

Michael Adkins, d/b/a Portsmouth Ambulance Service and United Mine Workers of America, AFL-CIO. Cases 9-CA-33475 and 9-CA-33622

March 28, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

On November 15, 1996, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The General Counsel filed limited exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions¹ 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, Michael Adkins, d/b/a Portsmouth Ambulance Service, Portsmouth, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ In his limited exceptions, the General Counsel contends that the judge erred by failing to find that the Respondent violated Sec. 8(a)(3) and (1) of the Act by suspending employee Bussa on August 25, 1995, as alleged in the complaint. (Bussa was orally informed of her suspension on August 25, 1995. On August 28, 1995, the Respondent sent her a letter noting her suspension of August 25 and warning that future acts of insubordination could result in termination.) Although the judge in his decision discussed the facts regarding Bussa's August 1995 suspension, in his original conclusions of law he referred only to Bussa's later suspension on January 17, 1996, as violating the Act. Subsequently, the judge issued an erratum to his original decision, in which he added to his conclusions of law a finding that Bussa's suspension in August 1995 violated the Act. We find that the facts as set forth by the judge in his original decision clearly establish that the Respondent violated Sec. 8(a)(3) and (1) of the Act by suspending Bussa in August 1995.

Eric Oliver, Esq., for the General Counsel.

J. Rick Brown, Esq., of Wheelersburg, Ohio, for the Respondent.

William B. Manion, Esq., of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This case was heard in Portsmouth, Ohio, on May 22-23 and July 15-17, 1996. Subsequently, briefs were filed by the General Counsel and the Respondent. The proceeding is based on charges filed December 15, 1995,¹ and February 20, 1996,

as amended, by United Mine Workers of America. The Regional Director's amended consolidated complaint dated April 26, 1996, alleges that the Respondent, Michael Adkins, d/b/a Portsmouth Ambulance Service, violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act by engaging in a series of coercive acts which were designed to restrain its employees in the exercise of their Section 7 rights and by taking adverse personnel action against six employees for unlawful discriminatory reasons.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the operation of an ambulance service from facilities located at Portsmouth and South Shore, Ohio, and Ashland, Kentucky. During the past 12 months it derived gross revenues in excess of \$500,000 from these operations and it annually purchases and receives goods and materials at Portsmouth valued in excess of \$50,000 directly from points outside Ohio. It admits that at all times material is and has been an employer engaged in operations affecting commerce within the meaning of Section 2(2) and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent's services are dispatched from its main location in Portsmouth utilizing units stationed at Portsmouth as well as units at South Shore and Ashland. Approximately 90 percent of the runs entail transportation of a non-emergency nature from and to private residences or nursing homes on the one hand and, on the other, doctor's offices or hospitals. It operates a fleet of approximately 24 to 25 vehicles and has 80 employees.

Michael L. Adkins is the owner and principal manager of the Respondent's day-to-day operations. His wife Trina Adkins is the office manager and Richard Caldwell is the effective station manager at Portsmouth and he functions as the principal supervisor other than the owner. Priscilla Cassidy (Trina Adkins' sister) does payroll and two other individuals function as station managers at both South Shores and Ashland. Both Owners Adkins and Caldwell are qualified paramedics and occasionally function in this role as well as performing their managerial duties.

Ambulance personnel are basically categorized according to their licensed skill levels as a paramedic (the highest), advanced emergency medical technicians (EMT), and basic emergency medical technician. Separate state licenses are required in Ohio and Kentucky and, in order to serve as a driver, an employee also must meet certain higher standards than merely holding a license in order to satisfy insurance requirements. In addition the Respondent has wheelchair vehicle drivers and several office positions including scheduler Tanya Monde and dispatchers and clericals. At times some unskilled persons also are employed as sitters (who stay with patients during doctors' or hospital visits).

The vehicles operated include three basic types including stretcher, stretcher/wheelchair combination, and wheelchair

¹ All following dates will be in 1995 unless otherwise indicated.

trucks. The stretcher units have more emergency equipment such as IV and suction machines, used by advanced EMTs and paramedics.

Linda Bussa was initially employed by the Respondent for a year in 1990 and 1991 as a basic EMT (Ohio). After additional training and work for another ambulance service, she was rehired by the Respondent in February 1995 as an advanced EMT (she also became licensed as a Kentucky basic EMT). Prior to being rehired she discussed with Adkins that she had been receiving \$5.50 an hour and full pay for working a 24-hour shift for another ambulance service. When Adkins said he couldn't possibly pay for a full 24-hour shift, Bussa said she wouldn't work 24-hour shifts then, and it was agreed that she would start at \$5.50 an hour (more than some other EMTs were making), and receive an additional 50 cents an hour in 3 months. She was given the raise within 2 months and complied with Adkins' request that she train new employees.

During the latter part of May, Bussa broke her ankle while on duty. Following this injury, Bussa worked as a dispatcher up until about August 7 when she resumed working as an advanced EMT and was reassigned to her same stretcher ambulance, unit 49.

At the same time Bussa returned to her EMT position, she also contacted 2 unions and began talking to employees (at least 40), about a union and got some cards signed. Advanced EMT Karen Risner recalled that on one occasion during the summer, Bussa raised the topic of the "Union" with her during a lunchbreak at the Ashland station.

Following 2 sick days on August 22 and 24, Bussa returned to work on August 25 and found that she was removed from unit 49 and reassigned a combo wheelchair unit. She was surprised and questioned Adkins who responded by saying she had no business being in the dispatch office and told her to get out of the office and go do her trips.

Later that day, while Bussa was sitting with a patient, Caldwell paged her and said that employee Jeff Marcum would be making a run to the Ohio State University Hospital (OSU) in Columbus and that she was needed to sit with one of his patients. After finishing her trip, the dispatcher called on her radio and instructed her to make the run to OSU. Bussa testified that she informed the dispatcher that she had been sick and that she did not think that she was physically well enough to make the 80-mile (one way) Columbus trip. Employee Donnie Richards heard the call and came on the radio and volunteered to take her OSU run but was told that he would not do the trip. Bussa, who said she felt the trip would be unsafe for herself and the patient, was then told to return to the station and to clean and refuel her vehicle (which is standard return procedure). On her arrival she was told not to clean her vehicle but to go right to the office to see "Mike." Adkins was coming from an office and he immediately handed her a paycheck and said she was being suspended and possibly terminated, depending on Respondent's legal counsel.

Bussa was shocked and started to leave but returned and asked Adkins why she was being suspended and to ask that he give her something in writing. Adkins said he didn't have to give her anything and then as she started to leave again, he came out of the office and, in a perceived sarcastic manner, said: "You were a good employee. You're sick."

Bussa testified that the night of the 25th or 26th Station Manager Angie Bowling returned her phone message and Bussa asked her what was going on. Bussa testified that Bowling told her that Adkins had called her to his office and "chewed her out" for not telling him that Bussa was trying to start a Union. Bowling also advised Bussa that Adkins would put her back to work if she filed for unemployment. Bowling recalled talking to Bussa on the phone once but testified she had "no memory of saying that" when asked about the nature of the conversation. In a letter from Adkins dated August 28, Bussa was advised that she was suspended for refusing to transport a wheelchair patient on August 25 and was told that her suspension would be effective through September 4, and that future acts of insubordination on her part could result in her being terminated.

After the Labor Day holiday, Bussa returned to work on September 5 and was assigned older units on a regular basis, units which she held were not as mechanically reliable and efficient as unit 49. During the initial 2-week period following her return to work and without explanation, Respondent reduced her work hours and her resulting level of compensation. Thereafter, her hours were increased to a level that was more consistent with her pre-August 25 suspension work schedule. Bussa testified that during this time period, Bowling told her that Adkins was convinced that the "union" talk had been extinguished and that everything was back to normal, a statement that Bowling also said she had "no memory of that either."

During the time that she was on suspension Bussa contacted the United Mine Workers (the Charging Party) and following this contact, an initial union meeting was scheduled for and held on October 1 at a local inn in Piketon, Ohio. Union Representative Bob Kendrick presided over the meeting. Among those present were Bussa and employees April Pierson, Donnie Richards, and Carrie Bussa Pitts. A second meeting was held at the same location on October 15 with added employees Donald Wise, Crystal Vowell, John Davis, and Jim Jenkins also in attendance. An October 16 letter from Union Representative Matt Miller formally notified Respondent of the organizing campaign.

Meanwhile, on August 23 when Bussa was out sick, Adkins called Karen Risner into the office with his wife, closed the door, and proceeded to ask her if she had heard any rumors. When Risner, an advanced EMT who usually worked in Kentucky, inquired about the rumors to which Adkins was referring, Adkins suggested there was union talk and he then asked Risner to "keep her ears open." Risner said she had forgotten her conversation with Bussa about a Union and told Adkins she had not heard anything.

The evening of the next day, August 24, Risner went to the office after normal hours to get her check. She said Adkins appeared to be upset when he handed her the check and he asked how things were going. He then told her he had a run to Columbus for her to do the next day in unit 62 (a wheelchair vehicle) instead of unit 34, the vehicle she normally used. When she asked why she was being taken off of her regular unit he replied, "you know why." She persisted, and he "hem-hauled around for a long time" and then said, "I can't tell you, as your employer." She persisted and Adkins acknowledged that she was a good employee, then, Risner became highly upset and she testified that:

He said, "I can't believe the way you have done me, Karen." And I said, "What are you talking about. And he said "Trina was so upset today." He said, "she couldn't even stand to look at you." He said, "She went home early to keep from looking at you."

And I said, "Mike I don't know what you what you're talking about."—uh, he said, "You need to talk to Richard Caldwell."

And I told him, I said, "Mike, please tell me." And he said, "You have caused me three hours in an attorney's office today and \$500 of my money." And he said, "You go talk to Richard," and he still refused to tell me what was going on.

