

District 1199, The Health Care and Social Service Union, Service Employees International Union, AFL-CIO-CLC and M.E.B. Incorporated d/b/a J. J. Jordan Geriatric Center. Cases 9-CB-8226, 9-CB-8230, and 9-CB-8262

September 14, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On March 3, 1993, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent and the Charging Party filed exceptions and supporting briefs.

The National Labor Relations 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, District 1199, The Health Care and Social Service Union, Service Employees International Union, AFL-CIO-CLC, its officers, agents, and representatives, 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.

The Charging Party has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

Carol L. Shore and Joseph C. Devine, Esqs., for the General Counsel.

Larry Harless, Esq., for the Respondent Union.

Connie Goldkamp, Esq., for the Charging Party Employer.

DECISION

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges were filed in the above consolidated proceedings on July 7 and 14 and August 12, 1992. A second consolidated complaint issued on September 10 and was further amended on October 19, 1992. General Counsel alleges in the amended consolidated complaint that Charging Party Employer is engaged in the operation of a nursing home facility at Louisa, Kentucky; that about July 1, 1992, the Employer's employees, represented by Respondent Union, ceased work and engaged in a strike and picketing at the Employer's facility; that Respondent Union, by its agents, engaged in, inter alia, mass picketing and blocking the in-

gress to and egress from the facility; assaulted and attempted to assault nonstriking employees and other individuals in the presence of employees; damaged vehicles of nonstriking employees, management personnel and other individuals in the presence of employees; threatened nonstriking employees and other individuals in the presence of employees with death and other physical harm if they crossed the Union's picket line; brandished weapons; threw nails, bottles, jackrocks and other objects at vehicles of nonstriking employees who attempted to cross the picket line; followed nonstriking employees from the picket line around the Louisa vicinity; coercively photographed nonstriking employees attempting to cross the picket line; and informed nonstriking employees and others in the presence of employees that they had the telephone numbers and addresses of the nonstriking employees thereby implying that said individuals would be subjected to physical harm and other injury at their homes; and that Respondent Union, by the foregoing and related conduct, restrained and coerced employees in the exercise of rights guaranteed to them in Section 7 of the National Labor Relations Act, in violation of Section 8(b)(1)(A) of the Act.

Respondent Union, in its answer, admits the jurisdictional allegations of the complaint and that Area Director Teresa Ball and District Organizer Steven Brewer are its agents as alleged. Respondent Union denies violating the Act.

A hearing was held on the issues raised in Ashland, Kentucky, and Huntington, West Virginia, on November 4 and 5, 1992, and January 4, 1993. On the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

The Employer is admittedly engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act. Respondent Union is admittedly a labor organization within the meaning of Section 2(5) of the Act. Commencing on July 1, 1992, the Employer's employees, represented by Respondent Union, struck the Employer at its Louisa nursing home facility. The evidence pertaining to picket line and related conduct during that strike and union responsibility for that conduct is summarized below.¹

David McKenzie, owner and administrator of the Employer's Louisa nursing home facility, testified that the Employer and Respondent Union had signed a collective-bargaining agreement for a unit of the facility employees effective from July 1, 1989, to June 30, 1992. Following unsuccessful efforts to negotiate a new agreement, Union Area Director Teresa Ball notified McKenzie on June 17, 1992, pursuant to Section 8(g) of the Act that "a strike and picketing by service and maintenance employees will commence . . . on Wednesday July 1, 1992 at 12:00 noon." The strike and picketing began as noticed.

¹An order granting a preliminary injunction pursuant to Sec. 10(j) of the Act was entered by the United States District Court for the Eastern District of Kentucky on July 20, 1992. The court issued a clarification of its order on July 24. The court further modified its order on September 3, 1992. The injunction proceeding is now pending review before the United States Court of Appeals for the Sixth Circuit. See R. Exhs. 1, 2, and 3.

McKenzie testified that about 10:45 a.m. on July 1 he left the facility “to facilitate parking for some newly employed workers who had indicated their interest in working through the strike.” McKenzie explained:

What I did was to drive my car out of the . . . parking lot in front of the nursing home across East Clayton Lane . . . into the subordinate employee parking lot to follow these newly employed women in their car . . . to [the] local hospital and park there, and I was going to bring them back to work. . . . When I pulled up I unrolled my side driver’s window . . . so that I could speak with the women that I wished to accommodate, and I told them that I was ready to follow them Steven Brewer [the Union’s district organizer], dressed in army fatigues with a bandanna around his head . . . told me to get out of the lot and threw his cup of coffee on my chest . . . and he repeated the demand for me to leave and then took his fist and hit me in the face breaking my glasses and bloodying [me]

McKenzie noted that this incident occurred in the Employer’s parking lot located “across the street” from the facility. General Counsel’s Exhibit 5 is a photograph depicting the physical injury to McKenzie as a result of this attack. McKenzie later executed an arrest warrant against Brewer and criminal proceedings are pending. (See G.C. Exh. 6.)²

Raymond Mays, owner and operator of the Tri-County Commercial Laundry, testified that his laundry plant is located across the street from the nursing home facility where he “picks up and delivers laundry daily.” Mays recalled that on July 4 while making a delivery to the nursing home “we were harassed by Union officials.” Mays explained:

Well, they were standing up to the right of where I was making delivery and she [area director Teresa Ball] hollered down and asked me why didn’t I go have a sexual experience with David McKenzie; . . . we know where you live and we’re going to get you next; . . . they was going to burn me out.

Mays further explained on cross-examination that Teresa Ball had said “we know where you live and we’re going to burn you out.”³

²McKenzie acknowledged that, following the above attack, he pursued Brewer with his car “to get him out of my lot.” A warrant was later issued against McKenzie for this conduct which warrant, according to McKenzie, was subsequently “dropped.”

Mabel McKenzie, wife of David McKenzie, testified that she witnessed “this man in camouflage clothing run across to [her husband’s] car in the parking lot” “and hit him in the face” on July 1. She also related how the pickets thereafter “would walk in front of us and block the drive and we would . . . have to wait for the police to come and remove them; . . . one day it took us 40 minutes to get out.” In addition, she witnessed striking employee Jerry Welles, also spelled Wells in the record, “kick the side of” a car transporting maintenance and housekeeping supervisor Bob Branham on July 6 as he “was leaving the facility.”

³Robert Fleming was employed by Tri-County Laundry during the strike. On July 2, he drove over “spikes” and “jacks” as he attempted to make a delivery at the nursing home. Someone also threw a rock which busted a side vent window on his truck. His vehicle sustained four flat tires. On another occasion, one of the pick-

Lee Vance testified that he has worked for the nursing home “on and off for” a number of years and during the strike in July. He related a number of incidents involving strikers and Union personnel. On July 3, he estimated that some “500 strikers” were “in front of the nursing home” and on the nearby property. On another occasion, he recalled about 100 strikers were present. On other occasions, he observed “around 25 to 50 of them” and “they were generally located . . . at the entrances and out in front.” He recalled, “I always had trouble exiting.”⁴

On July 7, Vance attempted to leave the nursing home driving owner McKenzie’s car. He had two employees in the car. He testified:

I was going toward the exit and I noticed [Union Organizer] Steve Brewer . . . and about eight or nine or ten strikers out there and they tried to stop me from going out . . . by blocking [and] getting in front of the car. . . . I just kind of eased through them and I noticed that Steve Brewer had a metal rod . . . and he threatened to kill me and if he couldn’t kill me he’d get my kids. He knew where we lived and all this stuff. And he started beating the car, kicking the car, as I went out.

Later on July 7, Vance attempted to reenter the facility with his wife. He testified:

[W]hen I attempted to enter, Joyce Burchette or Nyoka Waller kicked the side of the door in . . . threatening my wife and saying . . . they’d get us . . . if they couldn’t get us they’d get our kids and all that. . . . [Burchette] said that she knew where I lived . . . if she couldn’t get me now she’d get me later on and more or less threatened to kill us Burchette jumped on the back of [the car] banging the trunk in.

On July 8, Vance was in the parking lot changing “flat tires.” Pickets were present while he was changing tires. He testified:

Morgan Hamilton asked me if I like the way the tires were slashed and I told him it didn’t bother me . . . it was my job to change them. He says well I’m glad you like it because next time it wouldn’t be tires . . . it’ll be you I cut.

Vance reported the incident to the police.

On July 9, as Vance attempted to leave the facility,

[T]hey wouldn’t let me out. . . . I had to back up to get the State police Nyoka Waller . . . lunged for my car [and] I heard a scrape going all the way down the side of my car [S]he just knifed my car . . . I told the cop . . . she’s putting a knife back in her pocket

ets said: “not to worry . . . McKenzie had all kinds of money [and] he could replace any tires that was damaged.”

