

Southdown Care Center and Local 100 Service Employees International Union, AFL-CIO. Case 15-CA-11288

April 25, 1994

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On February 12, 1993, Administrative Law Judge Richard J. Linton issued the attached supplemental decision on remand.¹ The Charging Party filed exceptions.

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

The Board has considered the decision and record in the light of the exceptions and has decided to affirm the judge's rulings, findings,² 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 Southdown Care Center, Houma, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the complaint allegations linked to the July 11, 1990 demonstration in the residents' sitting lounge are dismissed.

¹On August 13, 1992, the Board issued a Decision and Order granting motion to reopen record for further hearing at 308 NLRB 225.

²The Charging Party 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), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Keith R. Jewell, Esq., for the General Counsel.
Stephen D. Ridley, Esq. (McCalla, Thompson, Pyburn & Ridley), of New Orleans, Louisiana, for Southdown.
Nina Schulman, Lead Organizer (Local 100), of Baton Rouge, Louisiana, for the Charging Union.

SUPPLEMENTAL DECISION ON REMAND

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. The Board remanded this case to hear the testimony of a recanting witness, Della Landry. After hearing and considering Landry's new version, and disbelieving it, I reaffirm my original decision.

The General Counsel advances a new and alternative theory that the July 11, 1990 demonstration involved here was protected conduct even if the demonstration was as loud and threatening as I found in my original decision. That alter-

native legal theory is not available to the Government here because, I find, the General Counsel (then represented by a different trial attorney) waived it at the original hearing.

On August 13, 1992, the Board severed certain allegations in this case and remanded them to me for further hearing. 308 NLRB 225, 227. These are the allegations which turn on the disputed July 11, 1990 presentation/demonstration at Southdown Care Center, a nursing home in Houma, Louisiana. In my May 17, 1991 decision I largely credited the version of Patricia Reed Fruge, Southdown's administrator, over that of the Government's witnesses—employees of the nursing home—respecting the July 11 incident. I also credited Della Landry, a Southdown resident whose testimony corroborated that of Fruge. Based on these findings, I concluded that the July 11 demonstration by the group of off-duty employees was unprotected, and I dismissed the complaint allegations which rested on the General Counsel's evidence that the employee group calmly presented their petition and without demonstration.

The facts are described in the underlying case, 308 NLRB 225, 226 (1992). Although I shall not repeat the description here, the following excerpts from the Board's opinion highlight the event:

The Respondent operates a residential care and nursing home in Houma, Louisiana. In late June 1990, the Respondent's employees became involved in efforts to unionize the facility. On July 11, 1990, a group of employees, with Tarshelda Green as their spokesperson, presented Administrator Fruge with a petition. The petition listed assorted grievances and stated that the signers had formed a union and filed for a Board election.

Within days of this July 11 meeting, The Respondent issued written warnings to six employees and discharged eight employees at least in part because they had participated in the presentation of this petition.

. . . .

As recognized by the judge, the threshold question to determining whether the discharges and warnings were unlawful is whether the employees were engaged in protected concerted activity for which they were disciplined. The judge found that the employees' activity was not protected, and thus that the discipline and warnings were not unlawful.

At around 3 p.m. on July 11, shift-change time at the facility, the off-duty employees entered the nursing home and met Fruge in a lounge area near the main entrance. Three or four of the home's residents were also present. The events surrounding the presentation of the petition and the exit of the employees were recounted by six employee witnesses, Fruge, and a resident who had been in the lounge at the time, Della Landry. The accounts of the General Counsel's witnesses and the Respondent's witnesses differ.

[The Board then summarizes the testimony—the General Counsel's witnesses asserting that the employees were calm and orderly, and Fruge and Landry describing them as loud, disruptive, and threatening, with Landry adding that the employee group was so situated that Landry could not move her wheelchair.]

. . . .

Although noting that the Respondent's witnesses responded at length to excessively leading questions by the Respondent's counsel, and further discounting some of Fruge's testimony concerning the July 11 event as exaggerated, the judge credited Fruge's and Landry's version. He found that the employee group engaged in a loud, mass demonstration lasting approximately 1 minute, in the presence of residents, and that they blocked at least one resident. He concluded that an inference could be drawn that the demonstration was reasonably calculated to disturb and frighten the nursing home residents. He further concluded that because of the employees' actions, particularly the noisy demonstration after the presentation which made the residents frightened, confused, upset, and crying, the employees' action was not protected under the Act. He therefore dismissed the 8(a)(3) allegations concerning the warnings and discharges. [Footnote 3 omitted.]