After repeated efforts, Risner finally contacted Caldwell on the night of August 24 and questioned him about why Adkins was mad at her and treating her "like a dog." Their initial discourse consisted of a repeated exchange of her inquiring about what was going on and of him pointedly replying, "You tell me." Risner expressed her confusion and dismay over the manner in which Adkins had humiliated her and questioned if Respondent had received a complaint about her and Caldwell said no, and acknowledged that she was a "very good employee." Risner testified that:

So, anyway, the conversation went on and on and on. And all I could get out of Richard was, "You tell me." And I asked Richard—I said, "Richard," I said, "has this got anything to do with the conversation that Mike and Trina had with me last night in the office?"

And he said, "You tell me." And I said, "Has this got anything to do with the Union thing?" And he said, "You tell me." And I told him—I said—uh, I said, "Richard," I said, "I ain't got nothing to do with the Union."

And he said, "That's not what we're hearing." And I said, "Well what are you talking about?" And he said, "Are you heading up the Union?" And I said, "No, sir, I am not heading up no union." I said I don't know nothing about it."

She then told Caldwell the only time she heard a union mentioned was back in the summer when Bussa mentioned it and she then asked who had given him her name and he said that several people had but that he would give any names on the phone. The conversation ended with Caldwell agreeing to continue the discussion the next morning at 8 a.m.

When Risner met with Caldwell the next morning she asked that Adkins be there also but after Caldwell went to get him, he returned and said Adkins didn't want to attend. Risner testified that:

I asked Richard, I said, "I want to know what's going on."

And he told me, he said—uh, he said, "Well you tell me, Karen," he said—he—he said, "Have you been to any meetings lately?" And I said, "No," I said, "I ain't been to no meetings."

I said, "What are you talking about?" He said, "You didn't head up a union meeting at Station 3?" And I said, "What are you talking about?" And he said, "I have a friend that told me, that described you

to a tee that you were at a union meeting at Station 3 Wednesday evening."

And I said, "I was not." "I was at home minding my own business." And he said, "They described you to a tee and your car." And I said, "Well just how many people was supposed to [sic] me there?" And he said, "Approximately 14 to 15 people."

And I said, "Richard, I don't have any idea what you are talking about. I have no knowledge of any union meeting."

Risner testified that ultimately Caldwell told her that Bussa had identified her as a union supporter and that Respondent's information revealed that she had initiated a discussion about the "Union" with Paramedic Craig Irwin. Risner denied this and asked what she needed to do to restore a favorable relationship with Adkins. Caldwell then offered to rectify the situation by removing her name from the scheduled Columbus run, and the Saturday 24-hour shift and told her to go to her appointment with a doctor.

Risner testified that she then questioned Irwin who denied that he had given Caldwell her name. The following week on August 30 Risner sustained an injury, filed for workers' compensation, and did not return to work for the Respondent. The Respondent opposed her claim and Risner thereafter made a statement that at some point in time she would get even with Mike Adkins.

By memo dated October 19, the Respondent promulgated an addendum to its policy manual titled, "No Solicitation to or by Employees," to be effective immediately. The policy broadly provided (among others) that:

At no time is anyone permitted to solicit or attempt to solicit on Portsmouth Ambulance properties.

Portsmouth Ambulance employees are not permitted to solicit or attempt to solicit to any other employee or individual during the time they are working for Portsmouth Ambulance.

If brought to the attention of management that any individual is attempting to harass, threaten, coerce, impede, annoy, or otherwise attempts to force any employee of Portsmouth Ambulance to organize, join, arrange, or develop an organization on Portsmouth Ambulance property during the time that said employee is working for Portsmouth Ambulance; that individual will be immediately removed from Portsmouth Ambulance property and dealt with by all legal avenues available.

. . . . the offense will be dealt with by immediate TERMINATION of the offending employee.

Caldwell asserts that although the policy was formulated it was not implemented after a copy was faxed to their attorney on October 19 and he advised them not to use it. Paramedic Andrew Davis, however, testified that about October 20, he saw the no-solicitation policy posted on a bulletin board at Respondent's Portsmouth station. No posting was made of any material rescinding the prepared addendum. Davis also noted that in addition to the memo he also observed that a card was put up by the front door saying that there was to be no solicitation to or by employees.

Davis testified that about a week after he saw the posted no-solicitation policy, he overheard a conversation between

Adkins and advanced EMT Kelly Brady during normal worktime in the dispatch area.

Brady testified that she was against the Union and, that on her own, had typed up an antiunion petition which she circulated to employees, mostly those who were attending her advanced EMT class at Shawnee State University but also to some at the Respondent's facility.

Specifically, Davis testified that he heard Adkins tell Brady that Respondent would not be a union outfit and that anyone attempting to organize the facility would be terminated. Davis asserted that shortly thereafter, as Adkins went to his office, Brady turned to him and offered the antiunion petition (which she had in her hand during the time that she was conversing with Adkins) but Davis told Brady that he was unwilling to sign. Brady did not deny the occurrence with Davis and the petition but did deny that she had any conversation with Adkins "due to the union" or in which he said anything about the union. She also testified that she thereafter read some union material and gained a belief that it was against the rules to try to open an antiunion organization and that "the employer could be in trouble," so she then took it on herself to destroy the petition.

April Dawn Pierson was a qualified EMT who also worked as a dispatcher between March and October 1995. She testified that in early October, between the first and second union meetings, paramedic Paul Foyt² asked her if she had signed Linda Bussa's union papers. After asking Foyt what he was talking about she said she hadn't and then asked Foyt if he had signed. Foyt replied no and commented that the signing of union papers was pointless, because Adkins would shut the place down first.

Foyt testified that he couldn't recall if he actually said that but admitted that in October that was the way he felt and that he probably made that statement at least once or twice to others and that someone else could have overheard. He denied that anyone in management had told him that and said that it was a prediction based on the closing of another ambulance service after a unionization attempt and his opinion that Respondent would respond in this same manner. He also admitted that on at least two occasions Caldwell had cautioned him not to mention this subject anymore because he feared it would be taken the wrong way.

The day after Wheelchair Truckdriver Donald Wise attended the October 15 union meeting, he was suspended for having taken a day off without first providing Respondent with 48 hours' advance notice. On October 14, consistent with his past mode of notification, and within 36 hours of the time that he was requesting to be off, Wise submitted a written "request off" for October 16 to take his physically handicapped son to an out-of-town medical appointment. Wise said he was unaware of the alleged 48-hour rule, and at no time prior to his being advised of the suspension was Wise told that his 36 hours' notice was deemed insufficient, however, included in Respondent's records is a document that purports to reflect that Caldwell notified Wise beforehand that he would be suspended if he failed to report to

² Foyt performed several functions for the Respondent that demonstrated responsibilities beyond those of the ordinary employee paramedic or EMT including giving advice or approval on runs to other employees. He also functioned as the person in charge during the absence of both Adkins and Caldwell and he maintained keys to office areas.

work on October 16. Caldwell testified that, after he saw the note from the dispatcher reflecting Wise request, he called Wise and left a message he couldn't be off that day and needed to call Caldwell.

Dispatcher Maryjo Cantwell testified that shortly following Wise's suspension, she was present in the dispatch area when Adkins, Caldwell and Priscilla Cassidy (Adkins' sister-in-law), discussed the 24- and 48-hour notice rules. She stated that prior to such time she had not received any information concerning the implementation of a 48-hour notice policy. Cantwell testified that when Caldwell stated that a 48-hour notice policy was in effect, Adkins agreed but Cassidy corrected them by declaring that the personnel handbook contained a 24-hour notice rule. Then, pursuant to Adkins' instructions, Cantwell made copies of the 24-hour notice provision and posted same in the dispatch office and in the vicinity where the chalkboard is located and it was in place up until the middle part of May 1996 when it was replaced by a 48-hour notice posting.

Adkins told Wise on October 19 that he would be restored to the work schedule effective October 20. Following Wise's return to work, however, his work hours and income were significantly reduced and he felt that he was compelled to find another job. Wise testified that Respondent did not provide him with any reasons or justifications as to why his work opportunities were being curtailed and that in addition to having his hours diminished, Respondent abruptly suspended his driving privileges relative to his being permitted to use its vehicles to transport his son to medical treatment facilities.

Crystal Vowell (Davis) and John Davis worked as a paramedic team. Respondent reassigned them from their stretcher truck unit 69 on the day following the October 15 union meeting. Vowell testified that thereafter they were consistently assigned unreliable and mechanically substandard units.

On the Friday following the October 15 union meeting, Respondent called David and Vowell and told them they had an assignment on Saturday. They testified that because of their childcare situation, they had an oral agreement with Adkins whereby he agreed to give them a schedule which allowed them to be off on Saturdays and Sundays and where they would work a 24-hour shift on Thursday and a regular shift on Monday, Tuesday, Wednesday, and Friday. Accordingly, they told the dispatcher that they could not work Saturday because of their agreement and childcare problem. On Monday, they were approached by Adkins, who gave them a prepared disciplinary "paper" for them to sign, after they reminded him of their agreement, however, they were not required to sign.

On November 4, following a day off, Adkins ordered Davis and Vowell to rewash unit 69 (see R. Exhs. 34 and 35), a unit that had been thoroughly cleaned at the conclusion of their previous 24-hour shift on November 2. Vowell affirmed that this was the very first time that they had been instructed to rewash a unit and Davis noted that in the past, they had received frequent compliments on the cleanliness and condition of their unit.

There is no document that was introduced into the record that would show if or who used unit 69 on November 3 (a Friday) but records for Vowell and Davis shown that they last used it on November 2 for their regular Thursday 24-hour shift.

Andrew Davis also recalled two specific occasions when he was present with his former partner EMT Russ Crabtree in the dispatch area, first in late November, when Caldwell made some comment that he "would eliminate all union supporters" and also in November when Crabtree and Adkins had a conversation in which it was said that "we wouldn't have a union that the place would shut down first." Crabtree, who admittedly was a vocal opponent of the Union, recalled that on the latter occasion he was upset about something that had happened in the morning and he testified:

I think those were my words, actually. But, I think I told him he ought to.