⁴On cross-examination, it was acknowledged that Vance’s pre-hearing statement only cites up to some 100 pickets present.

Waller was directed by the police to empty her pockets; she refused; a search disclosed a knife; she started “yelling rape” at the police and she was “arrested.”⁵

Later on July 9, Vance “was going to pick up another employee for the nursing home . . . at Ron Perry’s Auto Mall.” He testified:

[W]hen I was getting ready to leave the parking lot of the nursing home I noticed that there was Teresa Ball . . . driving one car [and] I think Betty West was with her. And then Joyce Burchette was [in] her car. . . . As I went to pull out one went in front of me and one went behind me. And when we got down to the East Clayton Lane . . . they tried to block me in . . . I swerved around them . . . and then I went to Ron Perry’s Auto Mall to pick up Sabrina Duncan [W]hen I got over there they blocked me in Sabrina didn’t want to get out of her car because she was scared I turned around and Joyce Burchette [was] running towards me with [an] aluminum ball bat. . . . I just reached in and got the gun off my dash and I told her that I had the gun [and this] shit wasn’t going to happen . . . you ain’t going to hit me with the ball bat [Teresa Ball in the other car] seen I had the gun [and] she pulled out and left. . . . [Burchette] started calling me names, cussing me out, and said that if she couldn’t get me now she knew where I lived . . . she would eventually get me [A]t the time she hit the driver’s side rear quarter panel of my car with the baseball bat.

Vance called the police. He later showed the gun to the police and there were no shells in it. He was not arrested although told that he should not be carrying the weapon.⁶

Later that same day, the husband of the head of nursing at the home, Willa Cooke, came to pick her up. Vance testified:

Her husband came to pick her up and as she was leaving they was blocking her in so they had to get the cops and everything to go over there to split them so she could get through I noticed Morgan Hamilton lunge for the rear passenger side of the truck with a knife and try to cut the tire of the truck.

Subsequently, on July 11, Vance had to change 14 slashed tires on cars parked in the parking lot. Later, on July 16, as he was attempting to leave the facility, he was blocked by several striking employees including Betty West, Joyce Burchette, Shirley Kingsmore, and Nyoka Waller, “pacing back and forth in front of the cars to where you couldn’t go in or out.” The police would “come over to split them up” and “they was kicking the car door and everything.” He recalled, Waller and Burchette “kicked the car door.” And,

⁵See also the testimony of Brian Daniels (Tr. 322–342) pertaining to the above July 9 incident.

⁶Vance acknowledged on cross-examination that Burchette “got a grand jury indictment against me later . . . she accused me of following her around all that day pointing a gun at her three times and threatening to kill her . . . it’s pending in court . . . and I was arrested for the indictment.” Vance denied engaging in this conduct.

when I came back in . . . Burchette was jumping on top of the car, back of the car, hitting the car door or trunk in and then kicked the side door in . . . ; she said she was going to kill us and if she couldn’t get us she’d get the girls . . . she knew where we lived

On August 5, about 4:30 a.m., Vance observed Shirley Kingsmore throw a jar into the driveway of his home. He later discovered that “the cars [had] been acidified”; “it’s ate the paint all off both of my cars.”⁷

Dan Hardin, an employee at Ron Perry Auto Mall, witnessed in part the July 9 incident involving Vance and Burchette and Ball. Hardin recalled:

I just happened to see a tan Ford Thunderbird sitting across the street . . . and I seen a blue Oldsmobile pull into the parking lot and a woman get out and she was pointing her finger and yelling [and] she wound up with a baseball bat in her hand [T]he fellow in the Thunderbird [Vance] was backing out and he was getting ready to leave the lot and she hit the car with the bat And then during this time there was another car that came into the lot; it looked like a Cavalier to me. It turned around and exited the lot. [Vance] backed up in front of [our] showroom and got out of the car, and right about that time the police came.

Hardin did not see a handgun until after the police arrived when Vance “laid it on the hood of the car.”

Alice Queen has a sister-in-law who is a patient at the nursing home and she visits the facility frequently. Queen testified that on July 3 she visited her sister-in-law and then attempted to take her sister-in-law’s “sitter” home. Queen recalled:

[A]s I started out of the facility there was a group of people down there walking back and forth. . . . [T]his red car came down to block [the exit]. [T]he State police did come and make him pull out and let us through. . . . [The red car] followed me to the sitter’s home And I stopped and let her out I told the sitter to go into the house and call the police and tell them what had occurred and that I was on my way back to the nursing home and ask if they would please come out there and see that no incident occurred. . . . [The red car] followed [her] [T]his red car came back to the nursing home but I had already gotten inside by that time. . . . I’d say it took me possibly . . . five minutes [to get into the facility].

As she started to leave the facility later that day,

[T]hese people were walking double line in front of me. . . . I started blowing my horn and kept inching through. And then I heard this thud against the back of

⁷On cross-examination, Vance was questioned about a statement in his prehearing affidavit to the effect that he worked at the nursing home “as a volunteer” “without pay.” He insisted that he was getting “no money.” However, Nursing Home Supervisor Marlene Caudill, also a cousin of Vance, later testified that she had telephoned Vance during the strike “and asked if he’d help us in an emergency situation” She explained that he was in fact “a paid employee.” Caudill’s testimony is summarized below.

my car and I turned around and looked and this man was getting down . . . right beside my car and his face was almost against the window of my car, my back window. . . . I kept inching along . . . and I asked the State police . . . what the man had done to my car It was a big dent in the back door of my car.

This “man” was later identified as Union District Organizer Steven Brewer.

Audrey Steiner was employed at the nursing home as a licensed practical nurse on July 7. She had worked at the nursing home previously. On July 1, she worked for another employer Community Hospice. She visited the nursing home on July 1 where she observed “several picketers, about 20, and most entrances were blocked.” She saw strikers Joyce Burchette, Cathy Ross, Zelme Maynard, Pam Pigg, Jerry Welles, Mary Morris, Pansy Bryant, and “several others.” She noted that Morris was the union president and Bryant was the union delegate. Burchette told her “you’re not going in” “and they had stopped people from crossing the picket line all day.” Ross and Welles also told her that she “wasn’t going in.” Burchette warned: “Audrey, you can come back tomorrow and try to cross and go in but I can’t guarantee what would happen to you.” Union Area Director Ball also told her that she “would not cross”; Ball “would contact the Ashland Office, which is the Hospice main office, and explain the situation to them” Burchette added: “they was going to see that everybody in the building was fired.” One Harvey Reed was then identified by Burchette as a “scab,” and Union Organizer Brewer said that “they were going to make an example out of Harvey Reed and that he would get him either in or out of the facility”—“Harvey Reed was a dead man.”

Steiner started working again at the facility on July 7. The entrance to the facility was blocked “by picketers walking in front, back and forth in front of the car.” She had to wait about 3 to 5 minutes and the police moved the pickets. Subsequently, on July 14, she left the facility with her brother Lee Vance, Oletha Reed, and Harvey Reed. It took about 5 minutes to leave the premises with the assistance of the police. A car containing striking employees Pam Pigg and Pansy Bryant was following them. They “lost” the following car and ultimately went to Perry’s Mall to get Steiner’s car. The car with Pansy and Pam spotted the Steiner car and attempted to follow them again “almost bumper to bumper at first.” Pansy was making offensive hand gestures at the time.⁸

Sergeant Garrett Roberts of the Louisa police department testified. He was assigned midnight shift duty at the picket line of the nursing home on July 8. He observed 10 to 15 pickets,

[A] car [drove] down through, which while everybody was circling, had to stop. I got out of my police car, walked down that way. I seen a female, she had something in her hand [and] she was just walking around.

⁸See also the testimony of Mary Perkins (Tr. 435–451) pertaining to threats “yelled” while attempting to cross the picket line at the facility and related conduct; a truck and car following incident later that day with picket Addie Maynard in the truck; and a later car following incident. Perkins identified Pansy Bryant and Pam Pigg in the latter car following incident.

As I got closer I asked them to spread so they could let the car go through. At that time people took both sides of the car and I seen this one lady walk around behind the car and toss something at the wheel base.

Roberts heard the “sound of a ching hitting the ground.” He identified the object which hit the ground as a large jackrock “wrapped in a Hershey candy bar wrapper.” He arrested “the lady” who threw this object, later identified as Mary Morris, president of the Local Union. Criminal proceedings are pending. (See G.C. Exh. 7.)

