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**Hopevale, Inc. and Hopevale Employees Local 712.**  
Case 3-CA-19578

April 15, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND FOX

Upon a charge filed by the Union on September 1, 1995, the General Counsel of the National Labor Relations Board issued a complaint on November 3, 1995, against Hopevale, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On March 18, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On March 20, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

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

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 29, 1996, notified the Respondent that unless an answer were received by March 4, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Hamburg, New York, has been engaged in the operation of a residential care and treat-

ment facility for emotionally disturbed adolescent females. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its Hamburg, New York facility goods valued in excess of \$50,000 from other enterprises located within the State of New York, which other enterprises have received these goods directly from points outside the State of New York. We find that the Respondent 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.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective-bargaining within the meaning of the Act:

All full-time Child Care Workers and Night Attendants, including "floater" positions, all regular part-time Child Care Workers and Night Attendants, including "Floater" positions who perform such work on a regularly scheduled basis for at least forty (40) hours during each two-week period, all Social Workers, all Family Social Workers, all full-time Program Specialists, all regular part-time Program Specialists who perform such work on a regularly scheduled basis for at least forty (40) hours during each two-week period; excluding office clerical employees, guards, and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from July 1, 1994, to June 30, 1997 (the 1994-1997 agreement).

About August 1, 1995, the Respondent failed to continue in effect all the terms and conditions of the 1994-1997 agreement by unilaterally abrogating the contractual sick leave provisions and implementing an absentee monitoring program. The Respondent engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the

meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated 8(a)(5) by unilaterally abrogating the contractual sick leave provisions and implemented an absentee monitoring program, we shall order the Respondent to rescind the unlawful changes and make whole the unit employees adversely affected by these actions for any loss of earnings incurred by virtue of its unlawful conduct. Backpay shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F. 2d 502 (6th Cir. 1971), with interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Hopevale, Inc., Hamburg, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the 1994–1997 agreement by unilaterally abrogating contractual sick leave provisions or implementing an absentee monitoring program. The unit includes the following employees:

All full-time Child Care Workers and Night Attendants, including “floater” positions, all regular part-time Child Care Workers and Night Attendants, including “Floater” positions who perform such work on a regularly scheduled basis for at least forty (40) hours during each two-week period, all Social Workers, all Family Social Workers, all full-time Program Specialists, all regular part-time Program Specialists who perform such work on a regularly scheduled basis for at least forty (40) hours during each two-week period; excluding office clerical employees, guards, and supervisors as defined in the Act.

(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) Rescind the unlawful changes and make whole the unit employees adversely affected by these actions for any loss of earnings incurred by virtue of its unlawful conduct, in the manner set forth in the remedy section of this decision.

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

(c) Post at its facility in Hamburg, New York, copies of the attached notice marked “Appendix.”<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, 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 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.

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

Dated, Washington, D.C. April 15, 1996

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William B. Gould IV, Chairman

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Charles I. Cohen, Member

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Sarah M. Fox, Member

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

WE WILL NOT fail to continue in effect all the terms and conditions of the collective-bargaining agreement with Hopevale Employees Local 712, effective from July 1, 1994, to June 30, 1997, by unilaterally abrogating contractual sick leave provisions or implementing an absentee monitoring program. The unit includes the following employees:

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

All full-time Child Care Workers and Night Attendants, including "floater" positions, all regular part-time Child Care Workers and Night Attendants, including "Floater" positions who perform such work on a regularly scheduled basis for at least forty (40) hours during each two-week period, all Social Workers, all Family Social Workers, all full-time Program Specialists, all regular part-time Program Specialists who perform such work on a regularly scheduled basis for at least forty (40) hours during each two-week period; ex-

cluding office clerical employees, guards, and supervisors as defined in the Act.

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

WE WILL rescind the unlawful changes and WE WILL make whole the unit employees adversely affected by these actions for any loss of earnings incurred by virtue of our unlawful conduct.

HOPEVALE, INC.