keep all of that EPI and use it for any of five purposes specified in the statute, such as improving the administration of the service program.⁴ (2:229–230.) That would authorize Delta, Cutchens explains, to pay bonuses from EPI to management and staff. So long as Delta uses EPI for the five statutory categories, the PHS has no control over how Delta spends that excess money. (2:233, 277.)

Delta's level of funding depends on what is called "encounters"; that is, a provider "seeing" or treating a patient, and the cost per encounter. (2:255–256, Cutchens.) Providers, Dorsey explains, are the doctors, dentists, and nurses. (1:108.) In the experience of the workers, a significant loss of funds has resulted in layoffs. (1:194; 2:452; 3:681, 696; 4:812, 816, 884, 886; 6:1336.) Dorsey testified that the Greenville clinic was opened in order to increase Delta's encounters. (6:1206.)

Beyond its overall financial restrictions, the Public Health Service of HHS, Cutchens testified, has no control over the day-to-day operations of Delta, or any health center, and does not get involved in such operations. "These are private corporations [but nonprofit, 2:277] and the boards [of directors] are responsible for the operations of the center. We provide the funds." (2:227.)

Cutchens identified an August 20, 1990 memo (G.C. Exh. 39) from James J. Corrigan, HHS' national director for section 330 grants, in which Corrigan lists 18 "grant actions" which require prior approval. The 18 items range from capital expenditures for land or buildings to purchase of special equipment exceeding \$25,000 to subcontracting of the operations. None of the 18 items deals with day-to-day operations, wages, hours, working conditions, or labor relations. (2:228.)

Dorsey testified that she and the board of directors set the hours of the facilities (1:38) (although PHS specifies certain clinical hours, 1:51), determine employee benefits, including health insurance coverage and retirement (1:41–44), and vacation (1:49–50). They develop, install, and modify personnel policies and procedures for Delta without approval by HHS (1:51), including the sick leave, pay day, and leave of absence policies (1:54), hire and terminate line staff (1:62–63), lay off (1:65), demote (1:66), transfer (1:71), suspend and

³References to the six-volume transcript of testimony are by volume and page. Exhibits are designated G.C. Exh. for the General Counsel's and R. Exh. for Respondent Delta's.

⁴42 U.S.C. § 254c(d)(4)(B)(ii).

promote (1:72) employees, and fix the number and dates of paid holidays (1:78).

Although the PHS of HHS does not get involved in ordinary personnel matters, at one point before November 1988 it did insist that Delta replace its board of directors and executive director with, in Cutchens' words, "adequate" management, if Delta wanted continued Federal funding. Delta complied. Replacing Dr. Richard Enochs, Dr. William Lucas was appointed the acting executive director. (2:242–249.) Dr. Lucas is a younger brother of Earl S. Lucas, the mayor of Mound Bayou. (4:924, 939.)

For about 5 years, from August 1984 to August 1989, Delta operated in what PHS classifies as "exceptional status." (1:66; 2:226.) Contrary to the term's connotation, that status is not a good one to be in. "Exceptional status" usually means, Cutchens explains, that the health center is having financial problems and is experiencing a budget deficit. (2:224.) During the period Delta was in that status PHS provided technical assistance and performed detailed financial reviews. (2:225.) Although PHS' oversight of the financial management during that time was closer than normal, even then PHS did not formulate or administer personnel policies. (2:225–226.) After Dorsey became the executive director in November 1988 she submitted a plan to correct the budget deficit. (1:69.) Eventually Dorsey, with diligent effort and personal sacrifice by the staff (3:747; 4:817, Odom), was successful and the exceptional status was lifted either in March 1989 (1:66) or August 1989 (2:226).

As Delta, a statutory employer within the meaning of Section 2(2), (6), and (7) of the Act, maintains sufficient control over the employment conditions of its employees to enable it to bargain effectively with a labor organization over wages, hours, benefits, and other terms and conditions of employment, I find that Delta has failed to carry its burden to persuade that the Board should not exercise its statutory jurisdiction. *Human Development Assn.*, 293 NLRB 1228 (1989), *enfd.* 937 F.2d 657 (D.C. Cir. 1991); *Firefighters*, 292 NLRB 1025, 1026–1027 (1989); *Community Interactions—Bucks County*, 288 NLRB 1029 (1988); *Long Stretch Youth Home*, 280 NLRB 678 (1986).

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Basic Facts

1. Background and credibility

Delta Health Center, Dorsey testified, provides a full range of medical, dental, social (health education), and WIC (women, infants, and children) services, as primary health care, to the citizens of four Mississippi counties: Bolivar, Coahoma, Sunflower, and Washington. (1:27, 36.) Situated on the west to northwest side of Mississippi, the four counties lie in the Mississippi River's delta region.

Delta's principal office is located at Mound Bayou, a small town about 10 miles north of Cleveland, in Bolivar County. Dorsey testified that Delta also has a center at Clarksdale (situated to the north in Coahoma County) and a clinic at Greenville (south, in Washington County). As of the hearing, Delta employed 91 employees in its three facilities. Dorsey reports to the board of directors. Delta is divided into four service divisions (medical, dental, home health, and financial) whose directors report to Dorsey. (1:27–29, 36.)

Opened August 13, 1990, the satellite clinic in Greenville, its proposed opening, and the perceived impact of that clinic on the Mound Bayou (main site or center) employees are at the center of the controversy in this case.

Concerned about the impact opening and staffing a Greenville facility would have on them, Delta's Mound Bayou employees raised questions about the proposed opening as soon as Dorsey announced it at a June 5, 1990 general staff meeting. Raised initially in June as questions by individuals, at the interim medical director's monthly staff meeting of September 5 the employee conduct, the General Counsel alleges, became concerted.⁵ At trial the parties stipulated that the conduct of the employees in this respect was concerted (but no date was fixed), leaving for litigation the question whether the conduct was protected. (1:16; 2:409–412; 3:761.)

As described at several points in the record and briefs, Delta's affirmative defense (G.C. Exh. 1q, August 5, 1991 amendment to answer) is twofold. First, the conduct of the employees intruded upon managerial prerogatives and was therefore unprotected. One motivation for this was a purported personal dislike for Dorsey and/or her managerial style. Second, the allegations of the charging parties are deliberately or maliciously false and made with the bad-faith intention of defeating or reversing the decision to open a Greenville facility. The driving motive behind this bad-faith effort, it is alleged and argued, is local politics in conjunction with the opposition of Earl S. Lucas, Mound Bayou's mayor. In Dorsey's words, "they wanted me fired and the [Greenville] satellite closed." (1:155.)

However, Ivey B. Odom, the medical records manager during this period, testified (as a witness for the Government) that at a June 5 managers' meeting Dorsey, in the course of discussing the Greenville clinic, expressed the desire to convert Greenville into the main site and Mound Bayou into a satellite, "and if this is repeated outside this room, I will deny it." (3:668; 5:995.) Donald Peterson, lab manager at the time, confirms this. (4:859, 895.) Dorsey never denied this attributed remark when she testified. Odom (3:734) and Peterson (4:840) were fired along with the Charging Parties.

From Mound Bayou the Greenville clinic is about 45 miles south by southwest, or 90 miles roundtrip. (1:37, 181; 3:600.) Opened on Monday, August 13 (1:30, Dorsey; 5:1145, McCaskill; G.C. Exh. 23), the Greenville clinic initially was staffed by personnel working at Mound Bayou (transfers and rotations) and by some new hires. (1:184; 3:674.)

Medical staff employees who lived at Mound Bayou and now were assigned to work 2 days a week (3:598) at the new clinic in Greenville had to drive there. Some of these employees expressed concern about the expense and the condition of their cars being inadequate to withstand such extra mileage. They also expressed concern regarding a present staff shortage at the main site. (3:668–669, Odom.) At the June 5 general staff meeting Dorsey said travel reimbursement would be paid. (1:182, Hill.) Initially that was done (2:377–378), but by August 28 memo (G.C. Exh. 4) Dorsey

⁵ "On or about September 5, 1990, during a monthly staff meeting, Mosley and Hill, and others, concertedly complained to the Respondent about Respondent's Greenville clinic and the effect of said clinic upon the wages, hours, and working conditions of Respondent's employees." (Complaint par. 7 denied.)

notified managers that Greenville was part of Delta and employees reporting to Greenville are not eligible for mileage. (1:142; 2:378.) “Therefore, effective September 4, 1990, mileage will not be paid for travel to the satellite except for staff who are not scheduled to work in Greenville.” Lunches, too, would be the responsibility of each employee according to Dorsey’s memo. Dorsey reversed herself as to mileage by her memo (G.C. Exh. 5) of September 11. (1:142–143; 2:378–379.)

In making the findings which follow, I generally have credited the General Counsel’s witnesses. This is so not only because the Government’s version appears more plausible in light of the record than does Delta’s, but also because the Government’s witnesses appeared more persuasive than those called by Delta. I particularly credit the Charging Parties over Dorsey and Dr. Luther McCaskill.

2. September 1990—Concerted activity begins

During this period Dr. Luther McCaskill was the interim medical director. At McCaskill’s regular monthly staff meeting on September 5 several questions were raised concerning the Greenville operation, starting with the travel reimbursement matter. Because McCaskill was unable to answer the questions, he asked Dorsey to attend. Dorsey came and responded to these questions. Charging Party Priscilla S. Hill, then the medical secretary, prepared the minutes (G.C. Exh. 3) of the meeting. (1:191; 2:388.)

As reflected in the minutes of the September 5 meeting, and in the testimony, after Dorsey joined the meeting she addressed various issues, the first being that of travel expense. Thus (G.C. Exh. 3 at 1–2):

1. Mrs. C. [Charlotte] Mosley expressed her concerns to Dr. Dorsey about the decision to stop reimbursement for travel to Greenville. Dr. Dorsey stated there is no funds to continue to do this.

As a followup to Dr. Dorsey’s response, S. [Priscilla S.] Hill commented maybe we should reevaluate the status of the satellite clinic, and make some adjustments. Dr. Dorsey replied, we are reevaluating; the board has asked for the names of employees who refuse to go along with the health center’s mission.

Charlotte Mosley considered Dorsey’s comment about names to be threatening. (2:460–462.) Odom testified that Dorsey’s comment included the explanation that the board of directors said that such employees needed training in the center’s mission since they seem to have forgotten it. (3:679.) The complaint does not allege Dorsey’s comment about names to be unlawful.

The next day, September 6, Dorsey called Charlotte Hill into her office. Referring to Hill’s suggestion the previous day about reevaluating the Greenville clinic, Dorsey proceeded to tell Hill that she was tired of Hill’s critical remarks, and tired of people not having anything constructive to offer.⁶ Dorsey then asked Hill what she would have done about the travel to Greenville. Hill replied that she would have tried carpooling instead of paying everyone to drive.

⁶Complaint par. 8 alleges that Delta violated Sec. 8(a)(1) of the Act when Dorsey “threatened Hill with unspecified reprisals by informing Hill that she was upset and tired of Hill’s critical remarks made at the [September 5 meeting].” Delta denies the allegation.

Dorsey said that was a good idea. (1:192–193.) Dorsey does not deny this conversation, but asserts that Hill made the carpooling suggestion at the September 5 meeting. (1:143–145.) For Hill’s suggestion, Dorsey acknowledges, Hill thereafter was awarded \$50 as the first award of an employee suggestion program. (1:72–73.)