On July 9, Sergeant Roberts, again on the midnight shift, observed Lee Vance leave the facility. Two other vehicles followed him. Teresa Ball and Joyce Burchette were in the vehicles.

Sergeant Roberts generally testified that he would observe from 12 to 30 pickets “on a nightly basis.” Cars entering or exiting would be delayed from 3 to 5 minutes,

Sometimes you’d have to ask [the pickets] twice to separate and then they would separate and let the car go through.⁹

Sue Bailey, employed by the nursing home during the strike, testified, *inter alia*, that on July 3, as she tried to leave the facility,

[A] bunch of the strikers got in front and would not let us through and a woman hit my car with something and the police officer told her not to hit my car again or he would arrest her. And she hit the car, she threw whatever she had down and hit the car with her hand. And he got her and put her in the police car and made all the strikers move and let us through. And then Renee Bowens hollered . . . I’ll kick your ass bitch

Bailey identified the person who “hit the car” as Teresa Ball.

Later, on July 7, as Bailey and others attempted to exit the facility,

⁹Robert Branham, a supervisor at the nursing home, related instances where pickets blocked and delayed his exiting and entering the facility. Pickets leaned on his vehicle and were “yelling names” and “pounded on” his vehicle. He observed Union Area Organizer Brewer out there on one occasion. On another occasion, his “truck was struck with a bullhorn.” On another occasion, he saw Pansy Bryant strike a car in the rear with her hands.

In like vein, James Taylor, employed at the nursing home during the strike, related an incident involving efforts by his brother and mother to leave the facility on July 14. They were blocked by the pickets. His mother took ill. She was ultimately removed in an ambulance. James and his brother were blocked from leaving by Nyoka Waller. A confrontation ensued and the police assisted their exit. Waller then threatened that she and friends would “kick [James]’ ass” and “beat the hell out of” him. Later, he experienced flat tires in the parking lot.

Similarly, William Reed, an employee at the nursing home, was told while attempting to enter the facility by picket and Union Representative Thelma See, “Why don’t you get out of the truck . . . so I can slap your face.” And, on another occasion, Carol Skaggs, an employee at the nursing home, testified that the exterior of her car, parked at the facility during her shift, was damaged.

A bunch of strikers stood in front of us and would not let us through. And there was about three of them going around the car and we could hear them saying our names. . . . And then we heard them saying my license plate number and they was taking pictures of us. . . . They was taking them like from the front of the window and going around to the passenger side of the car . . . with a camera.

Ultimately, the police made the pickets move and let Bailey exit. A few days later, as Bailey recalled, someone shot at her truck at her home.¹⁰

Nancy Fields is currently employed by the nursing home. She visited the facility on July 1, the day before she started working there. Outside the facility, picket Pansy Bryant—referring to a car in the parking lot with its four tires flattened—“laughed and said it was lightning from heaven.” Union Organizer Steven Brewer was “talking about Mr. McKenzie being jumped on” and Brewer “made the statement that it would be worse for him next time” and “it would be worse for” McKenzie and his brother. Picket Joyce Burchette “made the comment that if I [Fields] went in there she would whip my ass.” Fields went home. Later, on July 3, when she attempted to enter the facility,

They tried to stop me. They gathered around. They banged on the car [and] the windows. They shouted their insults, their remarks and their threats.

Burchette said: “She knew where I lived.”

On July 4, Fields found her car near the facility with “all the windows busted out.” The police came and accompanied her back to the nursing home. The pickets then hit the windows and banged the car and “tried to reach through the car window” and “then realized that it was a police officer” in the car. Subsequently, on August 5, her car, parked in the nursing home lot, was sprayed with acid. She received a threatening call to the effect that “the first time it’s your cars and the next time it’ll be you and Lee [Vance].” And, on August 6, the pickets “hollered [to her] leave it out there and we’ll get it again.”¹¹

Jeanetta Stewart, assistant director of nursing at the nursing home, testified to a number of incidents involving pickets during the strike. On July 7, she was in a car exiting the facility and “felt a big thump on the right side of [her] car.” On July 8, pickets blocked her entering; “they just lined up body to body.” Gilda Spears, Pansy Bryant, Cathy Ross, and Joyce Burchette were identified as out there on the line. And, as Stewart explained, Burchette, Bryant, Ross, and Nyoka Waller were designated union representatives at the facility for grievance adjusting and disciplinary interview purposes. Bryant had signed a written disciplinary warning form as a union representative. Later, on July 9, Stewart witnessed Burchette, West, and Ross attempting to follow Lee Vance as he left the facility.

¹⁰ Bailey acknowledged on cross-examination that the Employer’s representative “was videotaping things that was going on that the strikers were doing.” This videotaping was not taking place during the above incident. See also the testimony of James Thompson, Tr. 288–298, describing the above and related incidents.

¹¹ See also the testimony of Brian Daniels (Tr. 322–342) pertaining to the above August 5 incident.

Wauletta Stevens is employed at the nursing home. On July 5, her son-in-law, James Fraley, attempted to drive her into the facility. The strikers “wouldn’t let us get through.” Their entrance was delayed by four to five minutes. Pansy Bryant, one of the pickets, told Fraley that “if he said anything or bothered any of her girls she would knock his God damn brains out and leave him laying on the ground.” Bryant also stated: “I recognize her . . . that’s that God damn black headed whore Wauletta Stevens.” Fraley got out of the car and then returned. One of the pickets thereafter threw coffee into the car.

Marilyn Moore is employed at the nursing home. On July 2, pickets also blocked her entrance to the facility. She was called “scab” and “bitch.” Pansy Bryant was one of the pickets engaging in this conduct. Bryant also said that “she would kick my [Moore’s] ass,” “she knew where I lived.” Later, on July 6, Moore observed one of the pickets “take a gun out of the back pocket of his jeans . . . and put it in a holster and slide it back in his car.” On the next day, she again observed this same person “take the same gun, put it in the same holster and put it in [a] red Chevette.” Later, on July 8, she observed “a guy taking nails out of a bag and throwing them in the driveway . . . just scattering them like sowing grass seed.” She “found [her] tire slashed” that same day. See also the testimony of Gloria Johnson (Tr. 371–378) pertaining to broken glass in the facility parking lot.

Marlene Caudill, a supervisor at the nursing home, testified that she disciplines employees and adjusts grievances in the performance of her duties; that a union representative is always present when performing such duties; and that prior to the strike Pansy Bryant, Kathy Ross, Joyce Burchette, Mary Morris, Nyoka Waller, Thelma See, and Shirley Kingsmore acted as such union representatives. She further testified that on July 1 she observed some 25 to 50 strikers in the road including Mary Morris, Teresa Ball, Jerry Welles, and Steven Brewer. When she tried to reenter the facility that day, she was blocked by the strikers. Ball, Brewer, Morris, and Welles were present. She recalled:

Brewer . . . had a big club like . . . bar in his hand . . . and he hit the car across the top, kicked the sides of the car, and the other strikers were kicking the car Finally, the police came down and let us in

Burchette stated that “she would get even with us”

On or about July 6, Caudill witnessed an incident involving Jeanetta Stewart and her daughter. Burchette was “screaming all kinds of foul language” at Jeanetta’s daughter. Caudill instructed Jeanetta’s daughter to come into the facility “and ignore them.” Burchette “hollered” to Caudill: “she’d get even with me, that I had a little red haired stepson, that they would get even.” In addition, Ross and Bryant had a “bullhorn” and “was trying to get me [Caudill] outside, they was going to kick the shit out of me and all this stuff.” Caudill also saw Tammy Branham on July 7 “throwing nails on the parking lot” and breaking a “pop bottle.” And, Ross yelled on the “bullhorn” “what they was going to do to me.”

Gina Woods was employed at the nursing home during the strike. On July 6, she witnessed picket Jerry Welles “kick”

employee Branham's truck as Branham attempted to exit the facility; she heard on the same day Pansy Bryant scream through a "megaphone" "we're going to kill you Marlene [Caudill] if you don't come out"; and she also observed Nyoka Waller, Kathy Ross, Teresa Ball, and Joyce Burchette present at the picket line on this occasion.¹² On July 9, she heard Burchette yell to employee Mary Perkins "How did you like your ride last night," and Teresa Ball yell "Maybe tonight's ride will be better." Later, as Woods testified:

We [Gina and her mother] pulled out of the [facility] parking lot and a small blue car with West Virginia plates got behind us. Teresa Ball was driving and Mary Morris was a passenger. They followed us through Louisa about five [or] six feet from our bumper at a very slow rate and my mother turned into a State police officer and they left.