...

I had never heard Mike Adkins say that.

Crabtree said Adkins did not verbally respond but "kind of patted me on the back" and then left the room; Crabtree otherwise answered that he had no knowledge of the Caldwell conversation.

Carrie Bussa Pitts, Bussa's daughter, began doing volunteer work for Respondent during the summer of 1995 but became a paid employee on or about July 20. She testified that she was hired with the understanding that she would be doing dispatch work on weekends and that Adkins had told her that weekend dispatch work was available because his current dispatchers shunned weekend assignments. Pitts actively supported the Union, and she attended the union meetings that were held on October 1, 15, and 29.

After calling off sick on August 26 and 27, Pitts was hospitalized and underwent a surgical procedure on September 14. After obtaining a doctor's release, Pitts called Adkins on October 4 and reported her availability to return to work. Adkins asked her to provide him with a copy of her medical release which she did. She testified that Adkins encouraged her to call him on the following day so that he could apprise her of available work opportunities and that he never said anything to her about her attendance and/or absenteeism. When Pitts called Adkins on October 5, he informed her that there was no available work. She testified that he repeatedly gave her this same response during the following 2-month period when she called to inquire about available work but that on one occasion, Adkins told her to keep her fingers crossed.

April Pierson was a qualified EMT who worked from about March 1995 through mid-October as a full-time dispatcher, working a minimum of 40 hours weekly. She also attended the union meetings on October 1, 15, and 29.

Pierson testified that she saw, for the very first time, a 48 hours' notice posting at Respondent's Portsmouth station immediately following Wise' October 16 suspension. In late October, she stated that she witnessed an occasion when Adkins told employees Jodi Timberlake and Kelly Brady (after he was questioned about why the 48 hours' notice was posted), that "there was several bad apples and it was time to get rid of them." Pierson also said that after Adkins made the that remark, he looked up and appeared to be surprised by her presence.

Adkins thereafter approached her one day in October and asked if she would be willing to go on the road as a EMT 1 to 2 days a week. She told Adkins that she would not object to being on the road 1 day a week but wanted to remain

a dispatcher and that she was unwilling to do full-time EMT work. Adkins said that was fine and asked her if she a problem being paired with Linda Bussa. She said "no" and Adkins said you guys are friends right, and Pierson agreed. A few days following the October 15 union meeting, Pierson was removed from dispatch and put back on the road as an EMT on a full-time basis. Then after being assigned full-time EMT work, Pierson's work hours were significantly reduced without explanation. This occurred during a time period in which Respondent was seeking and hiring new EMTs.

At 5:30 p.m. on the evening of November 22, Davis and Vowell were dispatched to the Golden Years Convalescent Center to pick up a trache patient and transport him to the hospital. The patient was in respiratory distress and Davis decided to suction the patient when he got the truck which was equipped with suction equipment. As they were preparing to leave the facility, a "nurses' aide" advised them that the patient had "a no suction" order. On hearing this, Davis testified that he commented that they would have to give the patient a high level of oxygen and get him to the hospital as soon as possible. Immediately thereafter, the patient was transported to the hospital without incident and Davis observed the hospital staff immediately begin to suction the patient.

LPN Kendra Helphenstein, an employee at the Golden Years Convalescent Center, testified that she called Caldwell on the night of November 22 and advised him that Davis had upset her somewhat when he commented he "didn't know what you want us to do. All that the trache patient needs is suctioned." She also said she told Caldwell that they were not asking for a diagnosis for the patient, just for the patient to be taken to the hospital. Helphenstein stated that she told Caldwell that Vowell did not say anything. She agreed that Davis had not acted contentiously or used profane language and she denied that she told Caldwell that he had. She also said she made no comment to the effect that she didn't want to see either of the persons again and she said she did not bother to document the incident. She also said she declined to make a statement about the matter when someone from the Respondent called several months later. She said she then told the Center administrator about it. She also said she did not consider the incident to be a major complaint.

Caldwell, however, did make a page and one half handwritten memo for himself that noted that the caller was extremely upset and complained that the crew appeared to be angry about being there, said that "they told the crew that they were there to transport and not to pretend to be a doctor or to tell others what to do," and said that the nursing home wishes that these two never come to their facility again. Caldwell also noted that this was the most upset he had ever found a nursing staff. Caldwell testified that the November 22 telephone complaint angered him to the point that he abruptly left Respondent's facility in an effort to avoid having to see Davis and Vowell when they returned to the station and he asserted that he would have fired them on the spot had he come into contact with them that evening.

Management (Adkins, Caldwell, and Foyt) held separate disciplinary meetings with Vowell and Davis on November 24. Caldwell threw his written memo at Vowell and demanded to know if it was the true and she said "no" that it didn't happen that way. Vowell said she told Caldwell and Adkins that it was said "that if the patient could not be

suctioned by us, that he really did need to be suctioned and we'd just have to run him to the hospital as fast as we could." Vowell testified that Caldwell's face became bright red and Adkins started yelling at her and said he was "tired of people's shit and that he wasn't going to cover for anyone's ass." Adkins then said he was going to Golden Years to investigate the incident and when Vowell asked to go with him to try and straighten it out, Adkins said "hell no," he didn't want either Vowell or Davis to enter that facility again. Adkins said he should fire her on the spot, that she was suspended indefinitely without pay and that he didn't care how she took care of her son—that she could go apply for unemployment or welfare.

Caldwell also started the disciplinary meeting with Davis by showing him Caldwell's own documented complaint. Paul Foyt, however, was there instead of Adkins. Davis also denied the report's truthfulness and described (as noted above) what happened and what was said or not said. He also was given a suspension but was returned to work in 4 days. Vowell, on the other hand, was sent a memo of discharge by certified mail with a one word reason, i.e., "unprofessionalism."

Adkins never followed through on his stated plan to go to the nursing home and Caldwell made no attempt to investigate further until his call to LPN Helphenstein a month later.

Meanwhile, Wise returned from his suspension on October 20 and found that he would no longer be allowed to drive his son in a company vehicle to appointments. He also found that he was being scheduled on average of only 20 to 30 hours a week in October and November as compared to the 40 to 50 hours a week he previously enjoyed.

At the end of November, Adkins called him to the back room and asked if he had anything to talk about. When Wise answered no, Adkins said he did and then complained that Wise had slammed the bay door a few days before and said he wasn't going to tolerate damage to his property or trucks. Wise admitted that he became angry over the loss of hours and did slam a door after being told to go home early after working only a few hours of what was to have been an all day shift. Adkins asked Wise how he liked working there. Wise answered affirmatively but Adkins responded with several comments saying in Wise's words:

He said I wasn't in this alone and that he had already fired one and he was looking at two or three more.

And he told me that as far as transporting my son, that I could no longer ask for any time off to transport my son to the doctor's office. He said that my wife could do that.

And he said that if I did ask off, that I would be fired for taking him and that he told me that he didn't care about my son, he didn't care about my family.

The only thing he cared about was his business and his family and I told him that I understood about his business and that he needed people.

Q. Did he say anything about watching employees?

A. Yes, he did. He said that he would be watching me and others as well.

Adkins on the other hand testified that:

A. I told him, I said, Don, I'm going to be watching you and I'm going to be listening and I don't want to hear anymore door slamming or no damage to any property at Portsmouth Ambulance.

Q. Did you tell him you had already hired one and you're going to fire two or three hours?

A. No, my comment to firing was, Don, I don't want to have to fire nobody over damaging any property. Now, he might have took it a little out of context.

But he did not refute Wise's other recollections of the conversation.

Because of his reduced hours and earnings, Wise stopped working for the Respondent on December 4, but he returned on April 22 prior to the issuance 10j injunction relief by a Federal district court which resulted in the return to work of several other former employees.

Donna Wise (Don's wife) testified that she called Caldwell in late October or early November about getting her son transported by wheelchair truck to Columbus. Caldwell asked if they had the van donated to them (by a service organization) and she said yes but that she wasn't good at going into big cities and that she knew Don couldn't take off work at that point as he had told her he would be fired. Caldwell told her they couldn't do it despite the fact that her son is totally wheelchair bound and the transportation is covered under his Ohio Medicaid card. The Respondent had been paid under this coverage for the prior occasions when Wise had used the Respondent's vehicle, as Respondent's driver, to perform this service. In June 1996 he was again allowed to be the driver for his son in Respondent's vehicle when Wise's personal van had a broken lift.

During the time that Davis and Vowell worked as a team, Vowell was the designated driver because Davis was not covered by Respondent's insurance company. Davis and Vowell reported to the Portsmouth station at 8 a.m. picked up their assigned vehicle and drove to the Ashland station. Davis also asserted that before Vowell became his partner employee Greenwood transported him to the Ashland station.

After Vowell was terminated, Davis was told that he and his assigned unit was being permanently assigned to the Ashland station and that rather than having to report to the Portsmouth station at 8 a.m. as he had been doing since January 1995, Davis was advised that he would have to report to the Ashland station at 6 a.m. Davis thus was put in a position of having to drive his personal vehicle 45 miles to Ashland rather than 15 miles to Portsmouth. In the past, Davis would acquire his drug box in Portsmouth and transport it to the Ashland station. Following Vowell's termination, Davis asked Foyt if he could store his drug box at the Ashland station but after Foyt granted Davis' request, Davis was inconvenienced on three separate occasions when his drug box was moved to the Portsmouth station. When this happened, Davis had to initially drive 15 miles to Portsmouth to secure his drug box, and then drive back past his house enroute to the Ashland facility.

Davis also experienced a significant reduction in his work hours and income after Vowell was discharged, essentially cutting his hours in half. He then sought other job prospects and missed work on January 16, 1996, to go on a job interview.