A month after my decision in this case, Della Landry gave a seven-page affidavit (RX 18, dated June 18, 1991) to NLRB Region 15.¹ In her June 1991 affidavit, Landry recants her sworn testimony at the February 1991 original hearing, practically line by line. In the process of recanting, Landry offered a new version, one which corroborates the version given at the hearing by the Government's witnesses. Landry stated that she had lied at the hearing because she "felt that Patti Fruge would make it hard on me as a resident if I did not say what I felt she wanted me to say," (RX 18 at 6), and (RX 18 at 7) "because I was afraid of retaliation by Fruge and Southdown management if I did not say what they wanted. Now that I live in an apartment Fruge cannot hurt me so it's time to tell the truth." A paraplegic, Landry testified from her wheelchair, both at the original hearing and at the reopened hearing.

By motion dated July 3, 1991, the General Counsel moved to reopen the record and to remand the case for further hearing based on Landry's June 1991 affidavit, a copy of which was attached to the motion.

Under established Board law, when newly discovered evidence is presented showing perjury in the first hearing about a material fact (that is, apparently affecting the outcome), the Board reopens the record to receive the newly discovered evidence so that the matter can be reevaluated. *Southdown Care Center*, supra; *Waterbed World*, 301 NLRB 589 and fn. 5 (1991) (although the printed volume shows the publication date as Jan. 5, 1990, that is the date of the JD; the slip opinion dates the Board's decision as Feb. 7, 1991); *Kanakis Co.*, 293 NLRB 435, 436 and fn. 11 (1989). As I noted, the Board severed and remanded this issue.

I presided at the reopened trial in Houma, Louisiana, on December 8, 1992. The General Counsel called Della Landry and rested after she testified. (3:586.)² Respondent

¹Exhibits are designated GCX for the Government's and RX for Respondent Southdown's. Only two exhibits were received in the reopened hearing, and the number sequence was retained from the first hearing.

²References to the transcript are by volume and page. As noted at footnote 3 of my original decision, the transcript of the original hearing consists of two volumes. The reopened hearing lasted but half a day, and I have marked the transcript of testimony for the reopened hearing as volume 3. (3:521.)

Southdown called three witnesses (Janie Boudreaux, David Carlos, and Patricia Fruge) and rested. (3:621.) No rebuttal was presented.

The General Counsel and Southdown have filed posthearing briefs. I have considered the General Counsel's brief (received on the due date), but not Southdown's because Company's brief was filed untimely. The due date, originally January 12, 1993 (3:622), was extended to the close of business on Tuesday, January 26. Under the Board's Rules, 29 CFR § 102.111(b), briefs would be considered timely filed if postmarked on or before Monday, January 25. Company's certificate of service by "United States mail" is dated January 26. Thus, even by the certificate of service, and aside from the stamp by the U.S. Postal Service, Southdown's brief was mailed a day late. By the U.S. Postal Service's postmark of January 27, Southdown's brief was mailed 2 days late. I shall not consider Southdown's brief.

After considering the entire record, the demeanor of the witnesses, and the brief filed by the General Counsel following the reopened hearing, I make the following

FINDINGS OF FACT

A. *The Evidence*

1. Why did Della Landry cry?

At the reopened hearing Della Landry testified, in essence, that at the July 11, 1990 presentation/demonstration Tarshelda Green and the employees accompanying her did not engage in a loud demonstration, and in fact were calm and quiet.

At the original hearing Landry described the sequence of events, following the July 11 demonstration, as follows. Landry went to her room where she cried. About an hour later she went to Janie Boudreaux, the social services director, and discussed the matter with her. The following morning she made a formal complaint (RX 5) to Boudreaux about the demonstration. Later that July 12 she went to Fruge to express her concerns and to ask whether the demonstrators would be returning to work at Southdown. (1:278, 280, 283, 285-287.)

