

Baptist Healthcare System, Inc. d/b/a Baptist Regional Medical Center and District 1199, The Health Care and Social Service Union, SEIU, AFL-CIO. Case 9-CA-30646

August 31, 1994

DECISION AND ORDER

BY MEMBERS DEVANEY, BROWNING, AND COHEN

On June 15, 1994, Administrative Law Judge Robert T. Wallace issued the attached decision. The Respondent 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 the record in light of the exceptions 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, Baptist Healthcare System, Inc. d/b/a Baptist Regional Medical Center, Corbin, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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

In adopting the judge's finding that the Respondent unlawfully interrogated employee Erna Skeen, we do not rely on Skeen's subjective reaction to the questioning about her union activity.

Julius U. Emetu, Esq., for the General Counsel.
Matthew R. Westfall and *Raymond C. Haley III, Esqs.* (*Westfall, Talbott & Woods*), of Louisville, Kentucky, for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge. This case was tried in London, Kentucky, on December 8, 1993.¹ The charge was filed by the Union on May 4, and the complaint was issued on June 24.

At issue is whether Respondent (BRMC), through a supervisor, unlawfully interrogated an employee about the union sympathies and activities of another employee.

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

¹All dates are in 1993 unless otherwise indicated.

FINDINGS OF FACT

I. BACKGROUND

BRMC, a corporation, operates an acute care hospital in Corbin, Kentucky, where it annually purchases and receives goods valued in excess of \$250,000 directly from points outside the Commonwealth of Kentucky. It admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Although BRMC has approximately 1000 hourly employees eligible to be represented by a union, it remains a non-union facility. An attempt at organizing occurred in 1992 when a union sent letters to employees inviting them to a picnic. The event was not a success, perhaps due in part to rumors that hospital agents would be spying. No further organizational activity occurred that year.

In early April 1993 employee Dianna Scarbro, a registered nurse, contacted a field representative, Robin Ball, of the charging union and inquired about the possibility of organizing. Following advice given by Ball, Scarbro and another employee, Lois Combs, over the next several weeks contacted employees during breaks and lunch periods with a view to compiling a list of names, addresses, and phone numbers of those interested in learning more about the Union. Scarbro spoke to every employee she met (over 40) and felt "a real positive feedback from all of them." She did not wear a union button or jacket or otherwise identify herself as a union supporter; and, responding to her desire for secrecy, employees wrote the requested information on scratch paper and surreptitiously stuck it in her pocket.

Erna Skeen, a licensed practical nurse at the facility for over 9 years, was approached by Scarbro on the morning of April 4. Skeen told her she wasn't interested because she had turned in a 30-day notice of resignation on April 2.² Scarbro urged her to withdraw the notice and help in the campaign. Skeen declined and warned Scarbro that management was bound to learn of her union advocacy and would fire her for it.

Skeen gave the warning because she believed the hospital was hostile to unions. Her belief is based upon signs posted in the hospital prohibiting distribution of printed materials, rumors circulating at the time of the 1992 union picnic, and the reaction of a supervisor, Mary Campbell, on several occasions when Skeen, expressing frustration, told her "this would be a good place to have a union." According to Skeen's undisputed testimony, Campbell responded saying, "You better not let no one else hear you say this."³

II. THE INTERROGATION

April 30 was to be Skeen's last day at work. On April 27 she was given an exit interview by director of nursing, Kathy

²On the previous evening Skeen gave the same answer in response to a telephone solicitation from Union Agent Ball. Skeen had turned in the notice of resignation because she felt aggrieved on learning that her seniority did not preclude her being required to do relief work on another shift.

³Over the years Campbell and Skeen have been good friends both on and off the job. They took lunches and "worked crafts" together and visited each other's home.

Hammonds. There was no mention of unions or union activity.