Davis gave the dispatcher 36 hours' advance notice of his desire to have January 16 designated as an off day and acknowledged his "time off" request and said he would be off the schedule for that day. Davis however received a 1-week suspension notice dated January 17 and was placed in his file for his having violated the alleged 48 hours' notice policy. That same day when he called about his schedule he was told he had to see Caldwell, which he did the next day.

Paul Foyt was present for the discussion and Davis testified that:

Apparently I had been causing some trouble with the Company. I was an unreliable employee and that I had—he laid out three papers for me.

One was a paper that said I quit, one was a paper that said I was fired and one was a paper that said I would do what I was told and go where I was told to go.

Q. Okay. And did you make a response?

A. I asked if I could take these papers home for me, so that I and my fiancée, Crystal Vowell, could look over them and decide which one we want to do.

Q. And what response did they give you?

A. The response was the papers didn't leave the office.

Q. So, did you sign any of them?

A. I signed the one that said I would go where I was told to go and do what I was told to do.

Q. And why did you sign that?

A. I thought that it was my only option. I have a family to support. It was either do that or be unemployed.

The statement given to him to sign provided as follows:

I agree to work where and when directed. I will perform whatever task assigned to me as long as it is not in violation of the law. I will perform my duties, of my level of EMT training, to the best of my ability. I will care for my ambulance and my assigned equipment, to maintain it in the best possible condition. I will keep my ambulance clean; I will keep my station clean. The above includes, sweeping and mopping, dusting and washing down the premises. I will pickup paper or trash about the station. I will do laundry or whatever task I am assigned by my supervisor or manager.

This also was signed by Caldwell and by Foyt, as a witness, Davis also said that although there was some discussion of his lack of sufficient notice, he was not given any documentation of the disciplinary report that was placed in his file.

On February 1, 1996, Davis was advised by dispatch that he was to secure his drug box at the Portsmouth stations prior to his reporting to the Ashland facility at his standard 6 a.m. starting time. Davis knew that a medic crew was traveling to Ashland from Portsmouth and requested that his drug box be placed in their unit so that he could pick it up in Ashland. After being put on "hold" the dispatcher denied Davis' request and admonished him to either come to Portsmouth to get the drug box or take the day off. Davis then called back a few minutes later and told them that under the circumstances he would have to leave the company.

Linda Bussa filed an unfair labor practice charge (with normal service), against Respondent during the latter part of December and when she attempted to give Adkins a copy of her charge, he refused it. However, when she presented his wife with a copy, she accepted it and commented that she had already seen it. Bussa's subsequently withdrew her charge to allow her allegations to be addressed in a charge that was filed by the Union. When Bussa reported to work on January 10, 1996, Adkins told her that he was assigning her a 24-hour shift. She reminded Adkins of their oral agreement that she would not be assigned 24-hour shifts. Adkins questioned whether she had it in writing. She said, "[N]o" and he said, "[W]ell if you don't want to work—"

Bussa inspected her vehicle and then approached Adkins and told him she would to work the 24-hour shift. Adkins laughed and said, "I thought you would" and Bussa then added that "but my name will go on the list to the Wage and Hour Board for paid 24's."³

Caldwell, Adkins, and his wife followed Bussa to the lounge and Adkins asking Bussa if she were threatening him. Bussa responded by asking Adkins if she were being fired but Adkins did not respond. When Adkins asked Bussa why she was reluctant to work the 24-hour shift, she again mentioned their oral agreement and commented on how he was legally required to give 24 hours' pay to persons who worked that shift. Adkins then abruptly ordered Bussa to clean her truck. She said it was clean but he then told her to rewash and wax it and sweep the bag.

Adkins admitted that he instructed Bussa to tend to her vehicle and sweep the bay without first considering how such would interfere with her ability to do her scheduled runs on a timely basis. Bussa told Adkins that she would rewash and wax her truck, but not sweep the mechanic's designated work area. She advised Adkins that she could not both rewash and wax her unit and make her scheduled run but he sarcastically said, "We'll see." She moved the truck and wiped the tires off and then went to the dispatcher and asked whether she should make the run or rewash and wax her truck, the dispatcher replied that she was not expected to do either but to go home.

The following day, Bussa went to Respondent's Portsmouth station to obtain her payroll check. Nothing was said at such time about the status of her employment. On January 12 and 13, 1996, the dispatcher informed her that she was not on the schedule but when she called in on January 14, the dispatcher inquired about her availability to work in the event that two other employees failed to report to work. She did not mention any suspension and it was not until Bussa talked to Dispatcher Lori Goodpastor on January 15 that anything was said about a suspension. Following this call, Bussa received a letter on January 17, 1996, which represented that she was being issued a 10-day suspension for her alleged insubordinate behavior on January 10.

A letter dated January 22 from Adkins to Bussa states that her suspension was effective through January 24. Bussa testified that a physical illness prevented her from reporting to work on January 25, but that she advised the dispatcher on the evenings of January 24, 25, and 26, respectively, that she

³ It was the Respondent's practice not to pay employees for a portion of their nonwork hours while they were on duty but waiting for an assignment during the 24-hour period.

was sick and would not be reporting to work on the following days. Dispatcher Lori Goodpastor called her on the evening of January 25 and advised her that she could not return to work without a doctor's statement. Bussa further asserted that when she called Respondent on January 26, the dispatcher told her that she was not on the schedule. Then, after having missed 3 consecutive days and on being told that she needed a doctor's statement to return to work, Bussa did not call in after January 26 to report her unavailability for work.

Kelly Malone testified that employees who are on extensive sick leave are not required to call in until they are available and prepared to return to work and that if more than 3 days' elapses before an employee calls in, that person's name is temporarily removed from the schedule. She further asserted that the employee's name is reinstated to the schedule when he or she calls in to report his or her availability to work.

Bussa testified that before she could obtain a doctor's statement, she received a letter dated February 5, 1996, what stated that she was being terminated for excessive absenteeism.

During November and December Pierson was scheduled only 3 days a week with an average of 25 to 30 hours' weekly and she felt her hours and income were reduced to a point where she was forced to find other employment. She testified that when she called the dispatcher to inquire about available work opportunities from about the latter part of December through January 20, 1996, she was told that she was not on the schedule. Aside from January 6, 1996, Pierson was not scheduled to work any other days in January. After her first jury duty selection on January 8 was canceled because of snow, January 11, she advised Respondent that she was available to work up until January 22, 1996, and informed Respondent that she was scheduled jury duty January 22 through 26, 1996. On January 23 Respondent sent her a letter saying work was available for her and she needed to contact the office by January 26. In February, shortly after Pierson obtained another job, Respondent sent her an official termination letter dated February 6 (Bussa's termination letter was dated February 5). Her letter, like Bussa's termination notice, indicated that she was being dismissed for 3 days of no show or no call.

III. DISCUSSION

These proceedings arose after several employees attended union meetings a few months after employee Linda Bussa had initially started discussing her thoughts about the need for a union with the Respondent's employees. The Respondent reacted to its first awareness of a perceived "union" threat by casting a wide net of suspicion which brought in EMT Karen Risner as a suspect and resulted in Respondent's alleged conduct in questioning and threatening this employee. Then, after an apparent quiet period when it appeared that the incipient union movement had gone away, the Respondent resumed its reactions (when it apparently became aware of union meetings) and allegedly seized on attendance related and other asserted problems to discharge or discipline employees and to change the work hours and conditions of suspected union supporters.

A. Credibility

The recitation here of factual statements (not otherwise qualified) are my factual conclusions based on the demeanor of the various witnesses and my evaluation of what is the most credible testimony overall. In general, I conclude that although some of the General Counsel's employee witnesses had an imperfect recall of some dates or details, they otherwise testified in a convincing, believable manner and in instances where testimony to the contrary was placed on the record by the Respondent's witnesses, I find the latter testimony generally to be self-serving, implausible, and untrustworthy and I therefore find that it should not be credited over the testimony of the General Counsel's witnesses. This is especially true in situations where the General Counsel's witnesses gave a narrative description of the surrounding circumstances and the Respondent's witnesses gave bare denials that they had made the statements attributed to them.

In particular, I find that the testimony given by Karen Risner was especially persuasive. She displayed a highly believable, if excitable, demeanor and she otherwise was shown to not have been a union activist or supporter with any particular ties to the General Counsel's other witnesses who had supported the Union and attended union meetings. In this connection I find that Risner candidly admitted that she had made a comment that she "would get even with Mike Adkins" but that the statement appears to have been made after the Respondent opposed her claim for workman's compensation relating to an injury sustained at work, and I find that such an emotional reaction is consistent with her testimony and demeanor and that it does not negate the overall credibility of her testimony. In a similar vein, I find that the independent testimony of nurse Helphenstein relative to the incident at the Golden Years Nursing facility with Vowell and Davis is more credible as it relates to her statements to the Respondent than Manager Caldwell's rather self-serving testimony, testimony which I find tends to grossly exaggerate the tenor of Helphenstein's complaint.

B. Motivation

In proceedings involving changes in conditions of employment and disciplinary action against employees, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employees union or other protected concerted activities were a motivating factor in the employer's decision to change their conditions of employment or to discipline them. Here, the record shows that the Respondent was aware of the employees' union activity. The credible evidence also supports an inference that it become aware of which employees had attended union meetings and that it specifically knew (or suspected, as with Karen Risner), that each of the alleged discriminatees was a strong supporter of the Union. It also engaged in certain unfair labor practices, as discussed below, which included statements by Owner Adkins and Manager Caldwell and alleged Supervisor Foyt that clearly shows antiunion animus.

Other indicia of motivation include the timing of the Respondent's various reactions, several of which occurred shortly after union organizational meetings and, under these circumstances, I find that the General Counsel has met his initial burden by presenting a prima facie showing sufficient

to support an inference that the employees' union activities were a motivating factor in Respondent's subsequent decision to change the conditions of employment and to discipline certain of the employees who were among the active union supporters. Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980), see *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), to consider Respondent's defense and whether the General Counsel has carried his overall burden.