At the original hearing Landry testified that, in her room, she cried because the demonstration had scared her. (1:278.) Landry's July 12 formal complaint (RX 5) is consistent with that explanation. At the reopened hearing Landry seemingly reconfirmed that explanation, testifying (3:550), "I was just scared and wondering what was happening." Later, however, Landry's explanation moved from blaming the demonstrators for her fright to assigning the basis for her fear to "the way Patty was acting." (3:559.) From this Landry, experiencing difficulty remembering even the sequence, apparently moved up her July 12 conversation with Fruge to a point on July 11 after the demonstration but before Landry went to her room.

That is, when Landry asked Fruge, in this July 11 conversation, why the employees had come, Fruge replied that they were there "because of this Union thing." Fruge, Landry asserts, "acted like she didn't like that they were there." (3:559-560, 579.) Landry later testifies that she cannot remember whether Fruge said anything, but Fruge appeared upset. Then, "She said she just didn't like the idea that they were there." Landry cried in her room because "I

just was upset to see that Patty was upset when she said what she said.” (3:580–581.) Fruge asserts that Her conversation with Landry was not until after Boudreaux reported (presumably on July 12) that Landry had filed a formal complaint about the July 11 demonstration. (3:609.)

David Carlos has lived at Southdown for 16 years. (3:600.) A paraplegic, like Landry Carlos (not a witness at the original hearing) testified from his wheelchair. Carlos (3:604) and Landry (3:558) agree that they conversed most every day. Carlos testified that on July 12 Landry told him about the demonstration, that the hollering and marching by a group of employees had upset her so much she later cried and spoke with the social worker. (3:601, 604–605, 607.)

2. Landry asserts that she lied to Boudreaux

At the reopened hearing Landry testified that after crying in her room she went to Boudreaux’s office to ask, out of curiosity, why all the employees had come into the nursing home. (3:541–542.) Although at the reopened hearing Landry does not give the time of her visit to Boudreaux, at the original hearing she fixed the time as about an hour after the demonstration. (1:286–287.) When Landry told Boudreaux the following morning, July 12, that she wanted to make a formal complaint (1:281, Landry; 3:593, 596, Boudreaux), Boudreaux wrote a short statement (RX 5) which, as her formal complaint, Landry confirmed. (1:280–281; 3:543.)

Boudreaux asserts that Fruge had not told her about the July 11 demonstration before Boudreaux wrote Landry’s statement on July 12. (3:593.) Contradicting this, Fruge acknowledges that in fact she told Boudreaux the evening of July 11. (3:615.) As I have noted, Landry’s statement, or complaint, is consistent with her testimony at the original hearing. As Boudreaux testified (3:593) that Landry signed the statement (RX 5; written by Boudreaux in the third person), the document in evidence apparently is a copy made after Boudreaux had signed but before Landry signed.

Although confirming that the statement expresses her words (1:281; 3:567), Landry now asserts that her statement (RX 5) to Boudreaux is false. (3:543.) Asked why she “signed” the statement if it was not correct, Landry initially answered that she did so because she wanted to get “some answers out about what this was all about,” “some answers about this union thing.” (3:544.)

Moments later Landry, again (now on redirect examination) asked why she said the words in the statement, testified (3:582): “I—I guess I—I really don’t know.” The General Counsel then asked (3:582) if Landry thought anything would happen if she said those things. Landry answered that she guesses she made the statement to Boudreaux on the thought it might help Terry Eaton, her friend and later roommate, obtain a job at Southdown. Eaton, Landry explains, had applied for a job at Southdown and had been unsuccessful. Landry does not know, cannot explain, why she thought this statement would help Eaton get a job. However, later Landry apparently spoke to Fruge on Eaton’s behalf, although the results are not described. (3:581–583.) Landry never discussed her motive with Fruge. (3:585–586.)

Boudreaux worked one year at Southdown, leaving in January 1991. She was the Social Services Director. In that capacity she was available to discuss with residents their problems or complaints, and to counsel them on such matters. (3:589–590.) Boudreaux is Fruge’s sister. (3:595.) Not a wit-

ness at the original hearing, at the reopened hearing Boudreaux testified that she had counseled Landry on several occasions before July 11–12, 1990. (3:598–599.) Boudreaux testified that there is no doubt Landry was sincere when she complained about the July 11 conduct of the group of employees. (3:594.) And in subsequent counselings Landry never indicated that she had different thoughts about her formal complaint of July 12. (3:595.)