Noting that the September 5 minutes report nothing about a suggestion for carpooling, and observing Hill’s sincere and convincing demeanor, I credit Hill and her version of Dorsey’s September 6 remarks. Dorsey’s remarks, uttered in the executive director’s office, the locus of official authority, would tend to strike fear into an employee concerning job security. Conditioned on my finding the nature of the employees’ remarks and conduct protected, and particularly the September 5 inquiry by Hill, I find that, as alleged, Delta violated Section 8(a)(1) of the Act by Dorsey’s implied threat of unspecified reprisals for concerted activity.

At his September 5 staff meeting McCaskill appointed a committee to look into the concerns of the medical staff. Charging Party Ivey B. Odom, then the medical records manager, was appointed as chair. Also appointed were Charging Party Charlotte Mosley, then a pediatric nurse practitioner; Nursing Director Marilee Lucas; Dr. Carolyn Eubanks, director of dental services (1:89; 2:440) (Eubanks never participated, 3:683; 5:1022, 1179); Donald Peterson, the lab manager; and Charging Party Priscilla S. Hill. (5:1019, 1096; G.C. Exh. 3 at 2.) Odom (5:1019) and Hill (5:1096) testified that the committee’s purpose was to compile a list of concerns to present to the board of directors. Mosley explained that the list would have to go through Dorsey because she set the agenda for the board of directors. (2:460; 3:613–614, 616.)

During two meetings thereafter (September 7 and 11), the committee drafted a two-page paper (G.C. Exh. 44) addressed from the medical staff committee (naming Odom, Lucas, Hill, Mosley, and Peterson) to Dorsey with a covering memo (G.C. Exh. 43), dated September 14, from Odom to McCaskill. Odom’s cover memo, recounting the appointment and drafting, asked McCaskill to call a staff meeting to inform them of the progress, and closed by stating the committee would like to submit the memo to Dorsey before the September 20 meeting of the board of directors. Odom testified that, in effect, only as a courtesy to McCaskill was a draft of these concerns submitted to him. (5:1019–1020.)

On September 18, Odom testified (3:686–689; 5:1020–1021, 1056–1060), McCaskill approved all the draft except for the remarks in one paragraph on the second page. Odom said they would be deleted. McCaskill then orally approved forwarding the memo to Dorsey, and confirmed this later that day in writing (G.C. Exh. 6). At the hearing McCaskill identified other items which he felt were incorrect. Because he had not wanted to impose his will on the committee, he had said nothing about these other items. (5:1150–1152, 1171–1172.) I do not believe McCaskill. Nothing would have kept him from suggesting rather than directing changes, and in his approval memo he speaks of corrections imposed by him. Finally, McCaskill’s demeanor was unpersuasive. I find that McCaskill approved the revised memo with no mental reservations.

The morning of September 19, after Hill had retyped the memo to Dorsey deleting the portion McCaskill had objected to, Odom delivered to Dorsey’s office a copy of both

McCaskill's approval memo and the committee's revised (G.C. Exh. 32) memo. Toward the end of the day on September 19, around 4:45 p.m., Odom delivered to McCaskill his copy of the two-memo set which Odom had left that morning for Dorsey. (3:687-692; 5:1021.)

When she made her late afternoon delivery to McCaskill, Odom testified, McCaskill said (3:688):

Dr. Dorsey has indicated that she is going to close the Health Center if you all persist in pursuing this.

Replying that she did not think one person could close the center, Odom asked McCaskill if he agreed that the committee's concerns were legitimate. "Yes," answered McCaskill. Odom said the committee would proceed to send them [to the board of directors]. In testifying, McCaskill does not address this conversation. I credit Odom who was a persuasive witness. There is no complaint allegation concerning Dorsey's closure threat relayed by McCaskill. Explanation of the absence apparently lies in the General Counsel's position that Odom is a statutory supervisor. (6:1350-1351.)

Addressed and delivered (September 19) to Dorsey, the committee's revised memo (G.C. Exh. 32), still bearing the September 14 date, consists of two pages. At the end of the memo, and aside from an expression of appreciation and thanks for Dorsey's (anticipated) consideration, the committee requests permission to appear before the board of directors at its next meeting for "presentation and discussion." The text reads:

The employees of Delta Health Center, Inc. are committed to serving the people of Bolivar, Sunflower and Washington Counties by providing quality health care to all patients; and hereby declare this to be our mission.

Since the early eighties, we have made sacrifices within the center. We have doubled and tripled our work duties to make sure the functions of our respective departments are carried out. Even though there are times when our jobs become depressing and difficult to perform, we remain dedicated and have served our patients well.

Just recently DHC opened a satellite clinic in Greenville. We have no objection to opening a satellite clinic, but feel there are other locations in our service area that need patient care more than Greenville; and we feel this is not the appropriate time for expansion, at least not at the magnitude of its present existence; especially in view of our reduced provider load.

After a discussion in the Medical Staff meeting held 9/5/90, a committee was appointed to discuss and present to you specific concerns and issues. The committee met on 9/7 and 9/11/90 and presents the following:

1. We do not have enough physicians to take care of the needs of our patients. Patients who are presented for health care are turned away because the providers are rotating to the satellite clinic. Two of the four adult physicians and one of the two pediatric providers see patients at the satellite clinic twice a week.

2. We do not have a permanent medical director to oversee the day-to-day operations of the medical division; to keep us informed of the guidelines mandated

by the Regional Office, and to see that these guidelines are adhered to.

Our permanent medical director who was well versed in his role has resigned. Although he served in a key position and possessed the kind of leadership ability required, and we respected him, the Board of Directors never expressed any interest as to discuss with him the reason for his resignation. He has since resigned as a staff physician.

Our acting medical director is one who is very dedicated to providing patient care and has the largest patient load among the providers. We feel it is unfair to him and to his patients to have him function in this capacity for an extended period of time. We need a permanent medical director.

3. We do not have adequate support staff in critical clinical areas; such as X-Ray, Lab, Medical Records, etc. We have a room full of physical therapy equipment that is not in use and could be very beneficial to our patients.

4. Divisional directors/department heads are not given the opportunity to manage and implement procedures within their respective division/department.

There are times when department heads and/or divisional directors are not aware of changes made in their particular department. Instructions are handed down to [a] staff person in a given department without the knowledge of the supervisor.

5. Our Personnel Policies and Procedures Manual is not always followed. From time to time, policies and procedures as stated in the Manual are changed to fit the occasion. In our opinion, the Personnel Policies and Procedures Manual is that document which governs an institution, determines the management system of that institution, and contributes greatly to its survival or failure.

The satellite clinic has only been in operation a month and already we are experiencing staffing and funding problems. Each day we see our facility taking a dive for the worse and it's so painful to see how we are setting a downward trend and not be able to say or do anything about it. We hope our concerns will not be construed or conveyed as just invalid criticism.

We request permission to appear before the Board of Directors at its next meeting for presentation and discussion.

Your consideration is greatly appreciated.

By memo (R. Exh. 13) dated September 17, Dorsey reminded the members of the board of directors that a meeting of the board was scheduled for September 20 at 5:30 p.m. to be followed by a grievance meeting at 7 p.m. (6:1271, 1277.) The 7 p.m. grievance was on a matter unrelated to this case. (R. Exh. 14; 6:1272.)

By her memo (G.C. Exh. 7) dated September 19, Dorsey forwarded the medical staff committee's September 14 memo (G.C. Exh. 32) to members of Delta's board of directors. Stating she had received the memo that morning from Odom, Dorsey observes that the committee "did not request a meeting with me or a response to the concerns listed. They request, instead, permission to appear before the board at its next regular meeting for presentation and discussion." Dor-

sey concludes her transmittal by stating she is forwarding the memo because she has no authority over who the board allows to come to its meetings, “and since their intent is to talk to the board about these concerns.”

On September 20 Dorsey (1:149–150) had separate conversations in her office with Mosley (2:458) and Odom (3:710; 5:1021) in which Dorsey, in the presence of certain division managers, requested specific examples of the expressed concerns. Each responded, or suggested, that she would provide specifics if Dorsey would summon the full committee for the discussion. Dorsey declined, telling Mosley that the committee was bypassing her. (2:458.)

Failing with her oral requests, Dorsey, that afternoon, by memo (G.C. Exh. 8) to Odom as chair of the medical staff committee, requested Odom to “reduce to writing the specific instances where these violations have occurred,” citing allegations Nos. 4, and the unnumbered paragraph following it [directors and departments not given opportunity to manage and sometimes are bypassed] and 5 [personnel policies and procedures manual not always followed], “as no division director is aware of any such charges.” Dorsey instructed Odom to submit her response by 5 p.m. for Dorsey’s review before the meeting that evening of the board of directors. This led the committee to believe they would be on the board’s agenda for that evening. (1:214; 2:423–426, 442, Hill; 2:478, Mosley.)

Odom, as chair, responded in writing. (G.C. Exh. 33; 1:101; 3:706.) Briefly describing the morning’s conference, and of receiving Dorsey’s memo at 3:40 p.m., Odom states, “Here are the specifics.” For item 4 Odom lists:

1. Pulled a nurse from the Nursing Department for triage without nursing director’s knowledge.
2. Pulled lab tech out of the Lab to report to the satellite clinic for an extended period of time without informing the lab manager.

For item 5 Odom lists:

1. Pay schedule change.
2. Leave Form change.

Charlotte Mosley testified that as she walked over to get her mail around 11 a.m. that September 20, about an hour after Dorsey had called her into her office to discuss the committee’s concerns, she observed Dorsey standing in the hallway talking with Gracie Sanders, the financial director. When Mosley appeared, Dorsey, raising her voice and looking directly at Mosley, said “The folks in Atlanta are tired of these people around here. What I’ll do is just close this place for 90 days.” (2:467, 476; 3:546–549.) Dorsey does not address this incident, and Sanders did not testify. Although I credit Mosley, the complaint does not allege Dorsey’s remark to be an unlawful threat, and the General Counsel seeks no finding in this regard. Before attending the meeting that evening of the board of directors, Mosley informed the other committee members of Dorsey’s threat. (2:475–476.)

3. The September 20, 1990 meeting of the board of directors

The September 20 meeting of the board of directors was held in Delta’s conference room beginning a few minutes be-

fore 6 p.m. Odom and the medical staff committee (Odom, Hill, Lucas, Mosley, and Peterson) attended. In presenting her executive director’s report, Dorsey told the board members that the September 14 memo (G.C. Exh. 32) was from a group of troublesome, disgruntled, and uncooperative political activists who opposed opening a satellite clinic at Greenville, who wanted the Greenville satellite closed and Dorsey fired, and that the group was trying to get the physicians to strike. (1:212; 2:427, 477; 3:713; 5:1064.) Dorsey therefore asked the board for permission to close the main facility for 90 days in the event there was a strike. Dorsey’s motion was tabled. (1:109, 212; 2:427, 477; 3:713; 4:830, 896.)

When Odom, toward the close of the meeting, raised her hand to speak, she was ruled out of order (one member dissenting) as not being on the agenda.