C. Alleged Violations of Section 8(a)(1)

Here, I credit Risner's testimony that in August, shortly after Bussa raised the prospect of organizing a union, Owner Adkins and his wife called Risner into the office and sought to question her regarding information about the status of the organizing drive. Although Risner then was totally unaware of the fact that an organizing drive was in progress, the Respondent asked her to keep her ears open about a union drive. Both Adkins and Caldwell questioned Risner about what was going on with the Union and did so in an especially coercive manner by making vague accusations and then responding to her bewildered responses and then her asking if it had anything to do with "the union thing," by repeatedly saying, "you tell me." Adkins clearly threatened to breach their oral agreement and past practice regarding her not being assigned to 24-hour long shifts. As set forth above, the Respondent, in a closed door setting, questioned Risner about her involvement in the union campaign, asked if she were the primary organizer and if she had attended or chaired any union meetings. This was accompanied by a comment that someone had reported her presence at a union meeting and had observed her vehicle at the meeting site.

Here, I find that the record shows that the Respondent's unlawful threat to rescind the no 24-hour shift benefit that Risner had enjoyed was tied into its suspicion that she was engaged in union activity and its abusive interrogation of her about suspected union activities was combined with statements that conveyed the impression that the employees (union) activities were under surveillance by management and their friends. I conclude that the General Counsel has shown that the Respondent's statements on these occasions constitute conduct that is coercive in nature and which interferes with the employees' Section 7 right, and I find that its actions in these respects are shown to be unlawful and in violation of Section 8(a)(1) of the Act as alleged in the complaint.

I credit the testimony by Andy Davis that in October, he overheard Adkins telling employee Brady that he would not allow Respondent to become a union operation and that the organizers would be terminated and that on another occasion in November told an employee that union adherents would be discharged and Adkins said the place would shut down.

I specifically find that Brady's testimony that she had no conversation where Adkins said anything about the Union is not credible as she otherwise did not deny that she had contemporaneously approached Davis about signing an antiunion petition. Also, I do not find credible the testimony by Davis' partner, EMT Crabtree, who disavowed any remembrance of Caldwell's statement and said that he "thought" he made the shut down remark because of his own, strong antiunion feelings. Otherwise, however, it is clear that even if he did not

originate the comment at that time. Adkins endorsed Crabtree's comment by patting him on the back and he clearly did not disavow the comment that the Company would close if the Union came in.

During this same period Adkins made a remark to Wise that he had already fired one person, and that he was looking forward to firing several others. I also credit Wise that Adkins also cautioned him that he would be terminated if he missed a day as a result of taking his son to the doctor, and I find in each instance that the remarks attributable to the Respondent infringed on employee Section 7 rights, and I conclude that the Respondent is shown to have violated Section 8(a)(1) of the Act in these respects, as alleged, see *Future Ambulette*, 293 NLRB 884, 887 (1989), and *Larid Printing*, 264 NLRB 367 (1982).

Pierson gave credible testimony that in October, Foyt told her that Adkins would close Respondent's doors before he would permit it to become an organized outfit. During this conversation, Foyt also asked Pierson if she had signed Bussa's union papers and then commented that it was a waste of time pursuing union representation, because it would inevitably result in Respondent's business being closed. At this time Pierson was an undisclosed supporter and Foyt's interrogation about her union activities, under these circumstances, is an 8(a)(1) violation and more particularly, Foyt's business shut down threat and representation that organizing attempts were an effort in futility also are violative of the Act, see *Hertz Corp.*, 316 NLRB 672, 685 (1995).

In this connection, I find that the record shows that Foyt was more than a rank-and-file employee and he had duties which indicated that he was especially trusted by management. Although the evidence is insufficient to clearly show that he exercised independent judgment in performing those functions as a statutory supervisor, I find that the record is sufficient to show that Foyt had a confidential relationship with Adkins and that the other employees could reasonably believe that he spoke for management. In this connection it is noted that Foyt was with Caldwell on two occasions involving disciplinary meetings with Davis. Moreover, April Pierson and Dispatcher Maryjo Cantwell testified that Adkins and Caldwell instructed them to seek Foyt's approval or advice on runs. Bussa said that during the time that she was performing dispatch work, Foyt was in charge in Caldwell's absence and that Foyt, as did Managers Adkins and Caldwell, maintained keys to several offices. Both Pierson and Cantwell confirmed that they had on occasion received job related directives from Foyt. Foyt's statements are consistent with those of his employer and, accordingly, I conclude that his conduct is that of an agent and, as an agent, his conduct is attributable to the Respondent, see *Commercial Homing of Detroit*, 270 NLRB 909, 915 (1984), and *EDP Medical Computer System*, 284 NLRB 1231 (1987).

Andrew Davis observed a November conversation in which his partner Crabtree and Adkins discussed the union and it was said that there would be no union "the place would shut first." Although Crabtree attempted to convey the belief that he probably made the statement, rather than Adkins, he also said that Adkins patted him on the back and I find that at the very least Adkins thereby indicated his approval and adoption of the sentiment expressed. Crabtree said he had "no knowledge of" a statement by Caldwell in a

conversation between Davis, Crabtree, and Caldwell in which Davis asserts that Caldwell said he would "eliminate" all union supporters, and I find that this comment fails to refute Davis' credible testimony.

Although Andrew Davis is the brother of discriminatee John Davis, he was still an employee at the time he testified and he testified that he did not discuss his testimony with his brother because: "usually when I get in conversations with my brother, we just get in arguments. So I don't really discuss this type of thing with him." Otherwise, his demeanor and testimony was straightforward and believable and I find that the information he contributed to the record is trustworthy and credible. Accordingly, I find that the statements he heard to the effect that before there was a union, the place would shut down first and that all union supporters would be eliminated are attributable to the Respondent, they demonstrate antiunion animus on the part of the Respondent and they are shown to violate employee rights and Section 8(a)(1) of the Act, as alleged.

The record also persuasively support the allegations that the Respondent promulgated and posted a no-solicitation policy (as set forth above), that over broadly prohibits solicitation at any time by anyone and, in addition, threatens termination for any offending employee. Although the Respondent claims that the policy was not implemented (on advise of counsel), the policy was in fact posted for at least enough time for some employees to see and read it and no followup posting or distribution was made of anything directed at rescinding the broad prohibition and threat. This posting in the form of a memo dated October 19, also directly referred to attempting to force employees to "organize, join, arrange, or develop an organization" and it was made just a few days after the employees held an off premises union organizational meeting on October 15, and just after the Respondent's receipt of the October 16 fax from the Union which informed it about an organizational drive. This timing strongly indicates that the policy was in response to the union-related occurrences and that it was designed to interfere with the employee exercise of the Section 7 rights, and I find that the rule clearly is overly broad and unlawful on its face, see *Our Way Inc.*, 268 NLRB 394 (1983).

In addition, the record shows that about a week after he saw the posting, Andrew Davis overheard Adkins reiterate some of the words of the memo to employee Brady (anyone attempting to organize the facility would be terminated), whereupon Brady, who had an antiunion petition in her hand at the time she spoke with Adkins, turned immediately to Davis and solicited his signature on the antiunion petition she had prepared. This solicitation was done in the dispatch area on worktime and the circumstances (the contents of Adkins' statement, Brady's possession of the petition, and the immediate timing) provide complete support for an inference that the Respondent knew of Brady's plans and that Respondent did not restrict her solicitation efforts but disparately allowed antiunion solicitation to occur thereby violating Section 8(a)(1) of the Act in that respect, as alleged, compare *Ultrastystems Western Constructors*, 310 NLRB 545, 546 (1993).

D. The Respondent's Attendance Policy and Scheduling Practices

As noted by the General Counsel, there was more confusion than any uniform understanding of the Respondent absentee policy in the fall of 1995; however, a majority of employee witnesses were under the impression that they were required to provide Respondent with 24 hours' advance notice prior to their taking off for a day, generally based on their understanding of the two 24-hour notice provisions in the guidelines and procedures manual.

By a supplement to its manual dated September 19, 1995, the Respondent provided:

Re: Chronic Absenteeism

All employees are required to report for their shift at the appointed time, at the appointed station. ANY "call off" requires a doctor's release to return to work. A second (2nd) "call off" will be grounds for a 1 week suspension. A third (3rd) "call off" will be grounds for a 2 week suspension. Chronic "call off's" or absenteeism will result in the employee being terminated or other suspensions, all at the discretion of management.

All "Request Off's" must be submitted in writing and turned in to scheduling NO LATER than 48 hours prior to the time requested off. The request off will be honored, based upon how many employees are already scheduled off.

The previous guidelines had provided:

Changes in the Schedule:

A lot of changes are due to a employee asking for a day off. If an employee wishes to take a day off, give Priscilla or Angi a 24 hour notice. Without scheduling problems, Priscilla will grant you the time off you asked for. Under no circumstances will a employee be given time off without prior notice, and if this would occur it will = (1) occurrence.

3. You MUST notify management at least 2 hours in advance if you must be excused from duty. If you are ill and cannot report for duty, it is your responsibility to be sure that your shift is covered when management has not had a 24 hour advance notice.

Respondent's scheduler, Tanya Monde, testified that she had problems with employees calling in and asking off as she was making the schedule and this was a very significant problem because the Respondent hires a lot of nondrivers who need to be driven and she had a discussion with Owner Adkins about this prior to September 19 supplement. Caudill testified that he personally attached the supplement to pay envelopes for the pay period following September 19, 1995, that it was posted immediately after it was drafted, and that he personally updated the personnel books located on the premises. Several employees, however, indicated that they did not always read attachments to the pay slip (which occurred frequently) and they continued their past practices. Initially Adkins claimed that the 48-hour policy has been in effect for several years but at a later point in his testimony (after Monde had testified in his presence), he declared that the policy became effective in the fall of 1995 after one of

his schedulers complained about the increasing number of call offs that Respondent was receiving and he asserted that the 48-hour notice policy was in place prior to Wise' October 16 suspension.