3. Did Patricia Fruge nod?

About a week after the July 11 lobby incident, Landry testified, Southdown’s attorney in this case, Stephen D. Ridley, interviewed Landry in Fruge’s office in Fruge’s presence. According to Landry, when Attorney Ridley asked her questions she would look at Fruge who would nod or shake her head to indicate a yes or no answer for Landry to give. Landry did this, and answered accordingly, because she feared that if she did not cooperate Fruge would retaliate and make Landry’s living conditions very uncomfortable at the nursing home. Although Fruge had never threatened her in the past, on one or more previous occasions Fruge had not sent help when she said she would. (3:545–546, 559, 569.) From this Landry apparently concluded that Fruge could really make life miserable for her if Fruge had a motive to retaliate.

Fruge denies giving any such head signals, testifying that Ridley sat at her desk, and Landry sat facing him. Not only did Fruge never nod, she does not recall Landry’s ever looking at her during the interview, testifying that she sat away and to the rear of Landry. (3:617–620.) In fact, Landry concedes in her June 1991 recanting affidavit that the head signals had not been planned in advance, but that Landry “could just tell by watching” Fruge that, apparently, such was Fruge’s desire. (RX 18 at 7.) Nevertheless, Landry concedes that Fruge never asked Landry to lie. (3:576.)

A week or two later, Landry gave a pretrial affidavit to the Board agent investigating the charge in this case. (3:547.) Landry concedes that she could have told the Board agent that she would feel more comfortable if Fruge attended with her. (3:562.) Fruge acknowledges that she attended when Landry gave her statement to the Board agent. (3:611.) Her testimony at the original hearing in February 1991 is consistent with her pretrial affidavit given to the Board agent, Landry testified. (3:561.) That pretrial affidavit, Landry now asserts, is false. (3:563.)

Landry does not claim that Fruge suggested to her beforehand that she tell the Board agent that she would be more comfortable with Fruge present. With all the other disavowals Landry now makes, it is clear that, had Fruge in fact made that suggestion, Landry would have so testified at the reopened hearing.

4. Landry claims that she lied at the original hearing

At the reopened hearing, Landry testified consistent with her recanting affidavit of June 1991. According to Landry, she lied in her February 1991 testimony because she thought that if she said what Fruge wanted her to say that Fruge would make living conditions better for her. (3:547.)

Fruge testified that no one ever told her that Landry felt threatened or coerced by Fruge, and Fruge denies having done so. (3:612.) Of course, other than the head signaling

episode during attorney Ridley's interview, Landry does not claim at the reopened hearing that Fruge did or said anything to coerce her. Landry's recanting testimony is that Landry lied originally because she perceived that Fruge wanted her to testify in her support and that Landry believed Fruge would retaliate against her if she did not testify as she perceived Fruge desired.

David Carlos testified that the day after Landry's February 1991 testimony she told him about some of her testimony, and that she said she had "told it like it was," and that what she reported to him was consistent with what she had told him before she testified. At no point, Carlos testified, did Landry suggest that her testimony had been false. (3:603-604, 607.) Landry recalls no such conversation or words. (3:578-579.)

5. Landry moves from Southdown; later recants

In March 1991 Landry left Southdown, moving into an apartment with her friend, Terry Eaton. (3:525, 548, 553.) One day thereafter Landry, while at a store near her apartment, saw and spoke with Nedra "Candy" Simmons.³ Simmons asked if Landry knew of the outcome of the hearing, and Landry said no. Landry invited Simmons to visit her sometime. A few days later Simmons visited Landry and Eaton at their apartment. Although Landry thinks they may have discussed the hearing, she cannot recall the discussion. A few days later Simmons returned, this time with Union Organizer Nina Schulman, and they discussed Landry's testimony at the hearing. Landry told them that the testimony she gave was false. Landry said this because she was living on her own and no longer had anything to be afraid of. (3:548-551, 554-557.)