Dorsey testified that the minutes (R. Exh. 12) for the September 20 meeting were prepared by Willie Mae Sims, apparently Dorsey’s administrative assistant. After (presumably) the chair and secretary sign, the minutes are distributed to the members. (6:1273–1275.) In this case the chair, Estelle Pryor, did not sign until October 30. Patterson’s signature is not dated. (R. Exh. 12 at 7.) It is clear, and I find, that Dorsey dictated the contents of the minutes for Sims to type. Because I find Dorsey generally not a credible witness, I find the minutes—dated much later and perhaps not prepared until after the discipline administered by Dorsey—to be unreliable. Thus, even though the minutes do not record Dorsey as describing the committee as “troublesome,” or as soliciting a strike, as the employees testified Dorsey did, I credit the employees, Hill, Mosley, Odom, and Peterson. The minutes do record Dorsey stating, “It appears that the objective of the committee is to close the satellite.” (R. Exh. 12 at 6, par. 3.) Testifying that she does not ever remember calling the employees troublemakers, Dorsey concedes that (on some unspecified date or occasions) she has called them disgruntled. (6:1218.)

On leaving the meeting the committee gathered in the lobby where they discussed the situation. Concluding that Dorsey ultimately would be allowed to close the Mound Bayou center for 90 days, that such a closing probably would become permanent with the employees losing their jobs, the committee, seeing no other option, decided to send a letter to the board of directors with copies to Dorsey and HHS’ Public Health Service. (1:215; 2:479; 3:724–730.) Thereafter such a letter (G.C. Exh. 34; R. Exh. 3) was drafted. Dated September 25, the letter, typed by Hill (2:388), was mailed on September 26. (1:216; 2:480; 3:558, 730; 5:1048.)

4. The letter dated September 25, 1990

a. Board agrees to meet with committee

By memo (G.C. Exh. 9) dated and delivered September 25, Dorsey advised Odom that Delta’s board of directors would hear the committee’s concerns on October 11 at the “Center in Greenville.” Dorsey also advised Odom that the board would have several agenda items, and when Dorsey learned the times for the agenda settings she would notify Odom. A notation on the memo reflects that Odom received the memo from W. Sims [Willie Mae Sims, Dorsey’s administrative assistant] at 4:35 p.m. that day. (3:729; 5:1047.)

The Charging parties testified that, notwithstanding their September 25 receipt of Dorsey’s memo about their October

11 appearance before the board of directors, they nevertheless, on September 26, sent their letter dated September 25. They did so because they feared the board would first discuss the tabled motion to give Dorsey standby authority to close the Mound Bayou facility for 90 days, or even to close the facility, before the committee had a chance to voice its concerns. Moreover, the choice of Greenville as the meeting place dismayed the committee in light of Dorsey's request for standby authority to close Mound Bayou for 90 days—particularly in light of Dorsey's June 5 expression of her goal to elevate the approved Greenville satellite to the main site. Finally, the board's September 20 refusal to hear Odom, on behalf of the committee, left the committee distrustful of the board of directors.

Indeed, Odom testified (3:727) that when the committee gathered in the lobby after the board's September 20 meeting, Peterson reported overhearing board member Evelyn Peggy remark to another board member, "We got that committee tonight, didn't we." The result was an atmosphere that left the committee members alarmed.

The committee's September 25 letter, addressed to Delta's board of directors, shows copies to Dorsey, "Regional Office," and "Central Office." The latter two are HHS' Public Health Service (PHS) regional office in Atlanta and PHS' central office in Maryland. (2:300, Hill.) The committee, aware of no rule forbidding communication with the PHS, sent copies to the PHS for most of the reasons it sent the letter to the board, and "to get the attention of somebody in authority." (2:299; 3:730.) As Mosley puts it, the committee thought the PHS should know. "We wanted to be heard." (3:560.)

b. *The letter*

Signed by Odom, Mosley (Odom signed for Mosley with the latter's permission, 3:558), Marilee L. Lucas, Donald N. Peterson, and Hill, the September 25 letter to the board of directors consists of 3 pages, 16 unnumbered paragraphs, and 5 attachments. I shall number the paragraphs. After a "Dear Board" salutation, the letter reads:

1. The Medical Staff Committee is very disturbed over the fact that Dr. L. C. Dorsey, Executive Director, misled us in thinking we would be placed on the agenda for the board meeting of September 20th; and also because the board chose not to give us an opportunity to speak.

2. Dr. Dorsey deliberately and intentionally denied us this opportunity, in spite of the fact, at 3:40 p.m. this same day, she requested in writing from the committee, the specifics we had planned to discuss in the meeting; and she wanted this information by 5:00

3. This committee was appointed by the Acting Medical Director, Dr. McCaskill, because staff had some serious concerns about the satellite and the overall management of the center. We were formed to meet, discuss and prepare a presentation to the board.

4. Instead of placing the committee on the agenda, Dr. Dorsey received this information and used it in such a way to try and convince the board that we were a group of uncooperative and troublesome employees.

We made a request to Dr. Dorsey for one reason and one reason only – to state staff concerns before the body. We simply want to identify all problems, work out solutions beneficial to the agency as a whole, and form a united body to regain our viable program status. It is not our intent to point a finger or place the blame on anyone. Even though Dr. Dorsey discussed some of the issues we had planned to discuss, the board denied us the opportunity to refute her gross misrepresentation of the truth by invoking Robert's Rules of Order. According to the same rules, isn't it proper that you clarify, at the point of adopting the agenda, whether there are other items that need adding and accept or reject these items at that point; or to simply state to the body that no additional items will be placed on the agenda? Isn't it also improper procedure to allow a topic to be introduced (as did Dr. Dorsey) that you do not intend to give fair hearing to all parties involved? Dr. Dorsey was allowed to introduce our request to be placed on the agenda and give her scathingly erroneous assessment of us and our concerns but you offered us no opportunity to comment as to the validity of the issues she presented. This was totally unfair.

5. In the meeting, Dr. Dorsey stated the committee was forcing providers to strike. There is no impending strike by any staff. We are all concerned about the direction our center is taking; not politically but internally. If you recall, concerns were addressed prior to opening the satellite, about the ability to operate with reduced staff and about the drain on funds—no separate budget allocated for the satellite (see Attachments #2 & 3). It was suggested and totally rejected, that we start small initially with the satellite and advance as personnel and funds became available. Other concerns were also addressed but not considered.

[Attachment 2 is a one-page memo, G.C. Exh. 29 dated June 7, from Hill to Dorsey (individually expressing her concerns about the impact of a Greenville satellite) and Dorsey's June 14 brief response, G.C. Exh. 2, conveying reassurance but expressing disappointment "that you list all your criticisms without inquiring as to their validity." Attachment 3, G.C. Exh. 30, is Odom's June 12 four-page memo expressing her concerns, and Dorsey's June 14 five-page reply, G.C. Exh. 31.]

6. Dr. Dorsey asked for a motion to close this center for 90 days, without discussing this matter with staff. The board asked no questions, except for one board member who suggested to table this matter; and call a special meeting to discuss the closing of the health center. Thank God for giving that person the conviction to speak out! On considering the matter of the center being closed because staff is dictating to doctors to go on strike, remember that the medical director is the head of all medical services. He is responsible for all patients and those who work under his jurisdiction have to abide by his orders, not vice versa. He, of a necessity, is on the same level as the center director in reporting and is responsible to the board. We must note, however, that the medical director's report to the board is given by the center director instead of the medical

director. Is this the customary procedure in other agencies?

7. The request to close the center must be viewed for what it is, a suppressive ploy to intimidate those who see and speak out about the wrongful tactics employed to dominate staff.

8. Can the board justifiably consider discounting the needs of 80% of our patients to serve only 20%, simply because valid concerns are looked upon as political activism to close the Greenville clinic? It was stated prior to the opening of the satellite by Dr. Dorsey that her intention was to make the satellite the main clinic and DHC a satellite and her statement ended with, "if this is repeated outside this room, I will deny it." This statement was made in the presence of several employees (providers & department heads) the first week in June 1990. Does this reflect genuine concern for the viability of the DHC agency in its entirety, or just "her program" as she continuously refers to the satellite operation.

9. Since the opening of the satellite, Dr. Dorsey has devoted most of her time and energy toward the satellite. All of her recruitment has been geared toward staffing the satellite, with little emphasis placed here at the center. She has shown no genuine concern, and has not openly admitted the fact that the opening of the satellite has affected the health center. She has told the board no physician wants to come here to work; always giving the impression that Mound Bayou is so terrible. Dr. Dorsey came here to work and was given the responsibility of managing this health center. She knew what Mound Bayou was all about, and yet she chose to remain. Dr. Dorsey has been found guilty on numerous occasions of telling the board and staff on thing and in the absence of each other, has misrepresented the truth.

10. Dr. Dorsey, in the meeting of 9/20/90, made a comparison of August 1989 to August 1990 of the provider productivity report; stating the total encounters were lower in 1990 than in 1989. This is true, but she failed to let the board know that providers were out on vacation during the month of August, at one time or another.

11. Dr. Dorsey stated she did not know Dr. Fuchs was resigning until after the satellite had opened. Dr. Fuchs submitted his letter of resignation July 19th and the satellite clinic opened August 13th (see Attachment #4). She also knew one of the other physicians' obligation would be up this September. [Attachment 4 is a July 19 letter from Dr. Paul Fuchs to McCaskill in which Fuchs resigns from the medical staff.]

12. The Financial Services Director, Mrs. Sanders, gave the board a financial and statistical report on the satellite, but did not give a report on the status of the health center. If the computers were down, Mrs. Sanders could have secured the health center's information the same way she gathered the information for the satellite.

13. Realistically, the satellite has no expenditures because all expenses are applied to the health center. The satellite was started without a budget. Personnel, supplies and some equipment were moved to the satellite.

In view of the above, if one has to close, then it should be the satellite, as it has no approved operating budget.

14. We ask that the board be fair to staff; give ear⁷ to our concerns and opinions, as you have given Dr. Dorsey in the meeting of September 20th. We request that the board or a representative committee sit down with the staff, and Dr. Dorsey, hear what we have to say; see our supporting documents, and make a fully-informed decision.

15. We respectfully request the following:

1. A special meeting to address concerns about the survival of DHC prior to the 10/11/90 meeting in which you will act on Dr. Dorsey's request for permission to close DHC—main site—for 90 days (see Attachment #5); [Attachment 5, G.C. Exh. 9, is the September 25 memo from Dorsey advising Odom that the board of directors would hear the committee on October 11 in Greenville.]

2. That the meeting be held at DHC in Mound Bayou, MS as this is the community and county that are threatened with loss of a much needed health care industry.

16. Your prompt response is greatly appreciated.

By his memo dated September 28 (G.C. Exh. 10), stating that the September 25 letter, with copies to the PHS offices, was sent without his knowledge or permission, and that the committee had gone "over my head," McCaskill disbanded the committee. (2:290, 485; 3:371; 5:1153.) Later I discuss the September 25 letter.

5. Dorsey reprimands the committee

a. *Cease-and-desist letter of September 30, 1990*

By two-page memos dated September 30 (G.C. Exh. 11) to all five members of the committee (1:82; 3:731), including one to Hill (2:290–291) and to Mosley (2:486–487), with copies to the personnel files of each (1:83), Dorsey (1:82, 88) states that the committee was "out of order" in sending its unauthorized letter dated September 25 to the PHS. "Further, the memo, which is a poorly disguised attack on the board of directors and the executive director contained lies and half-truths, put together in a conspiratorial manner to hold the director and the board up to public ridicule and criticism."