Dispatcher Maryjo Cantwell testified that shortly following Wise's suspension, she was involved in a discussion with Adkins, Caldwell, and Priscilla Cassidy (Adkin's sister-in-law) about the 24- and 28-hour notice rules. She stated that prior to such time she had not received any information concerning the alleged formulation and implementation of a 48-hour notice policy. Cantwell asserted that when Adkins and Caldwell stated that a 48-hour notice policy was in effect, Cassidy corrected them by declaring that the personnel handbook contained a 24-hour notice rule. Adkins then told Cantwell to make copies of the page with the change in scheduled 24-hour notice provision set forth above and post them in the dispatch office and in the vicinity where the chalkboard is located. One copy was in place until May 1996 when it was removed the week before the hearing began. The other copy was removed sometime earlier and replaced with the 48-hour notice rule, which Cantwell observed for the first time "a couple of weeks," prior to this hearing.

The Respondent's guidelines also have provisions that cover the subject of chronic absenteeism; however, they are not especially clear or straightforward.⁴

⁴The guidelines provide as follows:

Chronic Absenteeism

1. An occurrence is an absence of 1-2 consecutive scheduled work days. 1 day missed = 1 occurrence.
2. All call offs are to be made to the dispatcher at least two hours before your shift starts.
3. If during a 12 month period, starting with the first absentee occasion, on the 3rd occurrence a verbal warning for habitual absenteeism will be issued.
4. The 4th occurrence will result in the 1st written warning.
5. The 5th occurrence will result in the 2nd written warning or termination.
6. The 6th occurrence in a 12 month period, starting with the first occurrence will result in termination.
7. At any time beginning with the 3rd occurrence, a plan of action may be developed during the above succession.
 - a. Removing the employee from the schedule until the problem is corrected.
 - b. Switching from full time to part time or on call.
 - c. Requiring a certain period of perfect attendance.

Warning Notices/Termination

1. Three consecutive days of absence without notification will result in automatic termination.
2. Three days of no show or no call in one year will result in automatic termination.
3. A written will be issued after each no show or no call.
4. When a employee receives (3) consecutive occurrences, the employee can be removed from the schedule until further notice.

What Constitutes an Occurrence

1. Report offs.
2. No show or no call.
3. If a employee is tardy (2) times in a 30 day period, it will = 1 occurrence.

The year starts with the first episode. Occurrences are removed from the employee record on the occurrence anniversary date.

Any absence of more than (3) days requires a doctor statement.

Absenteeism/Tardiness
1st absence—nothing

Here, the Respondent has presented no clear indication of how it regularly enforced its existing guidelines and, otherwise, the employees' testimony demonstrates that it appeared to have been applied with flexibility (for example oral request off could be honored without a formal written request), and inconsistently. There also appears to be some ambiguity in its use of terms such as report offs, no show/no call, absence call off, request off, and time off.

As discussed further below, the Respondent first applied its new absenteeism provisions as justification for its suspension of driver Wise on October 16 when he requested to take that day off by giving 36 hours' notice. The Respondent imposed a penalty of suspension although its prior guidelines would appear to support no more than a written warning even if it was legitimate policy violation. The new rules provide for changes that appear to impose more onerous guidelines and penalties, all at the "discretion of management." These rules were promulgated within a few weeks of Adkins initial antiunion actions in late August involving employees Bussa and Risner and they were then first utilized to impose a strict penalty (found here to be illegally motivated) on a union supporter, and I find that the promulgation and maintenance of these more strict policies was a violation of Section 8(a)(1) of the Act, as alleged. In this respect I also find that the General Counsel has made a strong showing consistent with *Wright Line*, supra, that the Respondent's implementation of these more onerous rules was a change in conditions of employment in which antiunion animus was a motivating factor.

As pointed out by the Court, in *Transportation Management Corp.*, supra:

[A]n employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected concerted activity.

The record shows that the Respondent has a high turnover rate and within this framework I do not believe that its parallel concern for scheduling problems provides it with a legitimate reason for establishing a new, more strict absenteeism policy which requires a written 48 hour notice before a "request off" can be approved, and also subjects employees to termination for any "call off." Here, the Respondent then applied its policy to driver Wise by denying his request off because it was 36 hours, not 48, before the time he wanted off and gave him a 1-week suspension when he (in effect) "called off" and was absent on the day requested so that he could drive his wheelchair bound son to a medical appointment. This suspension that does not appear to follow the Respondent's other guidelines that provide a type of progressive disciplinary system and its action would appear to compound rather than help, any scheduling problems for that week and, in view of the timing of the publication and the questionable reliability of the communication of the policy shortly after the Respondent's antiunion and illegal conflicts with employees Bussa and Risner, I find the Respondent's justification for its action to be pretextual and unpersuasive. Accordingly,

2nd absence—verbal warning

3rd and 4th—written warning for unusual circumstances

5th and 6th—this will be grounds for termination.

I conclude that the Respondent has not shown that it would have promulgated these more onerous guidelines were in not for its belief and concern over the union activities of some of its employees and I find that the General Counsel has shown that this conduct violates Section 8(a)(1) and (3) of the Act, as alleged.

The Respondent's following action in harshly applying this policy to Wise a few days after he attended a union meeting and just after the Respondent received a formal notification from the Union that an organizational drive was underway clearly tends to reinforce the conclusion that its actions were illegally motivated, and I find that its 1-week suspension of Wise for his violation of the new company policy was overly harsh and well beyond its other guidelines for progressive discipline. Under these circumstances, I find that the Respondent's interpretation of its ambiguous rules and its severe punishment of Wise immediately following the union meeting and the arrival of the union notice would not have occurred in the absence of the noted union activity. Accordingly, I find that the General Counsel also has shown that Wise's suspension was illegal and in violation of Section 8(a)(3) of the Act, as alleged.

In this connection it is noted that the reason Wise needed time off was tied into the Respondent's own actions in changing its prior practice whereby Wise, while on duty as a driver, took the run to transport his son, under which the Respondent was paid by Medicaid because of the son's legitimate handicapped status. Caldwell ended this practice after the Wise family was provided with a special van (an older vehicle) by a charitable group. After Wise was suspended he told his wife he could not take off any more to take his son or he would be fired therefor when Mrs. Wise called and requested Caldwell if their son could be transported by Respondent's wheelchair truck for medical treatment. She said she wanted to give Respondent the assignment, because her husband worked there. Caldwell however questioned her about the donated van and dismissed her explanation that she was not good at driving in big cities and did not know the location. Caldwell said they couldn't do it and Mrs. Wise was forced to make other arrangements.

As indicated above, the Respondent is shown to have antiunion animus and to have been aware or suspicious of the union activities of both Bussa and Risner prior to its actions involving Wise and it is shown to have participated in interrogation that shows that it was seeking to learn the identity of union supporters. Moreover, several of the employers at the facility (Brady, Crabtree, and Foyt) are shown to be strong antiunion advocates who attempted to ingratiate themselves with management and the action against Wise took place shortly after he attended a union meeting. Although Caldwell explained that he and Adkins felt that it might not look right to Medicaid if there was an audit and the Respondent also claims that it was then unaware of Wise's union activities, I infer that the Respondent was aware of and motivated by the employees' union activity when it acted against Wise and the other employees discussed below. I conclude that the denial of transportation is not shown to be for a legitimate reason, and I find that it also was a violation of Section 8(a)(1) and (3) of the Act, as alleged.

Turning to the Respondent's subsequent treatment of Wise, I find that the record is sufficient to show that he suffered a dramatic reduction in scheduled work hours that was not

shown to be attributable to specific, legitimate business considerations. Although the Respondent provided exhibits (R. Exhs. 21, 22, and 23) which purports to compare the hours worked by Wise and another driver who began working in August, these exhibits tend to confirm Wise's complaint that his hours were reduced, and they show that between July and the first period in October. His hours for 2-week pay period were 102, 86, 89, 98, 91, and 66 and that from October 6 onward they were 37, 50, 25, 75, and 56 hours, respectively. The hours shown for the new employee, for the last four pay periods were 66, 62, 69, and 42, generally exceeded those given to Wise and I cannot find that the Respondent has persuasively shown that it would have made this same reduction in Wise's hours even in the absence of his union activity.

Under these circumstances, I find that Wise did not voluntarily quit, as asserted by the Respondent but was coercive into leaving by an adverse change in working conditions motivated by the Respondent antiunion animus. This is consistent with constructive discharge, see *Kosher Plaza Supermarket*, 313 NLRB 74, 87 (1993); and *Kerich Petrochemical*, 294 NLRB 519, 539 (1989). Accordingly, I find that the Respondent is shown to have terminated Wise and to have violated Section 8(a)(1) and (3) of the Act in this respect, as alleged.

E. Additional Violations of Section 8(a)(3)

The situation involving Wise was closely followed by the Respondent's opportunistic reaction to an apparently minor complaint (or misunderstanding) between a nursing home employee and Respondent's EMTs Vowell and Davis, both of whom had attended the union meetings on October 15 and 29.

Nurse Helphenstein gave highly credible testimony that show that she made a complaint about what she considered not to be a major incident, a complaint in which she accused Davis of making a blunt statement. She also said she told Caldwell that Vowell said nothing. Otherwise she testified that she did not accuse them of acting contentiously or profanely and she did not threaten Caldwell that she didn't want to see them at the facility again.

I do not credit Caldwell's improbable testimony which is inconsistent with the Nurse's testimony and with Davis' and Vowell's recollection of the same event. I also find that his assertion that he would have fired them on the spot if he had seen them that evening to be incredible and, if anything, indicative of his biased animosity toward good employees who, incidentally, had recently participated in two union meetings. In this connection, it is noted that while the Respondent repeatedly claims that it did not know specific individuals were union supporters, it is not necessary for the General Counsel to prove the employer's knowledge of a specific employee's status as to the Union, when there are numerous acts against employees for the unlawful purpose of discouraging union membership and especially where, as here, these are other factors which support an inferences that the employer had suspicious and probable information on the identity of union supporters. See *American Wire Products*, 313 NLRB 989, 994 (1994).