Although she is not sure, Landry thinks that Simmons and Schulman may have asked her to go to NLRB Region 15. Landry volunteered to do so. According to Landry, no one told her that the case was on appeal and that if she recanted the employees might get their jobs back. (Disbelieving Landry, I find that is exactly what they told her.) Thereafter Schulman drove Landry and Eaton to NLRB Region 15 in New Orleans where, on June 18, 1991, Landry gave her recanting affidavit. (3:551-552, 574-576.) For the last several months Landry has lived with her parents. (3:553.)

B. Discussion

1. Government waived its new theory

At the original hearing the General Counsel (a different trial attorney from the one here) took the position that if the employees demonstrated on July 11 substantially as Fruge described, then the Government would agree that the demonstration was not protected by the Act. The General Counsel stated that the Government was presenting a factual dispute, not a legal dispute. (2:431-434.) Yet at the Government's resting at the reopened hearing (3:588), and in the Government's January 1993 posthearing brief (Br. at 22), the General Counsel now asserts in effect, that the employees' conduct was protected regardless.

On this very point at the original hearing, when I expressed the understanding that the General Counsel would

not argue in the Government's brief that the conduct "was protected, no matter what," the General Counsel stated (2:434): "No, I won't."

Following that clear statement by the General Counsel, I said (2:434): "As far as I am concerned, then, the matter is settled on that point."

The Government, I find, waived its new theory. Although I did not find quite the length or intensity described by Fruge, clearly my original findings about the demonstration (a mass demonstration, loud, lasting about a minute, in the lounge area and physically blocking at least one resident, and calculated to disturb and frighten elderly and disabled residents) were substantially as described by Fruge and Landry—particularly respecting the nature and effects of the demonstration.

The Government's new and alternative theory (loud demonstration in residents' lounge is protected) which the General Counsel now advances is not available to the Government. The General Counsel expressly waived it at the first hearing, and I then, in effect, told Southdown it was not an issue. Under established Board law, that eliminated the theory from the case. *Herman Brothers*, 264 NLRB 439, 440 fn. 3 (1982).

Aside from the express waiver represented by Herman Brothers, the General Counsel is estopped under *Peyton Packing*, 129 NLRB 1358 (1961), from advancing its new theory. As any other party, the Government cannot have a second bite at the apple simply because the case was remanded on the General Counsel's first theory (that the presentation was calm and there was no loud demonstration or blocking). *Peyton Packing*. As the Board there stated, 129 NLRB at 1360, the General Counsel is not a favored litigant in unfair labor practice proceedings before the Board.

In short, at the first hearing the General Counsel "stipulated" the Government "out of court" on this new and alternative theory. The General Counsel is restricted now to its factual argument, and the Government's case is restricted to its single factual theory that the event was calm and orderly. Failing to obtain those factual findings, the Government loses. Stated differently, the Government is limited now to arguing that I should reverse my credibility resolutions and factual findings. The General Counsel is not at liberty to argue a new (and waived) legal theory based on factual findings which are adverse to the Government.

Indeed, the whole purpose of the remand is to evaluate my factual findings about the July 11 event, in light of Della Landry's recanting testimony. Had the General Counsel not waived the alternative theory, the Government could have argued a dual theory the first time—and possibly have saved everyone the time and expense of a supplemental hearing. There would have been no need for the Board to have remanded this case if the Board agreed with the General Counsel's alternative theory. The Board simply would have decided that, even assuming the demonstration occurred as I found, the demonstration nevertheless was protected. Only if the Board dismissed the alternative theory would it have had to remand to hear Della Landry's recanting testimony. But the Board never passed on the alternative theory because that theory was not presented to the Board. It was not argued to the Board because it was waived at the original hearing. Now on the remand of the General Counsel's original factual

³ Apparently the same Nedra Simmons discussed in part III.C.4.b of the original JD.

theory, the Government wants to resurrect and advance the alternative legal theory. Too late.

The Government's belated attempt to reverse the waiver it made at the original hearing brings to mind the Red Queen's response when Alice sought to correct her own statement that the cause of lightning is thunder:

"It's too late to correct it," said the Red Queen: "when you've once said a thing, that fixes it, and you must take the consequences."

Lewis Carroll, *Through the Looking-Glass* Chapter 9 (1872, Bantam Books 1981).