Asserting that the committee's letter states no grievances, contains "deliberate lies," bypasses her without any enabling provision in the policies and procedures [manual], demands that the board change a meeting location, and shows disrespect for the board of directors, Dorsey instructed the members of the former committee to "cease and desist" from their "campaign of disruption and personal attacks by lies and innuendos."

Concluding, Dorsey advises the members that they "are in violation" of the policies and procedures "if" they are conducting unauthorized activities, and that sending unauthorized memos to the PHS "is a serious offense and as such is being referred to your personnel file in as much as the contents of

⁷ "Give ear, O heavens, and I will speak; and hear, O Earth, the words of my mouth." Dt. 32:1. (The Song of Moses, opening verse.)

the memo violates several provisions of DHC's policies and procedures."

Rule violations specified by Dorsey, from the personnel policy manual (G.C. Exh. 26), are for violating Federal regulations restricting political activity (standard policy 2, p. 29), willful misconduct (rule 7g, p. 31), misconduct or maladministration (rule 7i, p. 32), falsification of Delta records (rule 7k, p. 32).

b. *Complaint paragraph 9*

Complaint paragraph 9 describes Dorsey's cease-and-desist letter as a "written reprimand" to employees Hill and Mosley, and paragraph 12 alleges that Delta violated Section 8(a)(1) of the Act by the reprimands. Delta denies the allegations. My conclusion on the allegations depends on the determination of whether the committee's conduct was protected. If protected, then I find that the "cease and desist" memo, clearly a written warning, violates the Act as alleged.

As for complaint allegations and Delta's rules, the complaint does not attack Delta's standard policy 13a, "Solicitation and Canvassing," even though the rule requires employees organizing under the Act on behalf of a labor union to obtain written authorization. Authorization requirements are unlawful. *Brunswick Corp.*, 282 NLRB 794 (1987); *Springfield Hospital*, 281 NLRB 643 fn. 3 (1986), *enfd.* 899 F.2d 1305 (2d Cir. 1990). In the absence of authorization, the rule continues, no organizing may occur anywhere on Delta's premises at any time. Such a total prohibition is unlawful. *Rocky Mountain Hospital*, 289 NLRB 1347, 1359-1361 (1988). The rule reads (G.C. Exh. 26 at 34):

Except as authorized in writing by the executive director, all soliciting and canvassing by or on behalf of any club, society, labor union, religious organization, political party or similar association and posting or distributing of notices, placards or literature of any sort by employees and other[s] not employed by the Delta Health Center, Inc., is strictly prohibited at all times on the institution premises. This prohibition covers soliciting in any form, whether for membership, for subscription or for payment of money. Announcement of this prohibition shall be conspicuously posted on each public and employee entrance to the Delta Health Center, Inc.

Because the complaint does not attack this unlawful rule, and because the matter was not litigated, I make no finding of an unfair labor practice respecting the rule.

6. Grievance hearing of October 17, 1990

a. *Introduction*

Events caused a delay in the committee's appearance before Delta's board of directors, but beginning about 6 p.m. Wednesday, October 17, in Delta's conference room at Mound Bayou the (former) medical staff committee appeared before the board's personnel committee. (G.C. Exhs. 17, 19.) The meeting was pursuant to the October 1 letter (G.C. Exh. 13) from the chair, Estelle Pryor, that the board's executive committee, determining that the September 25 letter "contained what can be considered as employees' grievances," had decided that "they should be heard in accordance to the Health Center's Personnel Policies and Procedures Manual."

And, "I have requested the Personnel Committee to treat your letter of September 25th as a formal grievance."

b. *Board Chair Estelle Pryor's October 15, 1990 recommendations*

Two days before the meeting at which the board's personnel committee finally would hear the employees' presentation, Pryor, by October 15 memo (G.C. Exh. 27) to her fellow board members, submitted three pages of recommendations for their "consideration and possible action."

Respecting Delta's personnel policies and procedures, Pryor recommended (par. 1a) that the personnel committee of the board meet with a committee of aggrieved staff only when a majority of the staff has a grievance which they have been unable to resolve with the executive director. Second (1b), "Stipulate that no staff member make contact with H&HS in the regional office or central office without approval by the Executive Director."

Turning to directives for the executive director, Pryor recommended (3a) that the board's attorney and the executive director "determine if federal laws are being violated by staff members who engage in protest activities during work hours, and/or use Delta Health Center supplies and equipment in their protest efforts." For her last recommendation (3g) Pryor wrote:

Only legitimate staff committees should be allowed to voice the concerns of a department or division. The former medical staff committee has been disbanded by the medical director, who appointed the committee, and is therefore only individual staff members who are demanding to appear before the board. They are in violation of the personnel policies and procedures and should be given ten (10) days to submit their resignations if they do not want to work at Delta Health Center. After ten (10) days, if they have not resigned, they should be terminated on the grounds that their actions are interfering with the Board's mission of providing services to people in Bolivar, Washington and Sunflower counties. Further, they are trying to run the center and they have not been hired to do so, nor have they been hired to interfere with the board by going to Health and Human Services with complaints before the board has had a chance to act on the merit of their complaints.

The record contains no copy of any responses to Pryor and does not disclose what action, if any, the board of directors took respecting her recommendations. The complaint contains no allegation attacking any amendment to the policies manual restricting the right of an employee to contact the PHS. Pryor, who lives in Greenville (2:428, Hill), did not testify.

c. *The meeting*

The meeting, which exceeded 2 hours, was recorded and transcribed by a court reporter. The 92-page transcription is in evidence as the first part of General Counsel's Exhibit 19. (1:208; 2:288, 308, 492.) Two sets of documents are attached, continuing the page sequence. The first set, offered there (at 90) by the board of directors' attorney, Willie Bailey (Delta's co-counsel here) consists of the September 25

letter and the five attachments, numbered as pages 93–109. The second set, numbered as pages 110–133, consists of the group’s opening statement, a three–page listing and discussion of specific concerns (G.C. Exh. 19 at 112–114), plus copies of memos and forms.

As the (disbanded) committee’s chair, Odom, now the group’s spokesperson, presented the group’s 24–page package by reading the opening statement, the three–page listing of specifics, and discussed the memos and forms in connection with the specifics. (G.C. Exh. 19 at 2–18; 3:619, 741; 4:789.) Thereafter most of the seven members of the board’s personnel committee (chaired by Bruce Johnson) asked questions or made statements, as did Attorney Bailey, and as did each of the five members (Hill, Lucas, Mosley, Odom, and Peterson) of the disbanded medical staff committee. The discussion ranged from informative to spirited to slightly heated. When the meeting adjourned at 8:20 p.m. (G.C. Exh. 19 at 91), it seems that the employee group perhaps had not achieved its stated (G.C. Exh. 19 at 110) goal of persuading the board of directors to, in effect, investigate the group’s allegations.

Although some of the testimony before me was directed toward the positions and dialogue expressed at the October 17 meeting, I shall not summarize the meeting because there is neither allegation nor contention that the October 22 discharge was based even partly on what occurred there. To the extent that statements there shed light on relevant matters, I shall summarize or discuss them.

At the meeting Attorney Bailey inquired whether the group was saying it would be satisfied if (1) the Greenville satellite was closed and (2) Dorsey fired. Hill advised him that such was not what the group was saying. (G.C. Exh. 19 at 36, 68.) Toward the end of the meeting board member Alice Redfield, although in one breath assuring Peterson and the group that “Tonight will not be used against you,” in the next breath wondered if the group appreciated the “seriousness” of its sending the September 25 package to the PHS. Thus (G.C. Exh. 19 at 74):

If you were the medical [executive?] director, how would you feel if somebody talked about you and the board? See, you talked about the board. Everybody was talked about; the director and the board was talked about in this letter and then [the letter and attachments] faxed and sent down to Atlanta and to Washington.

How would you all feel about that? I mean, the serious—that’s very serious. Do you all realize the seriousness of that?

Marilee Lucas defended by saying that at the September 20 board meeting the group was labeled (by Dorsey) as being “rabble–rousers” causing a lot of problems but were not given a chance to defend themselves at the meeting. “Everything that we said, there is something attached to go along with it. We did not degrade anyone.” It was not the content, Redfield replied, but the fact it was sent at all. (Id. at 75.) When Lucas inquired whether Redfield was saying the group should have gotten permission, Redfield answered no, but they should have thought twice before sending such a letter. They did, Lucas responded. “Ms. Odom just explained in detail to you why we did what we did.” (Id. at 75–76.)

Peterson then pointed out that the most “pressing” factor in the group’s decision “was the fact the closure of the Health Center was asked for.” If it had been closed for 90 days, Peterson continued, the group feared the Mound Bayou center would be lost. The group’s members therefore felt they had to contact someone because they believed, perhaps mistakenly, that the board of directors did not want to hear them. Earlier (id. at 55–56) Peterson had described the group’s mailing of the September 25 letter as a sign of the members’ “desperation.” (Id. at 75–77.)

Odom added, “once you close a facility down, it’s not easy to open it back up. And this is what we were concerned about.” (Id. at 78–79.) Johnson, the chair, reported that had the group waited a few days they would have learned that they were on the agenda of the next board meeting, but the (September 25) letter “canceled” that. (Id. at 82, 87.)

When Johnson adjourned the meeting he did not state what procedural action the personnel committee would take next. (G.C. Exh. 19 at 90–91.) Earlier, however, Johnson said that if the group had grievances or concerns the personnel committee could consider, “I assure you that we’re going to look into them and make suggestions to Dr. Dorsey or whatever.” (G.C. Exh. 19 at 28.)

7. Dorsey fires the group

By memo (G.C. Exh. 18) dated October 22, Dorsey fired each of the group, the members of the now dissolved medical staff committee. (1:123, 141; 2:297, 492; 3:735.) The decision, Dorsey testified, was hers alone. (1:62, 153.) Dorsey testified that the discharge memo contains all the reasons for the discharge of the group. (1:170, 172.) The discharge memo (I have numbered the paragraphs 1 through 11) reads:

1. Delta Health Center was found and exists to provide health care for patients who were underserved. The current grant provides for the delivery of health care to patients from Bolivar, Sunflower and Washington counties. The specific logistics for how these services will be provided is outlined in the grant application and approved by the board of directors before it is submitted for funding. The grant is made to the board of directors of Delta Health Center. The notice of grant award is made directly to the board chair, Mrs. Estelle Pryor. The contractual obligation of the board to carry out the program goals is the exclusive responsibility of the board. They have delegated that responsibility to the executive director.

2. Your actions in past weeks have challenged the board’s right to govern this program and their right to delegate the day to day operations of the program to the executive director.

3. Beginning with your memo dated September 14, 1990, you have not stated a grievance which would justify the disruptive activities that you have conducted at the center and in the community. The specifics of your concerns were:

1. We do not have enough doctors.
2. We do not have a permanent medical director.
3. We do not have adequate support staff in critical areas such as x-ray, lab, and medical records.