David Moore was also employed at the nursing home during the strike. About July 5, he was sent to pick up some groceries. He was followed by a red Chevette. Three women in that car later threatened that they "would whup [him]." Later that weekend, the tires on his car parked in the facility parking lot were slashed. Pansy Bryant, standing nearby at the time he observed the damage to his vehicle, "said for me not to fix them . . . they would just do it again." He subsequently observed a large amount of broken glass in the facility parking lot.¹³

Teresa Ball testified for the Respondent Union. She is the "area director" for the Union; she "provides direction to all the staff members"; she is "in charge of the Union in Kentucky" and "certainly would be calling the shots"; she negotiated with the Employer prior to the strike; she conducted the union meeting when the strike vote was taken; she was personally present at the picket line "every day" throughout much of the pertinent time period; she paid strikers their "strike benefits" "if [they] were participating on the picket line . . ."; and, admittedly, she "knew [she] was responsible." Counsel for Respondent Union admitted in the answer filed herein that Ball was an agent of the Union at all times material to this proceeding, within the meaning of Section 2(13) of the Act.

Ball denied, inter alia, blocking or damaging any cars or giving any "orders" to that effect. She claimed that "we were simply trying to make a statement that we were on strike." There were admittedly during the "first couple of days" of the strike some 30 to 50 pickets present at the site. Ball, as she acknowledged, would picket with "seven or eight other individuals" "at an entrance of the nursing home" and "block people from coming in"—"what we did was walk very slowly in a circle across the driveway . . . we just wanted to slow people down . . ." And, although

¹² On cross-examination, Woods acknowledged that her pre-hearing affidavit reads to the effect that Pansy Bryant had said: "Marlene Caudill, you better come out or we're going to kill you."

¹³ See also the testimony of Judy Herron (Tr. 645-660) involving picket line encounters with Nyoka Waller and other pickets "block[ing] [her] way"; an occasion when Joyce Burchette and other pickets "shouted" "we know where you live and we are going to get you"; a car-following incident involving Joyce Burchette; and related conduct.

she "absolutely" denied hitting any automobiles of employees attempting to enter or leave the facility, she admitted:

There was an incident when one evening . . . there was a carload coming out with the Bailey's . . . car. . . . I was right there . . . and I hollered "scabs, scabs go home," and she gave me the double finger like this, and before I thought I just kind of went like this on her car window. . . . I slapped her car window with my four fingers like this and a State trooper . . . put me in a car and arrested me for disorderly conduct.

Ball denied, inter alia, threatening "to burn [May's] house down." She never "heard anybody threaten to kill anybody . . ." or "whip anybody." She claimed: "I didn't get to where I am by being stupid and why would I in front of numerous witnesses threaten to burn anybody out." She also denied car following or related conduct during the strike. She claimed that "any time they saw any of us they assumed we were following them." Elsewhere, she testified:

[The] morning [of the Vance car following incident as related above] I left . . . [and] he [Vance] was behind me and he shot around me. He did turn into Ron Perry's Car Lot and I proceeded on and saw in my rear view mirror that Joyce Burchette turned into Ron Perry's too [and] I turned around . . . [and] went back to Ron Perry's As I pulled up Burchette was out of her car . . . on one side and Vance was out of his on the other side and he had a gun in his hand pointed at Burchette. . . . I jumped out of the car and said "Get back in your car, Joyce, get out of here, this is crazy." . . . And I went up and turned around real quick, flew back to the picket line because I knew there was a policeman sitting there, . . . told him that this guy has got a gun on one of the picketers over at Ron Perry's, got the police over there and went back there also

Elsewhere, Ball asserted that she had turned into Ron Perry's because she "wanted to stop any altercation that might occur as a result of [Burchette] following [Vance] in there"

Ball was questioned about Steven Brewer. Brewer is a "staff member" of the Union; "he is an organizer" who "works for the Union"; Ball is his "immediate superior"; he was present at the nursing home picket line "on behalf of the Union"; and he is "still employed by the Union." Ball claimed that she could not "recall" "how many days [Brewer] was there" at the picket line. She added, "but when the trouble erupted and he was accused of hitting Mr. McKenzie, he was pulled out of there" She later claimed that Brewer was "pulled out" around July 4,

It was more like July 4 because I think that was the second time that he was pointed out by someone leaving the nursing home that he scraped their car . . . and was arrested again. And that's when I told him just to go on, get out of Louisa because no matter what he did, they was going to point him out

Brewer was also admitted in the answer filed herein to be an agent of the Union at all times material to this proceeding, within the meaning of Section 2(13) of the Act.¹⁴

Ball next claimed that she “never heard . . . of all the days I sat on the picket line,” “anybody threaten to teach anybody a lesson or threaten to kill anybody” and that she, Ball, does not “personally know” Pansy Bryant having “done anything or threatening nonstriking employees” She also added: “I have no knowledge of any of the strikers following anybody.” When asked whether she knew “anything about nails . . . glass . . . [and] jackrocks . . . strewn out on the road in the parking lots . . .” and whether there was “Union . . . involvement” in this activity, she responded that she “don’t know how in the world we could” with the State police “sitting there looking down our throats.”

Ball also denied hearing picket Nyoka Waller “threaten anyone.” Ball in fact posted bond for Waller as a result an “alleged incident” involving damage to a motor vehicle at the picket line. In addition, Ball assertedly knew of “no such substance [acid] being on the picket line or in the possession of any of us.” She claimed that “I wouldn’t even know where to get acid.” And, Ball similarly denied that “any Union representatives” “or any of the Union employees” “constantly [took] pictures of people coming in and out [of the nursing home] . . . at close range.” Ball added, however, that

There was a time when there was a staff meeting in Huntington and . . . the staff, when they broke up from the meeting, came down to the picket line, and our newsletter editor took pictures of the picketers and the staff members and the picket shacks and stuff like that for our newsletter¹⁵

¹⁴ Ball asserted that Brewer is now “on sick leave.” She claimed that he “had surgery on his neck.” She also claimed that “they thought” he had a “heart attack.” She added that she

just talked with [Brewer’s] wife . . . he had severe pain causing him to lose use of his arm and they had to do surgery Counsel for Respondent Union asserted that “he’s bedfast right now.” Counsel for Respondent Union elsewhere explained that “I understand he just had a surgical operation but I understand he’s not totally incapacitated.” Counsel for Respondent Union added:

Right now we don’t intend to call him but I want to hear what she [counsel for General Counsel] develops on cross exam

¹⁵ On cross-examination, Ball acknowledged that Mary Morris is the elected president of the Union’s unit chapter. The Union “paid the bond” for Morris after she was “arrested” in conjunction with picket line conduct. In addition, Ball acknowledged that the unit employees elected a negotiating committee “to represent them at the [bargaining] table” including Nyoka Waller, Mary Morris, Jerry Welles and Kathy Ross. Steven Brewer was also at the bargaining table and “handled grievances.” The Union “bailed out Nyoka Waller” in conjunction with picket line conduct. The Union also “paid the bond” for Jerry Welles after she was arrested in conjunction with picket line conduct. And, the Union “posted bond” for Joyce Burchette who was also “arrested” in conjunction with picket line conduct. Ball noted: “If our people were arrested and I was available I went and got them out of jail.” Ball further explained on cross-examination that it was not mandatory to do picket line duty in order to receive union “strike benefit” checks.

Ball acknowledged that, although she was obviously aware of the various arrests made at the picket line for alleged acts of misconduct, she never provided instructions to union members with respect to how they should conduct themselves on the picket line. Indeed, Ball characterized the United States district court’s injunction order entered herein as “outrageous” in her letter to the members.

Mary Morris, an employee at the nursing home and chapter president of the Union, testified that she picketed the facility and

When you picket you walk across driveways. To that extent I would say we blocked . . . stopped [automobiles] temporarily maybe for a minute I would say not more than three minutes and usually less than that.¹⁶

She was present at the picket line everyday. She assertedly obeyed the instructions of police present at the facility and “never defied the officers” She denied throwing “jackrocks under vehicles that were leaving or trying to leave the nursing home” although she “was arrested for that.” She denied, inter alia, knowledge of or encouraging alleged threats or other acts of misconduct attributed to the striking employees. Elsewhere, she acknowledged:

Well, there was damage . . . a dent made in one car I don’t know who was responsible. . . . I don’t know what date that was.

She also claimed:

Before the strike started there was a barrel in the driveway that had a sign on it that said, “nails in driveway.” I assume the Company put it there.¹⁷

Pansy Bryant, a striking employee, denied, inter alia, “block[ing] any automobiles of nonstriking employees”; “threaten[ing] anyone”; “stop[ping]” or “threaten[ing] to hit a driver that was trying to go in”; “threaten[ing] to kill anybody out there” “by megaphone or otherwise”; “scratch[ing] the vehicle of a nonstriking employee”; “threaten[ing] any supervisor and try[ing] to provoke a fight or start[ing] a fight”; “hit[ting] a vehicle with [her] fist”; and “follow[ing] nonstriking employees.”