Here, Caldwell wrote a highly self-serving memo which I find exaggerates and distorts the nature and seriousness of the complaint. He and Adkins then failed to follow up with any meaningful investigation and, in fact, merely angrily ac-

cused Davis and Vowell individually failed to listen to their attempted explanations and made no meaningful followup contact with the nursing home.

The Respondent seized on this incident to immediately discipline Vowell in the most severe manner possible, with termination for "unprofessionalism," even though the record shows that it was Davis, rather than her, who actually spoke with the nurse. Conversely, for some inexplicit reason, Davis was at first merely suspended for 4 days. Thereafter, however, Davis' working conditions were changed. These changes had a significant effect on Davis inasmuch as the departure of Vowell (with whom he normally was paired because of their personal relationship and her status as a qualified driver) compounded the effect of changes. The Respondent's following actions involving Davis when viewed collectively shows that it made onerous changes in Davis' working condition (his starting time, the picking up location of his vehicle, and drug box) and that it reduced his work hours. Vowell's discharge, Davis' suspension, and these changes do not stand alone but occurred after the union notice of October 15, after Respondent made a sudden changes in their vehicle assignment (to a less desirable unit) after the Respondent had reneged on its agreement and practice in not assigning them weekend shifts and had required them to rewash a vehicle they had thoroughly cleaned. In the latter instance, the Respondent's records (exhibits were presented showing when Davis and Vowell worked but records for all others were not made part of the record) show that Vowell and Davis used unit 69 on November 2 (Davis apparently transposed the numbers when he testified it was unit 96), and there is no showing of what employees were assigned to unit 69 on November 3, the day before Adkins ordered them to rewash that unit, even though others were probably responsible for any failure to clean the vehicle.

The timing of this series of actions involving Vowell and Davis (as well as parallel actions against Wise and others at the same time) are too frequent and uncharacteristic of past practices to persuade me to give any significant weight to the Respondent's bland attempts to assert some legitimate reason for its actions, and I find that its reasons are unbelievable, contrived, and pretextual. This is especially true with regard to the showing of disparate treatment given to other employees (employee Sula Stepp was merely issued a written warning on November 27 when a nursing home complained about her rude behavior, and Cathy Gambill was given only a verbal warning after her alleged rude behavior toward a patient was brought to management's attention).

Finally, the Respondent brought Davis to his knees by invoking its 48-hour rule and suspending him for a week after he gave a 36-hour request take off on January 16, 1996. On January 17 Caldwell then proceeded to humiliate him by forcing him to quit, be fired, or immediately execute an agreement (without time to take the papers out of the office to review), an agreement that provided not only that Davis must: "perform whatever task assigned to me as long as it is not in violation of the law" but also that:

I will keep my ambulance clean; I will keep my station clean. The above includes, sweeping and mopping, dusting and washing down the premises. I will pickup paper or trash about the station. I will do laundry or

whatever task I am assigned by my supervisor or manager.

There is no showing that any other employee, especially an EMT, was ever required to submit to such treatment in order to retain his job.

Finally, on February 1 Davis was told to get his drug box in Portsmouth prior to reporting to Ashland at 6 a.m., and when his request that another medic crew know to be going from Portsmouth to Ashland transport was denied and he was warned to get the drug box at Portsmouth or take the day off, then rethought the matter and called back to say that under the circumstances he would have to leave the Company.

As with Wise, and otherwise discussed above, I find that the circumstances show that Davis was constructively discharged and that the General Counsel has met his overall burden and shown that the discharges of Davis and Vowell as well as Respondent other disciplinary action against them and the more onerous changes in their working conditions all violated Section 8(a)(1) and (3) of the Act, as alleged.

The discriminatory actions demonstrated most dramatically in the Wise, Davis, and Vowell situations were contemporaneous with the Respondent's adverse treatment of Carrie Bussa Pitts in early October and of April Pierson shortly thereafter, following the Respondent receipt of the Union's organizing notice. Pitts and Pierson also both attended union meetings on October 1, 15, and 29. Moreover, Adkins clearly knew that Pitts was the daughter of Linda Bussa (against whom he had directed his suspicious and antiunion animus), and his animus clearly may be found to be directed against both mother and daughter, compare *Tecmec, Inc.*, 306 NLRB 499 (1992), *Norco Products*, 288 NLRB 1185 (1988), and *Advertisers Mfg. Co.*, 280 NLRB 1185 (1986).

Pitts was never appraised of any management concerns about her attendance or absenteeism and after October 4, when she gave Adkins a medical release from her September 14 surgical procedure, Adkins encouraged her to call about being placed on the schedule and then proceeded to consistently tell her that nothing was available. Pitts had worked on weekends (Friday to Sunday) but stopped calling after 2 months of rejection but with no explanation except once being told to keep her fingers crossed. When she started Adkins had said that her availability on weekends would be great, because other dispatchers did not want to work on weekends and, here, no persuasive reasons are given for the Respondent's failure to place her on any weekend schedules in response to her frequent calls other than Caldwell's statement that "there was no effort not to schedule her" and his comment that he "assumed" she knew she "no longer was employed there," because she filed for unemployment compensation.

Clearly, the seeking of unemployment compensation when one is not recalled to work under the circumstances shown here provides no presumption or excuse for the Respondent's actions. Accordingly, I find that the General Counsel has met its overall burden of proof, and I conclude that Respondent's failure to recall Pitts for weekend work is shown to be a violation of Section 8(a)(1) and (3) of the Act, as alleged.

In mid-October, at the same time the Respondent is shown to have been engaged in other violation of the Act, Pierson agreed to Adkins requested change in her job assignment

from full-time dispatching to going on the road as an EMT "one or two days a week." Although she told him she wanted to remain a dispatcher, Adkin's then scheduled her as an EMT all the time and no longer scheduled her as a dispatcher. Adkin's asserts he was short-handed on EMTs but, after Pierson was switched to the road, she assertedly experienced a drop in work hours. Then, after some apparent confusion about her availability to work, partially affected by her being on jury duty, she was sent a certified letter on January 23, 1996, that stated that the Respondent had difficulty contacting her but that it had work available and that she should notify them by Friday, January 26, if she intended to continue working there. This was followed by a letter dated February 6, which referred to her absences in January, her failure to report off and its policy of "3 day of no show or no call in one year will result in automatic termination" the Respondent said she was terminated. Strangely, the termination letter did not refer to certified letter sent on January 23 or to the January 26 notice requirement.

Clearly, however, the January 23 letter contemplated that she was not "automatically terminated" for her problems in January. Pierson otherwise testified that she took another job about January 20 and thereafter was then not available to work for the Respondent. She also said that she obtained that position because of the diminished hours she experienced previously.

Here, it appears that the Respondent's illegally motivated and unjustified switching of Pierson's position was followed by at least a partial reduction in hours (beyond some hours that she requested off), followed by her obtaining alternative employment. The reduction in work is consistent with the Respondent's treatment of other union supporters, and I am not persuaded that it would have occurred, as it is inconsistent with the Respondent's claim that it changed Pierson from dispatch to the road because of an asserted shortage of EMTs, were in not for the union activities. Moreover, Pierson was not given any opportunity to return to her prior dispatching position, and I therefore conclude that both the reduction in work and the following termination were unjustified and in violation of Section 8(a)(3) of the Act as alleged.⁵

Based on the evidence discussed above, it is clear that Respondent was aware of Bussa's organizing activities as of August 24 and she was first disciplined the day after Risner told management that Bussa had spoken to her about a union. Bussa also credibly testified that on August 25 or 26 Station Manager Bowling told her that Adkins had chided her for not telling him that Bussa was trying to start a union, and I find that Bowlings inclusions testimony that she had "no memory of saying that" fails to refute the overall clear and believable testimony given by Bussa. Bussa had no previous discipline by Respondent, but she was abruptly given a suspension for advising the Company that she didn't think she was physically well enough to make a long trip that she was suddenly given as a change in an assignment. Despite credible testimony that another employee heard the call on the radio and volunteered to take the run, he was told not to and she was instructed to return to the station where she was immediately informed by Owner Adkins that she was

suspended and possibly terminated. Then, when she asked why, Adkins sarcastically said, "You were a good employee. You're sick." This was followed by an August 28 letter from Adkins (with no intervening investigation or interview), which escalated her expressed concern about the change in assignment into a "refusal" to transport a patient. The letter also threaten that future acts of "insubordination" could result in termination.

The complaint alleges that the Respondent changed Bussa vehicle assignment at this time, and I find an apparent tie in of this action with the Respondent's following refusal to allow employee Richards to take the long run (also on alleged violation), and the Respondent's extreme reaction in immediately suspending her at the same time shows that the alleged violations were strongly motivated by the Respondent's antiunion animus and it was specifically directed at Bussa. The Respondent offers no explanation for not permitting Richards to take the run, and I also find that its general explanation that employees are not assigned regular vehicles is not accurate. Although management clearly had the right to and did sometimes change vehicle assignments, the record also is clear from both testimony and a review of assignment records that some drivers or teams of employees were regularly or frequently given the same vehicle assignment for extended period of time and Bussa previously had been treated as one of the Respondent's more valuable employees. Here, the fact that Adkins briskly told her she had no business in the office and to get out and do her trips at the time she asked about the first change on August 25, without offering any explanation, leads me to conclude, in light of all the circumstances, that its generalized explanation is pretextual. Accordingly, I conclude that the Respondent has not shown that it would have changed Bussa's vehicle assignment and refused to excuse her from the long-distance run even in the absence of her union activities. I therefore find that the General Counsel has shown violations of Section 8(a)(1) and (3) of the Act as alleged.