4. Divisional directors/department heads are not given the opportunity to manage and implement procedures within their respective division/departments.

5. Personnel policies and procedures are not always followed.

4. I concur that we do not have enough doctors or a permanent medical director. It is an issue that the board of directors and the regional office of Health and Human Services were aware of and were working with Dr. McCaskill and me on correcting. This concern does not constitute a grievance.

5. Whether there is adequate support in the listed areas is covered by Health and Human Services support staff ratios to medical providers. This concern does not constitute a grievance.

6. Divisional directors and department heads are responsible for the running of their divisions and departments. However, no department or division is greater than the entire operation. Occasionally decisions are made that reflect the need of the entire operation. The division directors are always involved in any decision that affects any department in the division. This concern does not constitute a grievance.

7. The personnel policies and procedures are followed in the operation of the center. The specific example that you cite is a pay schedule change (which the board approved) and a change in the leave form (which changed the form to conform with the specific provisions in the personnel policies and procedures) does not constitute a grievance.

8. Your actions during the past weeks have created an atmosphere of tension and confusion in the center and in the community. Your response to the board of directors who have attempted to work with you on the complaints listed, has been disrespectful, hostile, and demeaning.

9. Your activities make it difficult for the doctors that you demand to be recruited. The failure to recruit physicians jeopardizes the health center's survival. Our ability to provide a peaceful environment for professionals to be recruited to is jeopardized by the atmosphere that you are creating with your activities.

10. Effective today, October 22, 1990, at the close of the workday, you are terminated from employment at Delta Health Center. Your termination is covered under the rules of good conduct and fair play which include, but are not limited to:

1. Intentionally seeking to disrupt the operation of the health center through an organized campaign of misinformation, intimidation and confusion directed at staff members, board members, patients and the regional and central offices of Health and Human Services.

2. Intentionally circumventing the lines of authority by:

a. demanding a meeting with the board of directors in absence of a grievance and in defiance of the executive director's efforts to the program in an orderly manner.

b. sending written complaints directly to Health and Human Services' regional and central offices

without giving the executive director and the board of directors an opportunity to hear and act on these complaints.

c. rejecting the proffered date and place granted by the board to hear your complaints, and demanding to set the terms of the meeting with the governing board.

3. By engaging in conduct which has caused the health center and the entire staff to be subjected to public speculation through a campaign of negative and false information and which has caused unnecessary anxiety in the community and in the patient population who, based on misinformation feared that the center was closing. Your paychecks, vacation pay and severance pay are available in the Human Resource office. Any monies owed Delta Health Center by you for health care services that you have received has been deducted from your final check.

A statement of your account is attached showing the balance due.

11. Your termination may be appealed to the personnel committee of the board.

Among the copies shown at the end of the discharge letter is one to Paul Bond at the PHS' Atlanta regional office. The record does not disclose whether any of the five, and particularly employees Hill or Mosley, appealed.

B. Discussion

1. Introduction

Executive Director Dorsey's disciplinary memos of September 30 (G.C. Exh. 11; "cease-and-desist") and October 22 (G.C. Exh. 18; discharge) largely merge even though her reprimand (cease and desist) memo focuses on the medical staff committee's September 25 memo (G.C. Exh. 34; R. Exh. 3) and her discharge memo reaches back to the committee's September 14 memo (G.C. Exh. 32).

It is well established that even if employees' perception of their working conditions turns out to have been incorrect, such an incorrect assessment is not sufficient to remove activity based on those perceptions from the protection of the Act. *Tyler Business Services*, 256 NLRB 567, 568 (1981), enf. denied on basis not concerted 680 F.2d 338 (4th Cir. 1982).

Moreover, it is well settled that the truth or falsity of a communication is immaterial and is not the test of its protected character. *Professional Porter Cleaning Co.*, 263 NLRB 136, 139 fn. 12 (1982). However, protection will be lost if the communication is deliberately false in order to satisfy a malicious or otherwise improper motive. *Brownsville Garment Co.*, 298 NLRB 507 (1990). As the Board recently expressed the rule in *El San Juan Hotel*, 289 NLRB 1453, 1455 (1988), although the Act protects statements that are false, misleading, or inaccurate, as well as rhetorical hyperbole that is likely to be recognized for what it is, the Act does not protect information that is "deliberately or maliciously false," or made with "reckless disregard for the truth."

In our case Delta, as an affirmative defense, has placed in issue the committee's good faith. As earlier described, Delta's position is that the committee was motivated to submit

malicious lies for two reasons: (1) to get Dorsey fired and (2) to oppose, for political reasons, the existence of the Greenville satellite clinic. If the committee lied for these reasons, such misconduct would remove the committee's September 14 and 25 memos from the Act's protection. It therefore is necessary to examine the committee's memos and determine whether the evidence shows they contained such deliberate falsehoods that would cause a forfeiture of the Act's protection.

2. Committee's concerns

a. *The September 14, 1990 memo*

(1) Physician shortage

The committee's overall concern, as described or implied in its September 14 memo (G.C. Exh. 32) to Dorsey, was the impact the recently opened satellite clinic in Greenville would have on the main site (Mound Bayou)—its patients and staff. Causing that concern were several issues which the committee listed, the first being a physician shortage.

The number of doctors is important to both patients and staff. If patients are turned away at Mound Bayou because (as asserted in the September 14 memo) the providers are rotating to the Greenville clinic, then the number of encounters drops at Mound Bayou. As I described earlier, funding is based on the level of encounters (patients "seen"). Past experience teaches, as I noted in the part of this decision discussing jurisdiction, that a reduction in funding results in a loss of jobs. Donald Peterson, the former lab manager, testified that he was understaffed in the lab. (4:823-827.)

Patients were turned away because some the providers were in Greenville. (3:694; 6:1333, Odom; 4:890-891, Peterson.) (Although Mosley testified, 3:626, that certain forms in the October 17 package, G.C. Exh. 19 at 115-116, show the numbers of patients turned away, the testimony does not correlate the data with providers being at Greenville.) When the Greenville satellite opened, the doctors had to cover both facilities. This imposed extra work on the support staff. (1:197-200, 206-208; 2:415, 434-437; 3:692-693.)

(2) No permanent medical director

The committee's second itemized issue is that there is no permanent medical director. As Odom explains, this is linked to quality which in turn connects to funding. The medical director's position is about 20-percent administrative, and part of those duties is to monitor quality assurance. McCaskill, the acting medical director, carried the highest patient load and seldom was able to have a meeting of the quality assurance committee, of which Odom was a member. (2:376-377, 422, 471; 3:694-696; 6:1339.)

McCaskill's testimonial response is that "I think any qualified physician on our staff could take care of quality assurance." (5:1152.) As already noted, in making his single objection to the September 14 memo, McCaskill said nothing about the quality assurance concern. (5:1172.) Crediting Odom, I find that the evidence falls woefully short of showing bad faith by the committee on the issue of quality.

In the discharge memo Dorsey concedes that Delta has neither a permanent medical director nor enough doctors, but that management, the board, and the PHS are working to resolve these matters. (G.C. Exh. 18 at 2, par. 4.) In Dorsey's

view, this therefore does not constitute a grievance. As Mosley explains, the committee knew Dorsey was attempting to recruit doctors. The committee felt that the opening of Greenville should be delayed until the doctors had been hired. (3:618.) I find that the evidence fails to show that the committee's first two items are tainted by bad faith.

(3) Inadequate support staff

By her three-page memo (G.C. Exh. 45) of June 29 to McCaskill, Odom reported statistical data reflecting that during May Delta's medical records staff was operating pulling charts requiring work of 43 hours a day, yet able to work only 32 hours a day with four employees. This produced a deficit of 11 hours a day resulting in a backlog of work for Odom's section. (3:698; 6:1331, 1344-1346.) At page 2 of her June 29 memo Odom recommended that the opening of a clinic in Greenville would necessitate the hiring of an additional person in the medical records department. (G.C. Exh. 45 at 2.) Instead, one person rotated to Greenville, leaving three employees at Mound Bayou with yet more work. (3:698.)

Dorsey identified a standards guide for provider to staff ratios and certain "BCRR" reports (R. Exhs. 8, 9, 10, 11) indicating, Dorsey testified (6:1234-1235, 1314-1318), that Delta was overstaffed. Odom testified that although she had heard of the BCRR reports she had never seen these documents and that the committee did not have them. (6:1327, 1334-1340.) I credit Odom who testified with apparent sincerity. I therefore find that the evidence fails to show that this concern of the committee was tainted by bad faith.

Dorsey testified that Delta had records showing encounters just at Greenville. (6:1322.) The records not being then at hand, and it being the last day of the hearing, I approved Delta's request for a late-filed exhibit (R. Exh. 16) on the condition that it be accompanied by the General Counsel's stipulation. (6:1322-1326.) Titled "Monthly Provider Productivity Report," and consisting of one page (legal, 15 columns left to right) for each month from January through June 1991, Respondent's Exhibit 16 is not self-explanatory and has not been briefed by Delta.

By letter dated February 20, 1992, counsel for the General Counsel declines to stipulate and objects to Respondent's Exhibit 16. Responding by letter of February 21, 1992, Delta suggests that I receive Respondent's Exhibit 16 if I would find it helpful. As the General Counsel has not stipulated to Respondent's Exhibit 16, and the exhibit, which covers part of 1991 rather than the relevant months of 1991, as the exhibit is not explained or discussed either in the record or in the briefs, and as I do not find it helpful, I shall reject Respondent's Exhibit 16 and place it in the rejected exhibits file. (I shall forward the correspondence of the parties to the Board's case records unit, room 260.)

(4) Managers bypassed

Dorsey questioned item 4 (and item 5) and its followup paragraph by her "reduce to writing" memo (G.C. Exh. 8) of September 20. As earlier described, Odom replied later that day by her memo (G.C. Exh. 33) listing (1) pulling a nurse from triage and (2) assigning a lab tech to Greenville.

Delta merely cites (Br. at 7-8) general denials (5:1150-1151) by McCaskill of general item number 4 (on G.C. Exh.

32, and not Odom's two specifics of triage and lab tech): "I feel it's incorrect." The General Counsel makes a bare reference to the topic in the Government's brief to the lab tech item. (Br. at 24.)

A triage nurse is one who determines the treatment order for patients waiting to see a doctor or nurse based on the urgency of their relative medical needs. (3:570; 6:1249-1250.) Dorsey testified that PHS, apparently at some point before June 1990, performed a clinical review of Delta and listed 143 deficiencies. One of the 143 was the lack of a triage program. To correct this, Dorsey, it appears, reassigned a nurse to perform triage duties. (3:571; 6:1248-1249.)

Acknowledging that assigning a nurse to conduct triage is a management function, and agreeing that although the triage program is beneficial to Delta and to patients, Mosley explains that the committee's complaint was that Dorsey did not first consult the nursing director [Marilee L. Lucas] to assess the impact of the assignment on the staff. The committee's concern was not about any ruffled feathers of a supervisor, but about the fact that the nurse now assigned to triage would have to leave her other duties to conduct triage. Her absence imposed extra work on the other nurses. In testifying, Mosley was unable to say how much time the triage nurse was pulled away from her normal duties each day, on average, to conduct triage. (3:571-578.)