Kathy Ross, a striking employee, denied, inter alia, “threaten[ing] a supervisor at the nursing home and attempt[ing] to start a fight”; “follow[ing] a nonstriking employee”; and “block[ing] any vehicles of nonstriking em-

¹⁶ On cross-examination, Morris explained that she and the other pickets would picket in an “oval” with each picket being about a foot or so from the picket in front of him or her. The “oval” would extend across the driveway. In addition, Morris also explained that as the elected chapter president she would “chair the [Union] meetings and take care of whatever business we need to take care of.”

¹⁷ On cross-examination, Morris acknowledged that Pansy Bryant used a “megaphone” on the picket line; “a lot of different people used it”; and Joyce Burchette “may have” used it. She also acknowledged that the Union had “elected” “delegates” who would “attend disciplinary sessions with members of Management” including Joyce Burchette, Pansy Bryant, Thelma See, Nyoka Waller, Kathy Ross, and Shirley Kingsmore. She was uncertain whether or not Jerry Welles and Pamela Pigg were also “delegates.”

ployees.” Ross was admittedly a “delegate” for Respondent Union.

Jerry Welles, a striking employee, denied, inter alia, “block[ing] cars of nonstriking employees” and “hit[ting] a truck of a supervisor.” Welles was arrested for alleged “disorderly conduct” at the picket line; Union Representative Ball posted bond for her; she then returned to the picket line; and Respondent Union has retained an attorney to represent her in the pending criminal proceeding.

Nyoka Waller, a striking employee, denied, inter alia, “threaten[ing] to kill any nonstriking employee”; “threaten[ing] to physically assault nonstriking employees”; “try[ing] to block any cars” as she understood the term “block”; “scratch[ing] the car of a nonstriking employee”; observing fellow employee Betty West “blocking any cars”; observing fellow employee Thelma See “block[ing] vehicles” or “threaten anyone”; and observing fellow employee Shirley Kingsmore “making any threatening gestures [or threats] to nonstriking employees” or “kick at any vehicle.” Waller, like Welles, was admittedly a “delegate” for Respondent Union. She too was arrested for alleged criminal “conduct” at the picket line; the Union posted bond for her; she returned to the picket line; and Respondent Union has retained an attorney to represent her in the pending criminal proceeding.

Pamela Pigg, a striking employee, denied, inter alia, “follow[ing] a nonstriking employee” or “block[ing] any vehicle of a nonstriking employee” as she understood the term “block.”

Joyce Burchette, a striking employee, denied, inter alia, “threaten[ing] a potential job applicant with physical harm”; “block[ing] automobiles of nonstriking employees”; “threaten[ing] any nonstriking employee” or supervisor; “impliedly threaten[ing] a job applicant”; “follow[ing] a nonstriking employee”; “threaten[ing] an employee with a baseball bat”; and “strick[ing] his car.” Specifically, with reference to the incident involving employee Vance as related above, Burchette claimed that “he [Vance] drew a gun on me that day” Burchette asserted that she was not a union delegate although she admittedly had “signed a written warning during a grievance procedure for an employee as a Union representative.” Respondent Union also posted bond for Burchette following her arrest for alleged conduct pertaining to the strike and the Union’s attorney represented her. Following her arrest and release, she too went back to the picket line.

Counsel for General Counsel produced some 26 witnesses in support of the allegations of the amended consolidated complaint.¹⁸ Their testimony, as detailed above, is in substantial part mutually corroborative of the course of conduct

engaged in by union officials and pickets during the strike at the Employer’s nursing home. Their testimony, as demonstrated in the record, also withstood the test of thorough cross-examination. And, they impressed me as reliable and trustworthy witnesses. On the other hand, the some eight witnesses produced by counsel for Respondent Union (Teresa Ball, Mary Morris, Pansy Bryant, Kathy Ross, Jerry Welles, Nyoka Waller, Pamela Pigg, and Joyce Burchette) did not impress me as reliable and trustworthy witnesses. Their testimony, as demonstrated above, was at times, incomplete, unclear, vague and contradictory. In particular, I reject as incredible Ball’s general denials of various acts of misconduct attributed to her at or near the picket line. I find unbelievable on this thoroughly substantiated record Ball’s general assertions to the effect that “we were simply trying to make a statement that we were on strike”; “I didn’t get to where I am by being stupid and why would I in front of numerous witnesses threaten to burn anybody out”; “anytime they [the nonstriking employees] saw any of us they assumed we were following them”; she had turned into Ron Perry’s because she “wanted to stop any altercation that might occur as a result of [Burchette] following [Vance] in there . . .”; “when the trouble erupted and he [Steven Brewer] was accused of hitting Mr. McKenzie, he was pulled out of there . . .”; and she “never heard . . . of all the days [she] sat on the picket line,” “anybody threaten to teach anybody a lesson or threaten to kill anybody.” Further, I note that the repeated acts of misconduct attributed to Union Representative Brewer stand undenied on this record.

Likewise, I find equally incredible on this record the general assertions of Morris to the effect that she assertedly obeyed the instructions of police present at the facility and “never defied the officers”; did not throw “jackrocks under vehicles that were leaving or trying to leave the nursing home”; and had no knowledge of and did not encourage threats or other acts of misconduct attributed to the striking employees. At one point in her testimony, Morris apparently suggested that the Employer was responsible for the “nails in [its] driveway.” In like vein, I reject as incredible the general and incomplete denials of misconduct by Bryant, Ross, Welles, Waller, Pigg, and Burchette as summarized above.

In sum, I find and conclude on this record that the above substantiated and detailed testimony of counsel for General Counsel’s witnesses, when assessed against the incomplete, unclear, vague, and contradictory testimony of counsel for Respondent’s witnesses, constitutes a more reasonable, reliable, and trustworthy account of what in fact transpired during the pertinent sequence of events involved here.¹⁹

Discussion

Section 7 of the National Labor Relations Act provides that employees “shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collec-

¹⁸They are:

David McKenzie	William Reed
Mabel McKenzie	Carol Skaggs
Raymond Mays	Sue Bailey
Robert Fleming	James Thompson
Lee Vance	Nancy Fields
Brian Daniels	Jeanetta Stewart
Dan Hardin	Wauletta Stevens
Alice Queen	Marilyn Moore
Audrey Steiner	Gloria Johnson
Mary Perkins	Marlene Caudill
Garrett Roberts	Gina Woods
Robert Branham	David Moore
James Taylor	Judy Herron

¹⁹Counsel for General Counsel, in their posthearing brief (p. 10 fn. 11), acknowledge that Vance’s testimony, summarized above, estimating some 500 people on the picket line on one occasion, appears to be “somewhat exaggerated.” Vance’s prehearing affidavit only cites up to 100 pickets present. I have scrutinized this cited exaggeration and related flaws in the testimony of Vance and other witnesses for General Counsel. Nevertheless, on balance, as stated above, I find their testimony, insofar as pertinent here, to be credible and trustworthy.

tively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities” Section 8(b)(1)(A) of the Act makes it an unfair labor practice “for a labor organization or its agents . . . to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7”

It has long been settled law that a union or its agents violates the proscriptions of Section 8(b)(1)(A) of the Act by engaging in mass picketing and blocking the ingress to and egress from a struck employer’s premises; assaulting or attempting to assault nonstriking employees and other individuals in the presence of employees; damaging vehicles of nonstriking employees, management personnel and other individuals in the presence of employees; threatening nonstriking employees and other individuals in the presence of employees if they cross a union’s picket line; brandishing weapons at a picket line; throwing nails, bottles, jackrocks and other objects at vehicles of nonstriking employees who attempt to cross a picket line; following nonstriking employees from a picket line; and coercively photographing nonstriking employees attempting to cross a picket line. See generally *Iron Workers Local 455 (Stokvis Multi-Ton)*, 243 NLRB 340 (1979); *Carpenters (Reeves, Inc.)*, 281 NLRB 493 (1986); *Tri-State Building & Trades Council (Structures, Inc.)*, 257 NLRB 295 (1981); *Roofers Local 30 (Associated Builders)*, 227 NLRB 1444 (1977); *Laborers Local 383 (Carter-Glogan Laboratories)*, 260 NLRB 1340 (1942); and *Carpenters Philadelphia District Council (Delran Builders)*, 307 NLRB 172 (1992).