At about 1:30 p.m. on April 28 Skeen was on duty in a corridor on the third floor between the elevator and the nurses' station. She recalls that Supervisor Campbell⁴ got off the elevator, came directly to her, and initiated the following conversation:

CAMPBELL: What did Kathy have to say?

SKEEN: . . . You already know.

CAMPBELL: Let me ask you a question. Has Dee [Scarbro] talked to you about the Union?

SKEEN: No.⁵

CAMPBELL: She hasn't talked to you about a Union?

SKEEN: No. . . . [but] . . . I talked to a lady from the Union. . . . [who] called me. . . . I told her that I had resigned and would be of no help to her.

CAMPBELL: Well, I told them it was probably just a feedback from last year.

At that point, according to Skeen, Campbell turned away, walked back to the elevator, reentered, and left the area. Skeen then looked for Scarbro and, not finding her, left a note asking Scarbro to call her at home that evening. When she called, Skeen told her that "management knew" and advised her to stop her union activities or risk getting fired.

Skeen claims that Campbell never urged her to withdraw her resignation and indeed had never discussed the matter with her.

For her part, Campbell testified that on several occasions she tried to talk Skeen out of retiring and that upon seeing Skeen during the course of her rounds on April 28 she attempted to do so again. According to her, Skeen rebuffed the effort and "at some point in the conversation" volunteered that she had declined a request by someone who called her at home asking that she postpone her departure "until the Union gets in." Campbell admits that "at some point" she asked Skeen "Was Dee [Scarbro] collecting phone numbers?" Assertedly, she asked because in the course of reporting on "problems and stuff" during a shift change earlier in the day two other patient care managers said they heard Scarbro was collecting phone numbers.

Campbell's testimony, was studiously vague and unpersuasive. For example, after stating she met Skeen in the course of making rounds on the third floor she later conceded she had not in fact "made rounds . . . [because] it was change of shift [time] and it looked, you know, nothing hectic . . . was going on." Skeen, on the other hand, was consistent and appeared to be a candid witness and I credit her account.

Analysis and Conclusions

Under the totality of circumstances test set forth in *Rossmore House*, 269 NLRB 1177 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d

⁴At this time, Campbell's official title was "GRASP Coordinator House Patient Care Manager." As such she had responsibility for assuring adequate patient care throughout the facility. She reports directly to the vice president of nursing services as well as to the director of nursing for her shift.

⁵Skeen states that "[u]sually if I knew about something going on on the floor and Campbell wanted to know, I'd tell her."

1006 (9th Cir. 1985), I find that Campbell's interrogation was coercive.

Campbell was a high-level supervisor who on hearing of an incipient organizational campaign made haste to verify that fact from employee confidant Skeen. The latter was well aware that the hospital took a dim view of union activism particularly since Campbell previously warned her that she'd better not talk about having union representation. Her questioning was not casual. Rather, she sought Skeen out promptly to verify the concern expressed to her that day by other managers. Her questioning was intrusive, i.e., she asked whether a specific individual, Scarbro, one who had taken pains to conceal her activity, was soliciting union support, and it was persistent. Not satisfied with Skeen's initial denial she again asked whether Scarbro had talked to her about the Union. Despite their long friendship, Skeen clearly perceived a threat, falsely answering, "No," twice, and upon Campbell's departure she immediately took steps to alert Scarbro.

CONCLUSION OF LAW

Respondent is shown to have violated Section 8(a)(1) of the Act in the particulars and for the reasons stated above, and its violation has affected, and unless permanently enjoined will continue to affect, commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

Disposition

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The Respondent, Baptist Healthcare System, Inc. d/b/a Baptist Regional Medical Center, Corbin, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating any employee about their union support or union activities.

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

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

(a) Post at its Corbin, Kentucky facility, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 9, after

⁶If 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.

⁷If 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."

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 employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively question you about your union support or activities.

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

BAPTIST HEALTHCARE SYSTEM, INC. D/B/A
BAPTIST REGIONAL MEDICAL CENTER