After a brief period when it appeared that there was no obvious union activity, Bussa contacted the Charging Party Union, began seeking signatures for authorization cards and began holding and attending meetings. As discussed above, the Respondent reacted to this renewed threat of union activity by engaging in a series of unfair labor practices against many of those who had attended the union meetings in response to Bussa's efforts.

In late December, after she had filed an unfair labor practice charge against Respondent when she attempted to give it to him. Adkins refused a copy of her charge. Although the charge subsequently was withdrawn (her allegations were addressed in a charge filed by the Union) and, when Bussa reported to work on January 10, 1996, Adkins attempted to assign her to a 24-hour shift contrary to their oral agreement that she would not be assigned 24-hour shifts. Adkins questioned whether she had the agreement in writing. She said "no" and he said "Well if you don't want to work." Then, after a discussion in which Bussa spoke about the legality of getting less than 24 hours' pay for working 24-hour shifts, Adkins abruptly ordered her to rewash and wax her truck and to sweep the bay. Next, when she questioned the dispatcher about whether she should make the run or rewash and wax her truck, the dispatcher told her that she was not expected to do either job but to go home. On January 14, the dis-

⁵ Any questions relating to her actual availability at specific times can best be resolved in any necessary backpay proceeding.

patcher inquired about her availability to work in the event that two other employees failed to report to work and said nothing about suspension. The next day, however, Bussa called in and was told she was on suspension. Bussa then received a letter on January 17, 1996, which represented that she was being issued a 10-day suspension for her alleged insubordinate behavior on January 10. She thereafter called off sick for 3 days and then was told on January 26, that she was not on the schedule and that she needed a doctor's statement to return to work. Bussa did not call in after January 26 to report her unavailability for work and, before she could obtain a doctor's statement, she received a letter dated February 5, 1996, what stated that she was being terminated for excessive absenteeism.

Here, the Respondent has shown no justification for Adkins sudden order to rewash a vehicle and to sweep out the mechanic's bay. I also find that the Respondent's escalation of the overall event into a change of insubordination in view of the fact that her performance of these duties were inconsistent with her starting her assigned runs shows that the orders and the following 10-day suspension is based on pretextual reasons and is not legitimate. Accordingly, I find that these actions involving Bussa would not have occurred in the absence of Bussa's union activity and her filing of a charge just a few weeks earlier. Under these circumstances, I further conclude that the Respondent is shown to have imposed changes in working term and onerous work assignments and to have issued an unjustified suspension in violation of both Section 8(a)(4) and (3) of the Act, as alleged.

These illegal actions by the Respondent also set the stage for its termination letter to Bussa on February 5. It appears that as late as January 14 the Respondent would have scheduled Bussa (at its convenience, if two other employees were not available). She did nothing thereafter that would support termination under its progressive disciplinary procedure and its medical statement submission policy as described above. The Respondent's attempt to rely on its absentee and related policies in this regard is once again not persuasive, and I find that its supposed justification fails to overcome the General Counsel's showing that Bussa's discharge was motivated by her union activities. Moreover, the parallel timing of the discharges of both Bussa and Pierson and then Davis shortly after it had effectively engineered the departure of Bussa's daughter and two of the other union supporters who had attended organizational meetings in October supports the ultimate conclusion that the General Counsel had carried his overall burdens of proof and shown that the Respondent's action in terminating Bussa was because of his union activities and was in violation of Section 8(a)(1) and (3) of the Act, as alleged.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. At all times pertinent Paul Foyt was an agent of the Respondent and his conduct as an agent is attributable to the Respondent.
4. By threatening employees with closure of the business; threatening that employees who support the Union should be fired; informing employees that it would be futile for them

to select a union as their bargaining representative; threatening to rescind benefits and orally agreed-on working terms and conditions; interrogating employees about union activities; creating the impression that employees' union activities are under surveillance; and requesting an employee to disclose the status of the union organizational drive and to keep her ears open for information the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

5. By promulgating an overly broad no-solicitation, no-distribution rule and by promulgating and maintaining a more strict absenteeism policy the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

6. By discriminatorily changing the terms and working conditions of employees by rejecting employees request to switch assignments, to be assigned the use of a vehicle for an otherwise paid for service involving the employee's handicapped relative, and to pick up assigned vehicles and drug boxes; changing vehicle and job assignments; imposing more onerous working conditions and requiring employees to work weekend or 24-hour shifts contrary to oral agreements; and reducing the number of work hours assigned to employees Linda Bussa, John Davis, April Pierson, and Donald Wise, because of their union activity, Respondent has violated Section 8(a)(3) and (1) of the Act.

7. By discriminatorily suspending employees Donald Wise on October 17, 1995, Crystal Vowell and John Davis on November 22, 1995, Linda Bussa on January 17, 1996, and John Davis on January 18, 1996, refusing to recall Carrie Bussa Pitts to work since October 4, 1995, and by directly or constructively causing the termination of employees Crystal Vowell on November 22, 1995, Donald Wise on December 4, 1995, John Davis on February 1, 1996, Linda Bussa on February 5, 1996, and April Pierson on February 6, 1996; because of their union activities, Respondent has violated Section 8(a)(3) and (1) of the Act.

8. By discriminatorily changing the terms and working conditions and suspending and terminating Linda Bussa after she filed a charge with the Board, Respondent has violated Section 8(a)(4) of the Act.

9. Except as found here, Respondent otherwise is not shown to have engaged in conduct violative of the Act as alleged in the complaint.

REMEDY

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

With respect to the necessary action, it is recommended that Respondent be ordered to reinstate employees Linda Bussa, Carrie Bussa Pitts, John Davis, April Pierson, Crystal Vowell, and Donald Wise to their former jobs or substantially equivalent positions, dismissing, if necessary, any temporary employees or employees hired subsequently, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earn-

ings they may have suffered because of the discrimination practiced against them by payment to them of a sum of money equal to that which they normally would have earned from the date of the discrimination to the date of reinstatement in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁶

The Respondent also shall be ordered to expunge from its files any reference to the suspensions and discharges and notify all these employees in writing that this has been done and that evidence of the unlawful discharges and suspensions not be used as a basis for future personnel action against them. Otherwise, it is not considered necessary that a board Order be issued.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

The Respondent, Michael Adkins, d/b/a Portsmouth Ambulance Service, Portsmouth, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act, by threatening employees with closure of the business; threatening that employees who support the Union should be fired; informing employees that it would be futile for them to select a union as their bargaining representative; threatening to rescind benefits and orally agreed-on working terms and conditions; interrogating employees about union activities; creating the impression that employees union activities are under surveillance; and requesting employees to disclose the status of the union organizational drive and to keep their ears open for information.

(b) Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, by promulgating an overly broad no-solicitation, no-distribution rule and by promulgating and maintaining a more strict absenteeism policy, because of employees engaging in union or other protected concerted activity.

(c) Discriminatorily changing the terms and working conditions of employee by rejecting employees request to switch assignments, to be assigned to use a vehicle for an otherwise paid for service involving a handicapped relative and pick up assigned vehicle and drug boxes; changing vehicle and job assignments; imposing more onerous working conditions and requiring employees to work weekend or 24-hour shifts contrary to oral agreements; and by reducing the number of work hours assigned to employees because of their union or other protected concerted activity.

(d) Discriminatorily changing terms and working conditions and suspending and terminating employees because of their engaging in union or other protected concerted activities or because they filed charges with the Board.

⁶Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. §6621.

⁷If 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.

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

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

(a) Offer Linda Bussa, Carrie Bussa Pitts, John Davis, April Pierson, Crystal Vowell, and Donald Wise immediate and full reinstatement (or recall) and make them whole for all losses they incurred as a result of the discrimination against them in the manner specified in the remedy section in the decision.

(b) Within 14 days from the date of this Order rescind the no-solicitation, no-distribution rule and the strict absenteeism policy promulgated in October 1995.

(c) Within 14 days from the date of this Order, expunge from its files any reference to these terminations and suspensions and within 3 days thereafter notify the employees in writing that this has been done and that evidence of these unlawful terminations and suspensions will not be used as a basis for future personnel action against them.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Portsmouth and South Shore, Ohio, and Ashland, Kentucky facilities copies of the attached notice marked "Appendix."⁸ 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 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.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

⁸If 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 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 interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act, by threatening employees with closure of the business; threatening that employees who support the union should be fired; informing employees that it would be futile for them to select a union as their bargaining representative; threatening to rescind benefits and orally agreed-on working terms and conditions; interrogating employees about union activities; creating the impression that employees union activities are under surveillance; and requesting employees to disclose the status of the union organizational drive and to keep their ears open for information.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act, by promulgating an overly broad no-solicitation, no-distribution rule and by promulgating and maintaining a more strict absenteeism policy, because of employees engaging in union or other protected concerted activity.

WE WILL NOT discriminatorily change the terms and working conditions of employee by rejecting employees request to switch assignments, to be assigned to use a vehicle for an otherwise paid for service involving a handicapped relative and pick up assigned vehicle and drug boxes; changing vehi-

cle and job assignments; imposing more onerous working conditions and requiring employees to work weekend or 24-hour shifts contrary to oral agreements; and by reducing the number of work hours assigned to employees because of their union or other protected concerted activity.

WE WILL NOT discriminatorily change terms and working conditions and suspend and terminate employees because of their engaging in union or other protected concerted activities or because they filed charges with the Board.

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

WE WILL within 14 days from the date of the Board's Order offer Linda Bussa, Carrie Bussa Pitts, John Davis, April Pierson, Crystal Vowell, and Donald Wise immediate and full reinstatement and make them, whole for the losses they incurred as a result of the discrimination against them in the manner specified in the remedy section of the administrative law judge's decision.

WE WILL within 14 days from the date of this Order, expunge from its files any reference to these terminations and suspensions and within 3 days thereafter notify the employees in writing that this has been done and that evidence of these unlawful terminations and suspensions will not be used as a basis for future personnel action against them.

MICHAEL ADKINS D/B/A PORTSMOUTH AMBULANCE SERVICE