The facts about the triage matter appear to be undisputed, but not fully developed. The impact on the staff employees, caused by the absence of the nurse assigned to triage, is not quantified because Mosley apparently lacked the information. Still, enough evidence exists to show that the staff felt some adverse impact, even if that impact was slight.

As Donald Peterson, then the lab manager, explains, at the June 5 meeting Dorsey held with the division managers and department heads to advise them that the Greenville clinic would open, Dorsey said she would assign Peterson's only full-time lab technical employee, Deborah Lloyd, to Greenville. In a later letter (not in evidence), Dorsey stated that Lloyd would be at Greenville for 4 days to set up the lab at Greenville. Peterson's complaint is that a month after the opening Lloyd was still there, yet neither Dorsey nor McCaskill had told him of the extended stay for Lloyd. The impact, however, seems to have been almost solely on Peterson, the lab manager, who had to work many extra hours, rather than on the part-time workers who assisted him. And as Mosley concedes, as Lloyd lived in Greenville, Lloyd simply did not have to commute to Mound Bayou. No adverse impact as to Lloyd is shown. (2:472-4273; 3:539-544, 579; 4:823-824, 843-847.)

Finding, as I do, that there is no showing of bad faith on this item, it is a close question whether the committee was concerned about a protectible interest of employees. First, the item's phrasing (in Odom's clarifying letter of September 20, G.C. Exh. 33) can be interpreted as implying, contrary to fact, that Lloyd's assignment was made with no notice at all to Peterson. Indeed, Mosley appears to have been under that illusion even at the trial. (3:579-580.)

Second, Mosley's explanation of the group's concern is that Peterson had to work excessive hours—sometimes 12 hours a day—at the lab, frequently alone. Peterson told the group that such excessive hours would cause him to make errors. Aside from the stress, as such, on Peterson, lab errors would "increase our liability." (2:472-473; 3:537.) Odom

also refers without explanation to this "liability." (3:697.) At the October 17 hearing Peterson briefly mentions the possibility of Delta's being liable for any of his mistakes (G.C. Exh. 19 at 51), an apparent reference to possible lawsuits over negligence. But there is no articulation there or elsewhere of how any such liability could have an impact, such as loss of jobs through uninsured losses on negligence claims.

Peterson's two part-time lab techs, perhaps by definition of their limited hours, seem not to have been impacted by Lloyd's transfer. Peterson explains that one could have worked later, and apparently had done so on some occasions in the past. The second had a full-time job elsewhere each day and would not have been available to work extra hours. Peterson chose to work the extra hours himself rather than burdening the one part-time tech who possibly could have worked some extra hours. (4:824-825.)

Odom testified that Peterson could not do as many lab tests as both he and Lloyd had been doing. That meant less revenue (at Mound Bayou) and therefore had the potential to contribute to a future deficit. (3:697.) In his own testimony Peterson does not expressly assert that he was not able to perform as many tests as he and Lloyd had performed before. He spent about 50 percent of his time on managerial duties. (4:824.) The record does not show whether some or all of the lab tests Deborah Lloyd began doing at Greenville were ones she would have done at Mound Bayou had it not been for her assignment to Greenville.

Based on these limited facts, I find that the lab tech item was not a protectible concern of the committee because the only impact was on the lab manager, Donald Peterson, whom the parties consider to have been a statutory supervisor. Other than the committee's concern about an ambiguous "liability," there is no articulation of how the impact on Peterson could have affected, or even been perceived to have affected, staff employees. Eventually, Odom testified, loss of revenue from fewer lab tests could affect employees by creating or contributing to a deficit—that is, a potential loss of funds and jobs. That potential is quite speculative even if there was a loss of revenue at Mound Bayou from fewer lab tests. Regardless of whether the evidence is sufficient to establish that there were fewer lab tests, if the committee perceived that fewer lab tests were being performed at Mound Bayou because of Lloyd's extended assignment to Greenville then that would suffice if fewer lab tests and reduced revenue constituted a legitimate concern of employees. Standing alone, the remoteness of the potential would not seem to be a protectible interest.

(5) Departures from personnel policies manual

For item 5 (Personnel Policies and Procedures Manual not always followed) of the committee's September 14 memo (G.C. Exh. 32), Odom's September 20 clarification (G.C. Exh. 33) lists two specifics—(1) pay schedule change and (2) leave form change. The briefs do not address this matter.

Respecting the payday change, the January 1989 personnel policies manual provided for biweekly paydays on Thursdays. (G.C. Exh. 26 at 13.) By her July 13, 1989 memo (G.C. Exhs. 22, 19 at 123) to her division directors, Dorsey changed paydays to 4 p.m. on Fridays effective August 4, 1989, in order to avoid the loss of "thousands of dollars" through lost productivity. Previously, paychecks had been

distributed at 11 a.m. on Thursdays. (3:701, Odom.) According to Dorsey's memo, distribution of paychecks at 11 a.m. resulted in lost productivity the balance of Thursday and Friday.

Odom describes the impact on the employees (inconvenience respecting banking and other business, 3:702, 748–749), but that is not the key to the point. The committee's point is that Dorsey was changing personnel policies at will. (3:703.) Odom refers to a specific page, page 36, in the policy manual (G.C. Exh. 26) which describes the procedure to be followed to make a change. (3:703, 750–754.)

Odom's point, and that of the committee, apparently is this: Dorsey made her announced change in July (effective 8–4–89) without following the policy manual provisions. (3:701–704, 753–754; 4:812.) In this matter, according to an October 10, 1989 personnel memo (G.C. Exhs. 25, 19 at 124), the board of directors approved the change at the board's July and August 1989 regular meetings. (Although the board approved the switch to Fridays, it apparently left the hour at 11 a.m. G.C. Exh. 19 at 71, Odom.) By the October 10, 1989 memo, employees were notified of an addendum to the personnel policy and procedures. All this suggests that Odom and the committee were complaining that Dorsey's announced change came first, whereas any change should only have been proposed and the change procedure should have been followed thereafter.

The change procedure (G.C. Exh. 26 at 36) is ambiguous. Any member of Delta's staff may propose a policy change which will be submitted to department heads and on up the chain. No provision expressly requires the executive director to follow the same procedure. However, it does appear that approval by the board of directors is required before any proposed change is implemented. Although the payday item was a 1989 event, it and "others," Odom testified, indicated a trend which concerned the group. (4:812.)

"Others" would include the leave-form change listed in Odom's September 20 response (G.C. Exh. 33) to Dorsey. Unfortunately, this item is not well articulated in the record. At the October 17 grievance-presentation hearing, the committee's package included a July 25 memo (G.C. Exh. 19 at 120) from Dorsey to her division directors and department heads announcing various changes in the procedures for obtaining vacation and conference leave, with Dorsey now to approve all leave. Human Resources Manager Marye Bandy's July 31 memo transmitted a new leave form to supervisors and division directors in order to implement Dorsey's directive. (Id. at 121–122.) Unlike the previous form (G.C. Exh. 26 at 48), the new one contains a space for Dorsey's approval. (G.C. Exh. 19 at 122.) The record is unclear whether Dorsey's memo preceded the proper change procedure.

Another item not developed in the testimony, but made a part of the group's October 17 package, pertains to Delta's sick leave policy. Previous policy apparently was that an employee out sick for one day could charge that day to sick leave. The new policy (date of change not disclosed in the record) specifies that any 1-day absence for illness must be charged to vacation leave. If the illness lasts at least 2 days, then the employee may have all the absence, including the first day, charged to sick leave if the employee submits a note from a licensed physician, dentist, or health care provider. (G.C. Exh. 19 at 12, 72, 113, 125.) The problem here

is that the General Counsel has not shown that Dorsey had anything to do with this. The same policy appears in the January 30, 1989 copy of the personnel policies and procedures manual. (G.C. Exh. 26 at 18.) Accordingly, I attach no weight to this and other items listed in the group's October 17 package but not linked to some action by Dorsey.

(6) Funding problems

In the last paragraph of text of its September 14 memo, before the request to appear before the board of directors, the committee referred to Delta's experiencing funding problems. This information came from Dorsey at the September 5 meeting (briefly referred to earlier in this decision). Dorsey appeared twice at that meeting. In her first appearance the discussion of travel reimbursement was addressed. Dorsey said there were no funds to continue such payments and they were discontinued to avoid a deficit. (G.C. Exh. 3; 1:143, 187; 2:379–381, 449; 3:676–677; 5:1011.) After this topic and others were discussed, Dorsey left the meeting (1:142–143).

After Dorsey left the September 5 meeting for the first time, McCaskill appointed the medical staff committee. (2:450; 3:680; 5:1096.) Dorsey returned to the meeting to say that she had telephoned Paul Bond (at the PHS' Atlanta office) and reported to him that the staff was expressing dissatisfaction about going to the Greenville clinic. (1:191, Hill.) As the minuted Hill prepared reflect (G.C. Exh. 3 at 2), for which the testimony (1:191; 2:451; 3:681) is consistent:

Dr. Dorsey returned again to the meeting to say she had just called Mr. Paul Bond in the Regional Office and expressed to him the dissatisfaction staff voiced about going to the satellite clinic. Dr. Dorsey told the staff Mr. Bond said we should make a special effort to see that the satellite clinic works because if our encounters are below the norm, our budget will probably be cut next year; our encounters are down and the clinic was opened to increase encounters.

It was stated by Mrs. Odom that if the satellite clinic remains in existence and our encounters are still down, it is likely that our budget will still be reduced.

As this item has a factual basis for the committee's expression of concern, I find not only good faith, but also that the topic directly pertains to a protectible interest of the employees—the economic health of the main center and the existence of their jobs there.

b. *The September 25, 1990 memo*

(1) Introduction

Because I find reasonable support in objective facts for a substantial portion of the committee's September 25 memo (G.C. Exh. 34) to the board of directors, copies to Dorsey and the PHS, I shall not explore every point expressed there. Stated differently, examination shows a factual basis on some of the points so that a reasonable employee could form the perception the committee adopted.

Some of the committee's language is less than deferential, and some of the assertions are phrased in rhetorical hyperbole or inflammatory terms. Such expressions fail any test

for a persuasive writing technique. But tests for professional writing skill are not the measure embodied in the Act. Angered and alarmed by what they considered backstabbing by their superior and unfairness by the governing body of the organization, the members of the committee lashed out with stinging criticism. That Dorsey and the board were offended there is no doubt. Had the committee enjoyed the benefit of hindsight and wise counsel, perhaps the members would have waited a day or two, allowed their language to cool, and then tempered their memo with words of care and terms of persuasion. But the law does not require that wisdom be followed and eloquence displayed, only that malice or outrageous abuse be avoided.

(2) Misleading the committee

In paragraphs 1 and 2 the committee accuses Dorsey of deliberately misleading the group to think that it would be placed on the board's agenda for the September 20 meeting. Dorsey, as the executive director, plays a substantial role in preparing the agenda. (5:1115-1116.) The committee erroneously inferred from its request to be on the agenda, and from Dorsey's "reduce to writing" memo seeking specifics before the meeting that evening, that it, too, would be on the agenda. (1:214; 2:425-426, Hill; 2:478, Mosley.)