In the instant case, Raymond Mays credibly testified that Union Area Director Teresa Ball, together with other pickets, threatened him in the presence of employees while he was attempting to make a delivery at the struck facility. Ball pointedly warned: “we know where you live and we’re going to burn you out.” And, Audrey Steiner also credibly testified that Ball, together with other pickets, similarly admonished her on the picket line that she, Steiner, “would not cross” the Union’s picket line.

Likewise, Lee Vance credibly testified:

[W]hen I was getting ready to leave the parking lot of the nursing home I noticed that there was Teresa Ball . . . driving one car And then Joyce Burchette was [in] her car. . . . As I went to pull out one went in front of me and one went behind me. And when we got down to the East Clayton Lane . . . they tried to block me in I swerved around them . . . and then I went to Ron Perry’s Auto Mall to pick up Sabrina Duncan [W]hen I got over there they blocked me in I turned around and Joyce Burchette [was] running towards me with [an] aluminum ball bat. . . . I just reached in and got the gun off my dash and I told her that I had the gun [and this] shit wasn’t going to happen . . . you ain’t going to hit me with the ball bat [Teresa Ball in the other car] seen I had the gun [and] she pulled out and left. . . . [Burchette] started calling me names, cussing me out, and said that if she couldn’t get me now she knew where I lived . . . she would eventually get me

[A]t the time she hit the driver’s side rear quarter panel of my car with the baseball bat.

And, Sue Bailey credibly testified that as she tried to leave the facility,

[A] bunch of the strikers got in front and would not let us through and a woman hit my car with something and the police officer told her not to hit my car again or he would arrest her. And she hit the car, she threw whatever she had down and hit the car with her hand. And he got her and put her in the police car and made all the strikers move and let us through. And then Renee Bowens hollered . . . I’ll kick your ass bitch

Bailey identified the person who “hit the car” as Teresa Ball. In like vein, Gina Woods credibly testified that Teresa Ball, referring to a prior car following incident, warned her as she too tried to cross the picket line: “Maybe tonight’s ride will be better.”

Further, David McKenzie credibly testified how Union district organizer Steven Brewer physically assaulted him in the presence of employees at the picket line. And, Lee Vance credibly testified:

I was going toward the exit and I noticed [Union organizer] Steve Brewer . . . and about eight or nine or ten strikers out there and they tried to stop me from going out . . . by blocking [and] getting in front of the car. . . . I just kind of eased through them and I noticed that Steve Brewer had a metal rod . . . and he threatened to kill me and if he couldn’t kill me he’d get my kids. He knew where we lived and all this stuff. And he started beating the car, kicking the car, as I went out.

Alice Queen, a visitor of a patient in the nursing home, credibly recalled that as she started to leave the facility,

[T]hese people were walking double line in front of me. . . . I started blowing my horn and kept inching through. And then I heard this thud against the back of my car and I turned around and looked and this man was getting down . . . right beside my car and his face was almost against the window of my car, my back window. . . . I kept inching along . . . and I asked the State police . . . what the man had done to my car It was a big dent in the back door of my car.

This “man” was later identified as Union District Organizer Steven Brewer.

And, Audrey Steiner credibly recalled how Brewer warned that “they were going to make an example out of” a nonstriking employee and that he, Brewer, “would get him either in or out of the facility”—the nonstriking employee “was a dead man.” Similarly, Nancy Fields credibly testified that Brewer, referring to his attack on McKenzie, “made the statement that it would be worse for him next time”—“it would be worse for McKenzie and his brother.”

Similarly, Marlene Caudill credibly testified that when she tried to enter the facility during the strike, she observed some

25 to 50 strikers in the road including Teresa Ball and Steven Brewer, and

Brewer . . . had a big club like . . . bar in his hand . . . and he hit the car across the top, kicked the sides of the car, and the other strikers were kicking the car Finally, the police came down and let us in

The credible evidence of record is thus clear that Teresa Ball and Steven Brewer, admitted agents of the Union, engaged in coercive conduct plainly proscribed by Section 8(b)(1)(A) of the Act as alleged in the amended consolidated complaint.

Counsel for General Counsel argue that Respondent Union is also responsible for the picket line and related misconduct of others as recited above. Thus, turning to the allegations pertaining to Local President Mary Morris, Police Sergeant Garrett Roberts credibly testified that he was assigned mid-night shift duty at the picket line of the nursing home on July 8. He observed 10 to 15 pickets,

[A] car [drove] down through, which while everybody was circling, had to stop. I got out of my police car, walked down that way. I seen a female, she had something in her hand [and] she was just walking around. As I got closer I asked them to spread so they could let the car go through. At that time people took both sides of the car and I seen this one lady walk around behind the car and toss something at the wheel base.

Roberts heard the "sound of a ching hitting the ground." He identified the object which hit the ground as a large jackrock "wrapped in a Hershey candy bar wrapper." He arrested "the lady" who threw this object, later identified as Mary Morris, president of the Local Union. Criminal proceedings are pending. Morris was also present at the picket line throughout the strike. She participated in picketing and blocking the ingress and egress from the nursing home facility.

Morris' conduct, throwing a jackrock under a car trying to pass through the picket line and her participation in mass picketing and blocking of ingress to and egress from the facility, clearly runs afoul of the the proscriptions of Section 8(b)(1)(A) of the Act as alleged in the amended consolidated complaint.

Pansy Bryant, a striking employee and union "delegate," also engaged in numerous acts of misconduct. Thus, Audrey Steiner credibly testified that Bryant, as well as others, participated in mass picketing blocking the entrances to the nursing home. Steiner recalled that on July 7 the entrance to the facility was blocked "by picketers walking in front, back and forth in front of the car." She had to wait about 3 to 5 minutes and the police moved the pickets. Subsequently, on July 14, she left the facility with her brother Lee Vance, Oletha Reed and Harvey Reed. It took about 5 minutes to leave the premises with the assistance of the police. A car containing striking employees Pam Pigg and Pansy Bryant was following them. They "lost" the following car and ultimately went to Perry's Mall to get Steiner's car. The car with Pansy and Pam spotted the Steiner car and attempted to follow them again "almost bumper to bumper at first." Pansy was making offensive hand gestures at the time. In ad-

dition, Mary Perkins also credibly identified Bryant and Pigg in a car following incident.

Wauletta Stevens credibly testified that on July 5, her son-in-law James Fraley attempted to drive her into the facility. The strikers "wouldn't let us get through." Their entrance was delayed by 4 to 5 minutes. Pansy Bryant, one of the pickets, told Fraley that "if he said anything or bothered any of her girls she would knock his God damn brains out and leave him laying on the ground." Bryant also stated: "I recognize her . . . that's that God damn black headed whore Wauletta Stevens." One of the pickets thereafter threw coffee into the car. And, in like vein, Marilyn Moore credibly testified that on July 2, pickets also blocked her entrance to the facility. She was called "scab" and "bitch." Pansy Bryant was one of the pickets engaging in this conduct. Bryant also said that "she would kick my [Moore's] ass," "she knew where I lived."

Similarly, Marlene Caudill credibly testified that on July 6, pickets Cathy Ross and Pansy Bryant had a "bullhorn" and "was trying to get me [Caudill] outside, they was going to kick the shit out of me and all this stuff." In addition, Gina Woods credibly testified that she heard Pansy Bryant scream through a "megaphone" "we're going to kill you Marlene [Caudill] if you don't come out."

And, David Moore also credibly testified that the tires on his car parked in the facility parking lot were slashed. Pansy Bryant, standing nearby at the time he observed the damage to his vehicle, "said for me not to fix them . . . they would just do it again." He subsequently observed a large amount of broken glass in the facility parking lot. Further, Robert Branham credibly testified that he witnessed Bryant strike a car attempting to cross the picket line.

The credible evidence of record thus amply supports the allegations of the amended consolidated complaint that Bryant engaged in the blocking of vehicles of employees attempting to enter or leave the facility, made unlawful threats to or in the presence of nonstriking employees, struck a vehicle attempting to cross the picket line, and participated in coercive car followings, in violation of Section 8(b)(1)(A) of the Act.

Kathy Ross, a striking employee and union "delegate," also engaged in numerous acts of misconduct. The credible evidence of record shows that she too participated in blocking the entrances to the nursing home. Audrey Steiner credibly testified that Ross made clear to her at the picket line that she, Steiner, "wasn't going in." And, Jeanetta Stewart credibly testified that on July 8, pickets blocked her entering; "they just lined up body to body." Gilda Spears, Pansy Bryant, Cathy Ross, and Joyce Burchette were identified as out there on the line. Later, on July 9, Stewart witnessed Burchette, West, and Ross attempting to follow Lee Vance as he left the facility. In addition, Marlene Caudill, as noted above, credibly recalled that Ross and Bryant had a "bullhorn" and "was trying to get me [Caudill] outside, they was going to kick the shit out of me and all this stuff."