In any event, the Government's (waived) alternative theory is a strange one, at best. Under that theory of what the statute permits, off duty nursing home employees would be authorized, whenever they had one or more grievances (thus, weekly, even daily), to do the following:

- (1) loudly enter the nursing home en masse (25 here);
- (2) at the sitting lounge of the residents, present a list of those grievances to the administrator;
- (3) in the presence of elderly and disabled residents seated in the lounge of their home, engage in a loud and aggressive one-minute demonstration, physically blocking at least one paraplegic resident confined to a wheelchair, which demonstration frightens one or more of the residents, causing them to cry.

To describe the Government's alternative theory is to reject it. If the General Counsel's alternative theory had not been waived, and were before me for decision, I would find it without merit and the demonstration here unprotected. It was unprotected because the statute does not authorize loud, aggressive, and physically threatening employee-demonstrations in the presence of elderly and disabled nursing home residents seated in the tranquility of their sitting lounge. By adopting this improper means to accompany the presentation of their list of grievances (regardless of whether the demonstration was planned or spontaneous), the 25 or so employees here engaged in conduct that is indefensible under Section 7 of the Act.

2. Recanting disbelieved

Having closely observed the witnesses testify, I disbelieve Della Landry in her testimony at the reopened hearing, and I credit Southdown's witnesses, Boudreaux, Carlos, and Fruge. In disbelieving Landry's December 1992 recanting version, and reaffirming my belief in her February 1991 testimony, I am well aware that Della Landry (as David Carlos) must rely on others to assist her for basic living functions. Even though Landry now lives with her parents, she must weigh every word in light of where she might have to live if her parents suddenly, or even later, are not available to care for her. Unfortunately for Landry, she was caught up in this case as a witness. But, "There is an appointed time for everything . . . a time to be silent, and a time to speak." (Ecc. 3:1,7.) When she spoke the first time, Landry, I find, spoke truthfully. Later, I find, becoming concerned about the jobs of those who one day could again be assisting her in her daily functions, Landry recanted. I do not believe the recanting.

In crediting Boudreaux, I recognize the possibility that she lied about not being told by Fruge about the demonstration before Landry made her formal complaint on July 12. Of course, either she or Fruge could have been mistaken. In any event, however, none of that changes the fact that after the July 11 demonstration Della Landry went to her room and cried. The key question is what caused Landry to cry.

Contrary to Landry's December 1992 recanting version, offering shifting, strange, and disjointed reasons, Landry's February 1991 testimony was vivid, solid, and clear. Landry cried because the demonstration by a large group of employees, in the lounge in the presence of elderly and disabled residents, had been loud, physical, and scary to her. I find that Landry did not cry because of any looks, conduct, or words by Fruge.

The General Counsel's factual theory (orderly presentation, no demonstration) failing, and the Government having waived at the first hearing any theory that a loud demonstration is nevertheless protected conduct, I reaffirm my original decision dismissing the allegations linked to the July 11 demonstration.

3. Conclusions

The General Counsel having waived, at the original hearing, any theory that a loud demonstration, as found in my original decision, is protected, the Government is limited here to seeking a reversal of my credibility resolutions and factual findings on the single theory the Government advanced at the original hearing—the factual theory that the July 11 presentation was calm and there was no loud and physical conduct. Because I disbelieve the recanting evidence offered by the General Counsel at this December 1992 reopened hearing, I reaffirm my original decision dismissing the allegations linked to the July 11, 1990 demonstration in the residents' lounge. The July 11 mass demonstration was loud, threatening, and unprotected by the Act.

Should it be determined that the Government's new and alternative theory (loud demonstration, as found, is protected) is before me for decision, then I reject that legal theory on the same basis—the July 11 mass demonstration in the residents' lounge was unprotected because it was loud, physical, and threatening.

Accordingly, on either of the Government's theories, I reaffirm my dismissal of the complaint allegations which rest on a requested finding that the July 11, 1990 demonstration was protected by the Act. As I reaffirm my original decision, I need not address other potential questions which would have been resolved if the July 11 demonstration were found to be protected.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The allegations linked to the July 11, 1990 demonstration in the residents' sitting lounge are dismissed.

⁴If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Supplemental 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.