Hindsight shows that a prudent committee would have asked Dorsey specifically whether she had placed them on the agenda, or obtained their placement there. Nevertheless, there is a substantial factual basis for the committee's belief that it would be heard at the September 20 meeting. Given Dorsey's earlier expressions of a desire to convert Greenville into the main site, her threats to close Mound Bayou at least temporarily (her threat via McCaskill the afternoon of September 19 being directly tied to the committee's September 14 memo, and her September 20 hallway threat for Mosley's hearing clearly related to the committee's effort to appear before the board of directors), it was not irrational for the committee to conclude that Dorsey had implied one thing to the committee (that it would be heard) but quietly on her own, or in concert with Estelle Pryor the board's chair, had deliberately left the committee off the agenda.

(3) Gross misrepresentations by Dorsey

Paragraphs 4, 5, and 6 principally address Dorsey's accusation, at the September 20 board meeting, that the committee was fomenting a strike by the medical providers. Crediting witnesses such as Odom (3:714, 723; 5:1048, 1065-1068) and Peterson (4:830, 897), and disbelieving Dorsey's denial (6:1276), I have found that Dorsey made the accusation and that it was false.

Dorsey then used this false accusation as the basis for requesting a motion that the board grant her standby authority to close the Mound Bayou center in the event there was a strike of the providers. As we have seen, the committee's members were alarmed and believed that Dorsey was out to implement her goal (expressed to Odom, Peterson, and other managers and department heads on June 5) of causing Greenville to replace Mound Bayou as the main health center. Dorsey's threats to close, conveyed through McCaskill on September 19 and expressed for the benefit of Mosley on September 20, served to reinforce the committee's alarm. When the board refused to recognize and hear Odom on Sep-

tember 20, the committee feared that Dorsey would be able to persuade the board to close the center and operate from Greenville before the committee would be able to appear before the board on October 11.

Even a temporary closing, in the committee's opinion, would mean the loss of funds and jobs. (2:299-300, 429; 3:725.) Alarmed, the committee members, as Mosley (2:479) and Peterson (G.C. Exh. 19 at 55-56) describe, were desperate. They therefore sent their September 25 letter to the board, but with copies to the PHS in order, Odom testified (3:730), to get the attention of someone in authority. Dorsey's references at the September 20 board meeting to the committee members as "troublesome" and "uncooperative" were simply her own opinion of the concerns these employees had been expressing. From the group's viewpoint, those adjectives were false.

The record supports a finding, which I make, that the committee's accusations of gross misrepresentations were based on facts from which employees could form the impressions and perceptions the committee formed. I find that there was no malice.

Paragraph 9 also contains the accusation that Dorsey "has been found guilty on numerous occasions of telling the board and staff one thing and in the absence of each other, has misrepresented the truth." When Hill was asked about this on cross examination, she could not recall a single example of such conduct nor any example the committee discussed. The General Counsel offered no examples through any of the other witnesses. However, Hill testified that the committee did discuss such misrepresentations, but she could not recall that discussion. (2:401-402.) Although I credit Hill that such a discussion occurred, her bare testimony, lacking in details, is only weak evidence supporting a finding of no malice.

(4) Intimidation

Paragraph 7 is the one-sentence description of Dorsey's request to close the center as a "suppressive ploy to intimidate those who see and speak out about the wrongful tactics employed to dominate staff." When asked on cross examination how she was intimidated at the September meeting of the board, Hill answered that it was by Dorsey's calling the group troublesome and uncooperative (2:391), and Hill's belief that, apparently, Dorsey was instrumental behind the scenes in keeping them off the board's September 20 agenda. (5:1099-1101.)

As I have noted, Odom testified that Dorsey falsely told the board that the committee was trying to force the doctors to go on strike. (4:830; 5:1048, 1066.) In the committee's opinion, Dorsey's statement and request were an effort to silence the committee. (5:1048.) The committee's expression of opinion is fair comment.

As for past events, recall that copies of Hill's June 7 memo (G.C. Exh. 29) to Dorsey, and Dorsey's "I am disappointed" reply (G.C. Exh. 2), were attached to the September 25 memo as were Odom's four-page June 12 memo (G.C. Exh. 30) and Dorsey's five-page response (G.C. Exh. 31) of June 14. On page 3 of her June 12 memo Odom addresses Dorsey's "inadvertent use of statements/responses that belittle or demean employees, thereby diminishing employee questions/responses to questions for fear of ridicule," and Dorsey's "underlying or overt threats" that a staff person should "find another job if you can't go along with the

program” if the person questions or disagrees with a decision of Dorsey.

In her June 14 response Dorsey (at 2) denies any improper intent, denies (at 4) any threats, and (at 4), in part because of Odom’s accusation of threats, alerts Odom that “I am referring your letter and my reply to the personnel file.” At page 5 Dorsey, in her final paragraph, states, “People are free to speak at meetings, and I should not be held responsible if they don’t state their feelings, concerns, or their anger.”

Although unable to cite a specific incident (or date), Mosley asserts that Dorsey intimidates anyone who comments at staff meetings by stating “I know where the criticism is coming from.” (2:474.) Odom states that in meetings Dorsey belittles anyone who inquires about doing something differently from Dorsey’s way by declaring, “Well, we’re going to do it my way.” (3:670.) If asked whether she had considered some factor, Dorsey may say, “That’s a dumb question,” or make some similar remark. (4:810.) In meetings “Dorsey belittles you and makes you look bad.” (5:1050.) Odom is unclear whether she is referring to meetings with employees in addition to managers and supervisors.

Although Odom’s testimony is unclear on this, Hill, the former medical secretary, clearly states that at the monthly general staff meetings employees would be afraid to say anything because of Dorsey’s habit of giving short answers to any questions. “It’s not necessarily what she said, it’s how she said it,” Hill testified. To Hill, this resulted in poor communications. (5:1087–1089.) Dorsey denies knowingly demeaning anyone who has asked questions (6:1257) and she denies retaliating. (6:1279.)

One incident forming a part of the committee’s concern about intimidation of the staff by Dorsey has a link with the group’s concern with staff cuts in the nursing department. The incident involves the discharge of Andrew Atkins, a young orderly still in probationary status.

Before the September 5 medical staff meeting, memos were issued concerning staff surpluses resulting from a shortage of physicians. McCaskill’s memo of September 4 to Marilee L. Lucas, the director of nursing, instructed Lucas to inform Atkins that he would be laid off September 7. (G.C. Exh. 19 at 126.) A memo the following day from Dorsey to McCaskill covered a reduction in force for at least four positions, including Atkins, who was to be furloughed. Two nursing assistants at Greenville were to be laid off if two could be transferred there from Mound Bayou. If none at Mound Bayou would transfer, then reduce their hours to correspond with those that providers would be present at Mound Bayou.

Apparently three nursing aides had only recently been hired at the Greenville site. (2:450.) At the September 5 medical staff meeting, Lucas asked about the need to reduce the hours of her aides when Greenville had recently hired three aides. From there Lucas inquired about the need to lay off Atkins when there were recent hires at Greenville. Atkins, who was present, questioned Dorsey on the reason for his layoff. Dorsey replied that he was a probationary employee and she did not have to answer his question. Before the day was over, Dorsey (6:1295; G.C. Exh. 19 at 128) converted Atkins’ layoff to a discharge.

To the committee, Atkins’ probationary status did not matter, for the manner of his discharge meant that regular em-

ployees could expect the same fate if they questioned the executive director. True, they could appeal (G.C. Exh. 26 at 28–29), unlike a probationary employee, but they nevertheless would be on the street trying to obtain reinstatement. (2:449–450, 462–467; 3:588–594, 677–679.)

The record, I find, has an abundance of credited evidence to support a finding, which I make, that the committee had a good-faith belief that Dorsey’s closure request was nothing more than a pretext to suppress and intimidate employees, as well as supervisors, who speak out (such as the committee’s September 14 memo, G.C. Exh. 32) against Dorsey’s wrongful tactics (such as Dorsey’s September 6 statement, alleged in complaint paragraph 8 as a threat of unspecified reprisals, that Dorsey was tired of Hill’s critical remarks) employed to dominate the staff. The “wrongful tactics” include Dorsey’s September 6 statement, and the conversion of Atkins’ layoff into a discharge after he questioned Dorsey at the September 5 meeting of the medical staff.

(5) *Local politics*

Paragraph 8 of the September 25 memo refers, in the opening sentence, to Dorsey’s (Dorsey is unnamed, but she is implied) looking on the committee’s valid concerns “as political activism to close the Greenville clinic.” As discussed earlier, one of Delta’s main points is that the committee was motivated in part by its alignment with a local political faction which opposed Dorsey from the start.

There is some evidence that local politics was involved, but not necessarily for the reason suggested by Delta. First, the nursing director, Marilee Lucas, a member of the committee, is the wife of Mound Bayou’s long-time mayor, Earl S. Lucas. (2:396–397; 4:929, 940; 5:1009.) They discussed her role on the committee. He advised her not to rely on Dr. McCaskill because “he won’t stand up for nothing.” (4:933–934, 938.) Hill concedes that she discussed with Mayor Lucas the committee’s concerns, but she denies that the concerns derived from local politics. (2:395.)

By letter (R. Exh. 1) dated August 29, Mayor Lucas wrote Louis W. Sullivan, secretary of HHS, to express his concern and disappointment about the Greenville satellite and its “taking dollars and employment out of a poor community and placing it in an affluent community such as Greenville, Miss.” Lucas closed by requesting a visit by a representative of the national office. He expressed his concern “that we do not eliminate the Delta Health Center from our community.” The mayor’s letter acknowledges, without giving Dorsey’s name, that Dorsey replaced the mayor’s younger brother, William Lucas Jr., as Delta’s executive director.

Replying for Sullivan by letter (R. Exh. 2) dated September 13, Sheridan L. Weinstein, assistant surgeon general, wrote that the PHS at Atlanta authorized the Greenville expansion on the basis of excess income generated, that “we” understand the mayor’s concerns, and that “You can be assured that the Public Health Service is committed to assisting the DHC to meet the needs of the medically underserved in Mound Bayou and the surrounding communities.”

A Delta patient, Lonnie Williams, testified that on October 2 Marilee Lucas asked him whether he knew that the health center was going to close. He said he knew nothing about it. Concerned, Williams went to Dorsey who assured him it was not going to close. Williams denies initiating the conversation by telling Lucas he had heard that the health center

was going to close. He concedes that Lucas told him to see Dorsey. (5:974–980.) Marilee Lucas did not testify.

Earlier Dorsey testified that Williams had told her of the statement by Lucas, and that Mazio Dennis told Dorsey that Hill, leader of his Sunday school class, had said the center was to be closed and the patients transferred to Greenville. These reports, Dorsey testified, came before her September 30 “cease and desist” letter, and were a factor in her issuing the letter. (1:114, 161.)

Hill teaches a Sunday school class at her church. At one of these classes between September 20 and her October 22 discharge, in discussing the class topic, Hill told the class that Dorsey, at the September 20 board meeting, had asked the board to close the Mound Bayou health center for 90 days while keeping open the Greenville satellite. Hill did not mention the context of a strike by providers. At the hearing Hill could not recall the nature of the Sunday school topic, and recalled only that she used Dorsey’s proposal as an example in relation to the biblical message. Neither at Hill’s discharge, nor at any time earlier, did Dorsey ever mention to Hill the matter of Hill’s comment at the Sunday school class. (2:297–299, 3128–328, 416.) When he testified, Lonnie Williams was not asked about Hill’s comment at her Sunday school class.