The credible evidence of record thus also amply supports the allegations of the amended consolidated complaint that Ross engaged in unlawful threats, car following and blocking ingress to the facility, in violation of Section 8(b)(1)(A) of the Act. And, the credible evidence of record also amply supports the related allegations of the amended consolidated complaint that Thelma See, a striker and union "delegate,"

engaged in similar blocking of cars attempting to enter or leave the facility and also resorted to threats of violence. See the credible testimony of William Reed. Further, the credible evidence of record also amply supports the related allegations of the amended consolidated complaint that Jerry Welles, a striker and union “delegate,” engaged in similar blocking of cars attempting to enter or leave the premises and struck a vehicle of a supervisor attempting to enter the facility. See the credible testimony of Mabel McKenzie, Audrey Steiner, Marlene Caudill, and Gina Woods.

Nyoka Waller, a striker and union “delegate,” also engaged in numerous acts of misconduct. Thus, Lee Vance credibly testified that on July 7,

[W]hen I attempted to enter [the facility] Joyce Burchette or Nyoka Waller kicked the side of the door in . . . threatening my wife and saying . . . they’d get us . . . if they couldn’t get us they’d get our kids and all that. . . . [Burchette] said that she knew where I lived . . . if she couldn’t get me now she’d get me later on and more or less threatened to kill us Burchette jumped on the back of [the car] banging the trunk in.

Later, on July 9, as Vance attempted to leave the facility,

[T]hey wouldn’t let me out. . . . I had to back up to get the State police Nyoka Waller . . . lunged for my car [and] I heard a scrape going all the way down the side of my car [S]he just knifed my car . . . I told the cop . . . she’s putting a knife back in her pocket

Waller was directed to empty her pockets which disclosed a knife. She started “yelling rape” at the police and was “arrested.” See also the credible testimony of Brian Daniels.

And, later, on July 16, as Vance was attempting to leave the facility, he was blocked by several striking employees including Betty West, Joyce Burchette, Shirley Kingsmore, and Nyoka Waller, “pacing back and forth in front of the cars to where you couldn’t go in or out.” The police would “come over to split them up” and “they was kicking the car door and everything.” He recalled, Waller and Burchette “kicked the car door.”

In like vein, James Taylor, credibly related an incident involving efforts by his brother and mother to leave the facility on July 14. They were blocked by the pickets. His mother took ill. She was ultimately removed in an ambulance. James and his brother were blocked from leaving by Nyoka Waller. A confrontation ensued and the police assisted their exit. Waller then threatened that she and friends would “kick [James’] ass” and “beat the hell out of” him. Later, James experienced flat tires in the parking lot. And, Gina Woods, as noted above, credibly testified that on July 6, she witnessed picket Jerry Welles “kick” employee Branham’s truck as Branham attempted to exit the facility; she heard on the same day Pansy Bryant scream through a “megaphone” “we’re going to kill you Marlene [Caudill] if you don’t come out”; and she also observed Nyoka Waller, Kathy Ross, Teresa Ball and Joyce Burchette present at the picket line on this occasion. See also the credible testimony of Judy Herron involving picket line encounters with Nyoka Waller and other pickets “block[ing] [her] way.”

The credible evidence of record thus also amply supports the allegations of the amended consolidated complaint that Waller engaged in unlawful threats, blocking ingress to and egress from the facility and damaging a vehicle, in violation of Section 8(b)(1)(A) of the Act. Further, the credible evidence of record also amply supports the related allegations of the amended consolidated complaint that Betty West, a striker and union “delegate,” engaged in similar blocking of cars attempting to enter or leave the premises. See the credible testimony of Lee Vance.

Joyce Burchette, a striker and union “delegate,” also engaged in numerous acts of misconduct. Thus, as noted above, Lee Vance credibly testified that on July 7,

[W]hen I attempted to enter Joyce Burchette or Nyoka Waller kicked the side of the door in . . . threatening my wife and saying . . . they’d get us . . . if they couldn’t get us they’d get our kids and all that. . . . [Burchette] said that she knew where I lived . . . if she couldn’t get me now she’d get me later on and more or less threatened to kill us Burchette jumped on the back of [the car] banging the trunk in.

Vance credibly related Burchette’s car blocking, car following, car damaging and accompanying threats made on July 9, as recited above. Teresa Ball was involved in that incident. And, Vance recalled that on July 16, as he was attempting to leave the facility, he was blocked by several striking employees including Betty West, Joyce Burchette, Shirley Kingsmore, and Nyoka Waller, “pacing back and forth in front of the cars to where you couldn’t go in or out.” The police would “come over to split them up” and “they was kicking the car door and everything.” He recalled, Waller and Burchette “kicked the car door.” And,

when I came back in . . . Burchette was jumping on top of the car, back of the car, hitting the car door or trunk in and then kicked the side door in . . . ; she said she was going to kill us and if she couldn’t get us she’d get the girls . . . she knew where we lived

Audrey Steiner credibly testified that on July 1, Burchette told her “you’re not going in” “they had stopped people from crossing the picket line all day.” Burchette warned: “Audrey, you can come back tomorrow and try to cross and go in but I can’t guarantee what would happen to you.” Union Area Director Ball confirmed that Steiner “would not cross.” Burchette added: “they was going to see that everybody in the building was fired.” One Harvey Reed was then identified by Burchette as a “scab,” and Union Organizer Brewer said that “they were going to make an example out of Harvey Reed and that he would get him either in or out of the facility”—“Harvey Reed was a dead man.”

Similarly, Nancy Fields credibly testified that on July 1, Burchette “made the comment that if I [Fields] went in there she would whip my ass.” Fields went home. Later, on July 3, when she attempted to enter the facility,

They tried to stop me. They gathered around. They banged on the car [and] the windows. They shouted their insults, their remarks and their threats.

Burchette said: “She knew where I lived.”

On July 4, Fields found her car near the facility with "all the windows busted out." The police came and accompanied her back to the nursing home. The pickets then hit the windows and banged the car and "tried to reach through the car window" and "then realized that it was a police officer" in the car. Subsequently, on August 5, her car, parked in the nursing home lot, was sprayed with acid. She received a threatening call to the effect that "the first time it's your cars and the next time it'll be you and Lee [Vance]." And, on August 6, the pickets "hollered [to her] leave it out there and we'll get it again."

Marlene Caudill credibly testified that on July 6, Burchette "hollered" to Caudill at the facility: "she'd get even with me, that I had a little red haired stepson, that they would get even." And, Gina Woods credibly testified that on July 9, she heard Burchette yell to employee Mary Perkins "How did you like your ride last night," and Teresa Ball yell "Maybe tonight's ride will be better," referring to a prior car following incident. And, Judy Herron credibly recalled an occasion when Burchette and other pickets "shouted" "we know where you live and we are going to get you"; a car-following incident involving Burchette; and related conduct.

The credible evidence of record thus also amply supports the allegations of the amended consolidated complaint that Burchette engaged in numerous unlawful threats, car blockings, car followings and related attempts to damage vehicles entering or leaving the facility, in violation of Section 8(b)(1)(A) of the Act. Further, the credible evidence of record also amply supports the related allegations of the amended consolidated complaint that strikers Pamela Pigg and Shirley Kingsmore engaged in similar and related acts of misconduct as alleged in the amended consolidated complaint. Kingsmore was identified as a union "delegate." Indeed, Lee Vance credibly testified that on August 5, about 4:30 a.m., he witnessed Kingsmore throw a jar into the driveway of his home. He later discovered that "the cars [had] been acidified"; "it's ate the paint all off both of my cars." See also the credible testimony of Audrey Steiner and Mary Perkins.

There is also credible evidence in the record, as recited above, that amply establishes that pickets brandished weapons on the picket line; threw nails, bottles, and other objects at vehicles of nonstriking employees who attempted to cross the picket line; coercively photographed nonstriking employees attempting to cross the picket line; informed nonstriking employees and others in the presence of employees that they had the telephone numbers and addresses of the nonstriking employees thereby implying that said individuals would be subjected to physical harm and other injury at their homes; and engaged in additional and related coercive conduct. See the credible testimony of Sue Bailey, Marilyn Moore, Gloria Johnson, and Marlene Caudill.

Respondent Union generally denies responsibility for the numerous acts of misconduct detailed above. Respondent Union, however, is clearly responsible for the numerous and repeated substantial acts of misconduct committed by its admitted agents Ball and Brewer. Thus, Ball acknowledged that she is the "area director" for the Union; she "provides direction to all the staff members"; she is "in charge of the Union in Kentucky" and "certainly would be calling the shots"; she negotiated with the Employer prior to the strike; she conducted the union meeting when the strike vote was

taken; she was personally present at the picket line "every day" throughout much of the pertinent time period; she paid strikers their "strike benefits" "if [they] were participating on the picket line . . ."; and she "knew [she] was responsible." Brewer did not testify, however, Ball acknowledged that Brewer is a "staff member" of the Union; "he is an organizer" who "works for the Union"; Ball is his "immediate superior"; he was present at the nursing home picket line "on behalf of the Union"; and he is "still employed by the Union." Brewer was present on the picket line for a number of days. I find and conclude that Ball and Brewer were at all times pertinent here agents of Respondent Union within the meaning of Section 2(13) of the Act and the Union is responsible for their misconduct as found above.

Respondent Union is also responsible for the like and related acts of misconduct detailed above committed by Morris, Bryant, Ross, See, Welles, Waller, West, Burchette, Pigg, Kingsmore, and other pickets. For, as restated in *Iron Workers Local 455 (Stokvis Multi-Ton)*, 243 NLRB 340, 343 (1979),

It is . . . well established that where a union authorizes a picket line, it is required to retain control over the picketing. If a union is unwilling or unable to take the necessary steps to control its pickets, it must bear responsibility for their misconduct. Similarly, if pickets engage in misconduct in the presence of a union agent and that agent fails to disavow that conduct and take corrective measures, the union may be held responsible

See also *Carpenters (Reeves, Inc.)*, 281 NLRB 493, 497 (1986); *Hospital Employees District 1199 (Southport Manor)*, 227 NLRB 1732, 1734 (1977).

And, the Board pertinently noted in *Dover Corp.*, 211 NLRB 955, 957 (1974),

It is well established that when misconduct takes place in the presence of a union agent who does nothing to disavow it or to discipline the offenders, that union assumes responsibility for the conduct. . . . Although in cases where there has been only an isolated instance of misconduct the presence or absence of a union agent may be crucial on the issue of union liability, when as here there have been repeated incidents of alleged misconduct, some of which has been observed by a union agent, the union cannot be heard to plead its lack of knowledge or participation. In fact, in instances where there have been repeated outbreaks of misconduct not participated in or even observed by the union, but the union has failed to take steps to halt further outbreaks of such misconduct, union liability has been found

See also *Communications Workers Local 9431 (Pacific Bell)*, 304 NLRB 446 (1991), and cases cited.

In the instant case, Respondent Union is clearly responsible for the numerous repeated and related acts of misconduct by Morris, Bryant, Ross, See, Welles, Waller, West, Burchette, Pigg, Kingsmore, and other pickets, as enumerated above. The Union authorized the strike and picket line. Ball, its area director and admitted agent, was present at the picket line throughout the strike. She, together with admitted agent

Stevens, participated in numerous and substantial acts of misconduct. Ball would bail out and post bond for the above pickets when arrested and charged with misconduct, and then Ball would send them back out on the picket line to engage in more of the same kind of misconduct. Ball, although she was obviously aware of the various arrests made at the picket line for alleged acts of misconduct, never provided instructions to union members with respect to how they should conduct themselves on the picket line. Indeed, Ball characterized the United States District Court's injunction order entered herein as "outrageous" in her letter to the members. Under the circumstances, I find and conclude that the Union authorized, participated in, ratified, adopted and condoned the above acts of misconduct. It has therefore assumed responsibility for such misconduct.

In sum, I find and conclude that Respondent Union, by its agents, has engaged in the misconduct alleged in the amended consolidated complaint in violation of Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. Charging Party Employer is an employer engaged in commerce and health care institution as alleged.

2. Respondent Union is a labor organization as alleged.

3. Respondent Union, by its agents, engaged in mass picketing and blocking the ingress to and egress from the the Employer's nursing home facility in Louisa, Kentucky; assaulted and attempted to assault nonstriking employees and other individuals in the presence of employees; damaged vehicles of nonstriking employees, management personnel and other individuals in the presence of employees; threatened nonstriking employees and other individuals in the presence of employees with death and other physical harm if they crossed the Union's picket line; brandished weapons; threw nails, bottles, jackrocks and other objects at vehicles of nonstriking employees who attempted to cross the picket line; followed nonstriking employees from the picket line around the Louisa vicinity; coercively photographed nonstriking employees attempting to cross the picket line; and informed nonstriking employees and others in the presence of employees that they had the telephone numbers and addresses of the nonstriking employees thereby implying that said individuals would be subjected to physical harm and other injury at their homes; and that Respondent Union, by the foregoing and related conduct, restrained and coerced employees in the exercise of rights guaranteed to them in Section 7 of the National Labor Relations Act, in violation of Section 8(b)(1)(A) of the Act.

4. The unfair labor practices found above affect commerce as alleged.

REMEDY

To remedy the unfair labor practices found above, Respondent Union, its officers, agents and representatives, will be directed to cease and desist from engaging in these acts of misconduct, like and related acts of misconduct, and to post an appropriate notice.

Counsel for Charging Party Employer, citing *Union Nacionale de Trabajadores (Carborundum Co.)*, 219 NLRB 862 (1975), enfd. as modified 540 F.2d 1 (1st Cir. 1976), cert. denied 429 U.S. 1039 (1976), argues that the Union's

certification should be revoked here as a remedy for its misconduct. Cf. *Teamsters Local 703 (Kennicott Bros.)*, 284 NLRB 1125 (1987). However, on this record, I am persuaded that the usual and traditional remedies for the type of misconduct found above will provide ample and adequate relief thereby effectuating the purposes and policies of the Act. Respondent Union, if it again resorts to the type of misconduct found herein, or like or related acts of misconduct, will ultimately risk civil and criminal contempt proceedings. Further, those employees participating in such misconduct will risk discharge for serious acts of misconduct. There are also criminal proceedings available to stop any misconduct if it should resume. I therefore reject this request for such extreme and extraordinary relief on the facts presented here. Counsel for Charging Party Employer also seeks reimbursement for property damages to the various persons whose cars and personal property were damaged while attempting to cross the picket line. The assessment of such damages to automobiles and other property is a matter which can be handled more efficiently and effectively by State courts. See *Roofers Local 30 (Associated Builders)*, 227 NLRB 1444 (1977).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁰

ORDER

The Respondent, District 1199, the Health Care and Social Service Union, Service Employees International Union, AFL-CIO-CLC, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Engaging in mass picketing and blocking the ingress to and egress from the Employer's (M.E.B. Incorporated d/b/a J. J. Jordan Geriatric Center) nursing home facility in Louisa, Kentucky; assaulting and attempting to assault nonstriking employees and other individuals in the presence of employees; damaging vehicles of nonstriking employees, management personnel and other individuals in the presence of employees; threatening nonstriking employees and other individuals in the presence of employees with death and other physical harm if they cross the Union's picket line; brandishing weapons and throwing nails, bottles, jackrocks, and other objects at vehicles of nonstriking employees who attempt to cross the picket line; following nonstriking employees from the picket line around the Louisa vicinity; coercively photographing nonstriking employees attempting to cross the picket line; and informing nonstriking employees and others in the presence of employees that they have the telephone numbers and addresses of the nonstriking employees thereby implying that said individuals will be subjected to physical harm and other injury at their homes; and like and related acts of coercive conduct.

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

²⁰If 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.

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

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."²¹ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members 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.

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

²¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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 have violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT engage in mass picketing and blocking the ingress to and egress from the the Employer's (M.E.B. Incorporated d/b/a J. J. Jordan Geriatric Center) nursing home facility in Louisa, Kentucky; assault and attempt to assault nonstriking employees and other individuals in the presence of employees; damage vehicles of nonstriking employees, management personnel and other individuals in the presence of employees; threaten nonstriking employees and other individuals in the presence of employees with death and other physical harm if they cross our picket line; brandish weapons and throw nails, bottles, jackrocks, and other objects at vehicles of nonstriking employees who attempt to cross our picket line; follow nonstriking employees from our picket line around the Louisa vicinity; coercively photograph nonstriking employees attempting to cross our picket line; and inform nonstriking employees and others in the presence of employees that we have the telephone numbers and addresses of the nonstriking employees thereby implying that said individuals will be subjected to physical harm and other injury at their homes; and like and related acts of coercive conduct.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

DISTRICT 1199, THE HEALTH CARE AND SOCIAL SERVICE UNION, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO-CLC