Hill’s failure at her Sunday school class to describe the strike-context of Dorsey’s September 20 request is shown as confusion on Hill’s part as to the thrust of Dorsey’s position, not malice by Hill to deliberately make a false report at her Sunday school class. Although Delta points (Br. at 17) to Hill’s testimony (2:329) that she did not believe the center would close, Hill was testifying there that although she was concerned about the effect of low encounters on funding, she did not believe that the encounters were low enough to bring about closure. That concern is unrelated to the concern of Hill and the committee that Dorsey, for personal reasons, intended to convert Mound Bayou to a satellite and Greenville to the main center. On that point Hill expressed concern about (1) closure as a result of providers being pulled from Mound Bayou to work at Greenville, and (2) Dorsey’s September 20 request to the board to close for 90 days. (2:318, 328–329.)

I find that the evidence falls well short of showing that the committee’s motivation was based on local politics. There are objective facts to support the committee’s position at least in substantial part. Bad faith is not demonstrated by the evidence.

The testimony of Lonnie Williams (although uncontradicted, Williams’ description is not overwhelmingly convincing) shows that Marilee Lucas apparently told Williams that the center was going to close. That bare statement to Williams was false. Even if that statement shows malice on the part of Lucas, that one incident of malice does not overcome the objective facts the committee had before it. I find that this falls well short of showing bad faith on the committee’s part.

(6) No budget

Paragraph 13 asserts that the Greenville satellite was started without a budget. Disputing this, Dorsey (6:1209–1210) points to her June 4 five-page letter plus a two-page attachment of income and expenses (G.C. Exhs. 37, 40), to Paul Bond, PHS’ project officer at Atlanta, setting forth Dorsey’s

estimated 6-month startup income and expenses. Expenses were estimated at \$231,500. To cover these expenses, Delta had available \$211,178 in EPI funds (excess program income), and Dorsey projected savings in patient transportation of \$20,000, plus \$2818 income from increased encounters.

Atlanta’s Luther Wayne Cutchens, who oversees finances, told Bond to give Delta oral approval. (2:233–234; G.C. Exh. 40.) It is important to note, however, Cutchens’ testimony that there was no approval for additional Federal funds, and that Delta could not use any of its section 330 funds to open the Greenville clinic as distinguished from treating persons from Greenville and Washington county. (2:230–231, 236, 241–242.)

How Dorsey planned to operate the Greenville clinic is unclear. Perhaps that would come from an application for Section 330 funds specifically providing for Greenville, or perhaps from anticipating another surplus in the form of EPI. In any event, Hill (2:404–405) and Odom (5:1052) testified that in the summer Dorsey, or perhaps Financial Director Sanders, had said that there was no separate budget for Greenville. And from Dorsey’s September 5 comments about having no funds, members of the committee were concerned that the Greenville clinic was causing Delta to fall back into a deficit condition. (2:380, Hill; 3:677; 4:790, 815; 5:1011, Odom.) Hill testified that she feared Dorsey was siphoning funds from Mound Bayou to support her Greenville project. (5:1104.)

Regardless of whether the committee’s concerns about the lack of a separate budget (Section 330 funds) were accurate, the committee clearly had a factual basis for raising its concerns. Indeed, in the absence of Section 330 funds, and if there were no repeat of EPI funds, how would Greenville operate? Any increase in fees from encounters at Greenville would be minor. In short, the committee had an objective basis for raising questions. Delta has failed to show bad faith on this topic.

3. The warning and discharge

a. Introduction

Dorsey’s September 30 warning (cease-and-desist) memo (G.C. Exh. 11) and her October 22 memo (G.C. Exh. 18) discharging Hill and Mosley (2:492) (the other discharged members of the committee were supervisors) list essentially the same reasons for the discipline. Dorsey’s warning memo refers to the committee’s “deliberate lies” and “disrespect” as a “campaign of disruption.” Dorsey saw evidence of a possible conspiracy to damage the health program in the committee’s (1) the committee’s not requesting a meeting with her, (2) going directly to the board, and (3) asking the board to hear the committee’s concerns at Mound Bayou rather than Greenville.

At the trial Dorsey listed (1:90–91) the disruption as (1) meetings during the work day, (2) the constant flow of memos, (3) the creation of tension, (4) reporting to PHS in the form of alleged grievances thereby requiring Dorsey to respond, (5) copies to the board of directors, and (6) approaching the medical providers for their support.

For the discharges, Dorsey asserts that the same factors apply plus her belief that the group’s concerns really invade the province of management and did not affect them as employees, plus a bad-faith intent to usurp [not “use” as shown

at 1:154:17] the authority of the board of directors in order to disrupt a program [Greenville] approved by the PHS. (1:154.) The group's challenge of Dorsey and the board, and especially the manner in which the group addressed its concerns, is what caused their discharge, Dorsey testified. (1:169–170.) The discharge letter, Dorsey testified, contains all the reasons for the discharge. (1:172.)

Aside from accusing the committee of lying, Dorsey's memos of warning and discharge describe, as both background and listed reasons, protected conduct. Dorsey's real complaint (other than asserted malice) is that she and the board of directors were offended by the committee's "disrespectful" conduct, that the committee's concerns do not constitute "grievances" (under Delta's policy manual), and that the committee had bypassed her and the board and involved the PHS. I have found no merit to the malice defense, and all the other matters listed by Dorsey are protected conduct.

b. Analysis and conclusions

The committee's activities were stipulated to have been concerted. But activity may be concerted yet unprotected if, for example, done in an abusive manner. *NLRB v. City Disposal System*, 465 U.S. 822 (1984); *Reef Industries v. NLRB*, 952 F.2d 830 (5th Cir. 1991) (mildly sarcastic letter and cartoon, part of a labor dispute, protected); *New River Industries v. NLRB*, 945 F.2d 1290 (4th Cir. 1991) (mocking letter, done as a lark for the sole purpose of belittling employer's gift, unprotected); *Caterpillar Tractor Co.*, 276 NLRB 1323 (1985) (obscene, obnoxious cartoon of supervisor unprotected).

Here many of the group's concerns ultimately related to a fear of the loss of funding, jobs, and possibly even the health center at Mound Bayou as a result of Dorsey's Greenville satellite clinic. Dorsey's expressed desire to convert Greenville to the main site, and her threats to close Mound Bayou either without restriction (McCaskill), for 90 days (Mosley), or, as her September 20 request for standby authority, for 90 days in the event of a strike by the medical providers, coupled with the board's refusal to hear the group on September 20 and an atmosphere the group considered unfriendly, so alarmed the committee that it sent copies of its September 25 memo to the PHS in the unexpressed hope of support by that Federal agency.

The committee's activities, I find, related directly to concerns affecting employees. It is immaterial that Hill or Mosley may have been unaffected personally by some of the changes brought about by the Greenville operation. They could have been affected by any loss of jobs and certainly would have been if the center had to close. In any event, their personal involvement of assisting other employees more immediately affected falls within the "mutual aid or protection" clause of Section 7 of the Act. *Eastex v. NLRB*, 437 U.S. 556 (1978). Thus, Delta's first affirmative defense, that the committee's activities are unprotected because they invade the province of management, is without merit.

Respecting Delta's other affirmative defense, that the group's allegations against Dorsey were maliciously false, I have found that defense to have no merit. I further find that the committee acted sincerely, and not with reckless disregard for the truth.

Delta also argues (Br. at 14) that the committee acted disloyally (and the discipline was therefore proper) by sending copies of the September 25 memo to the PHS, Delta's major funding source. Employees may seek to improve their lot "through channels outside" those available with their employer. *Eastex*, 437 U.S. at 565. However, disparaging the employer to customers, or the funding source, while seeking support can be unprotected if the communication is sufficiently disloyal, reckless, or maliciously untrue. *Brownsville Garment Co.*, 298 NLRB 507 (1990) (criticism of manager in presence of third parties protected notwithstanding manager resented the remarks as personal and unjust).

The committee's remarks here, while some were stinging and harsh, nevertheless had some reasonable connection, for the most part, to objective facts sufficient that a reasonable employee could form the perceptions, even if erroneous, that the committee here formed about matters relating to a labor dispute affecting terms and conditions of employment. Thus, I find that the remarks and allegations were not so abusive as to lose the Act's protection. *Brownsville Garment*, id.; *Sierra Publishing Co. v. NLRB*, 889 F.2d 210 (9th Cir. 1989), enfg. 291 NLRB 540 (1988).

Finally, as Dorsey imposed Delta's discipline on Hill and Mosley (plus the other members of the committee) solely because of their protected concerted activities, I need not make the analysis required under *Wright Line*, 251 NLRB 1083 (1980). *Circle K Corp.*, 305 NLRB 932 (1991).

CONCLUSIONS OF LAW

1. Delta Health Center, Inc. is a statutory employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Delta has failed to carry its burden to persuade that the Board should not exercise its statutory jurisdiction over Delta.

3. Delta has committed unfair labor practices within the meaning of Section 8(a)(1) of the Act affecting commerce within the meaning of Section 2(6) and (7) of the Act by:

(a) Executive Director Dorsey's September 6, 1990 threatening medical secretary Priscilla Susette Hill with unspecified reprisals because of protected concerted remarks Hill made at the medical staff meeting of September 5, 1990.

(b) Issuing the September 30, 1990 "cease and desist" written reprimand to Charging Parties Priscilla Susette Hill and Charlotte Mosley.

(c) Discharging Charging Parties Priscilla Susette Hill and Charlotte Mosley on October 22, 1990.

REMEDY

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

Delta having discriminatorily discharged employees Priscilla Susette Hill and Charlotte Mosley, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Because Delta's Greenville clinic figures prominently in this case, I shall order Delta to post the notice to employees there as well as at Mound Bayou, its main site.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

ORDER

The Respondent, Delta Health Center, Inc., Mound Bayou, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, issuing written reprimands to, or otherwise discriminating against any employee for engaging in concerted activities protected by the National Labor Relations Act.

(b) Threatening employees with unspecified reprisals because the employees have engaged in protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the 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 Priscilla Susette Hill and Charlotte Mosely immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files the written "cease and desist" reprimand of September 30, 1990, and the October 22, 1990 discharge memo, and any references to those documents, and notify employees Hill and Mosley in writing that this has been done and that the reprimand and discharge will not be used against either of them in any way.

(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 health center and clinic in, respectively, Mound Bayou and Greenville, Mississippi, copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative,

⁸If 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.

⁹If 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."

shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

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 discharge you, issue written reprimands to you, or otherwise discriminate against any of you for engaging in concerted activities protected by the National Labor Relations Act.

WE WILL NOT threaten you with unspecified reprisals because you have engaged in protected concerted activities.

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

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

WE WILL remove from our files the written "cease and desist" reprimand of September 30, 1990 issued to Priscilla Susette Hill and to Charlotte Mosley, and the October 22, 1990 discharge memo issued to them, and any references in our files to those disciplinary actions, and WE WILL notify each of them in writing that this has been done and that neither the warning nor the discharge will be used against either of them in any way.

DELTA HEALTH CENTER, INC.