

Doctors' Hospital of Staten Island, Inc. and Local 1199, National Health and Human Service Employees Union, AFL-CIO. Case 29-CA-20687

May 13, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HURTGEN

On October 6, 1997, Administrative Law Judge Michael A. Marcionese issued the attached decision. The Respondent filed exceptions, a supporting brief, and a motion to reopen the record.¹ The General Counsel and the Charging Party filed answering briefs in opposition to the Respondent's exceptions and motion.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order as modified.⁴

¹ The Respondent requests reopening of the record so that it can submit evidence of the relevant work hours of all its Radiology Department employees. The Respondent contends that this is necessary because the judge noted that it had failed to put forth this evidence during the trial. The motion is denied because the Respondent does not allege that this evidence is newly discovered or has become available only since the hearing, nor does it state why the evidence was not presented previously. See Board's Rules and Regulations, Sec. 102.48(d)(1).

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. No exceptions were filed to the judge's finding that the Respondent unlawfully promulgated and maintained rules which prohibited employees from distributing union materials in nonwork areas during the employees' nonworking time.

³ We adopt the judge's conclusion that the Respondent's claim of misconduct by Mantione was pretextual. However, in doing so, we do not rely on the judge's statement that the Respondent failed to prove that Mantione had *in fact* engaged in misconduct. The Respondent's burden (to rebut the General Counsel's *prima facie* case) was simply to show that the Respondent possessed a good-faith belief (e.g., not one that was the result of a discriminatory failure to investigate) that Mantione engaged in misconduct and that belief was the motivating cause of the discharge. Compare *Goldtex, Inc.*, 309 NLRB 158, 169 (1991) (discharge lawful where motivated by the employer's reasonable belief that employee had engaged in misconduct) with *Teksid Aluminum Foundry*, 311 NLRB 711, 725-726 (1993) (discharge unlawful where employer, for discriminatory reasons, failed to investigate the basis of reports concerning an alleged death threat by the discharged employee). We agree that the Respondent did not meet its burden here.

⁴ In accordance with our decision in *Excel Container, Inc.*, 325 NLRB No. 14 (Nov. 7, 1997), we have modified the Order to require that, in the event that the Respondent goes out of business or closes its facility during the pendency of these proceedings, the Respondent shall mail a copy of the notice to all employees employed

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Doctors' Hospital Of Staten Island, Inc., Staten Island, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(g).

“(g) Within 14 days after service by the Region, post at its facility in Staten Island, New York, copies of the attached notice marked ‘Appendix.’⁵ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 16, 1996.”

by it as of September 16, 1996, the date that the first unfair labor practice occurred, rather than the date the charge was filed.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Richard Bock, Esq., for the General Counsel.
Marsena M. Farris, Esq., for the Respondent.
Elizabeth A. Baker, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. This case was tried in Brooklyn, New York, on July 23, 1997. The charge was filed by Local 1199, National Health and Human Service Employees Union, AFL-CIO (the Union) on February 3 and amended April 1, 1997. The complaint issued April 3, 1997, alleging that Respondent, Doctors' Hospital of Staten Island, Inc., violated Section 8(a)(1) of the Act by promulgating and maintaining a rule prohibiting distribution of union materials at Respondent's facility, and violated Section 8(a)(3) of the Act by reducing the work hours of John Mantione on October 1, 1996, and discharging Mantione on January 19, 1997. Respondent filed an answer to the complaint denying these allegations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs

filed by the General Counsel, Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is engaged in the operation of a hospital providing health care services at its facility in Staten Island, New York, where it annually derives gross revenues in excess of \$250,000 and purchases and receives goods and materials valued in excess of \$5000 directly from points outside the State of New York. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

Respondent operates a 117-bed hospital and employs approximately 280 full-time equivalent employees at its facility on Staten Island. The Union commenced an organizing campaign among Respondent's employees in about April 1996.¹ Peter Montanino, Respondent's assistant executive director of operations and an admitted supervisor and agent of Respondent, testified that he became aware of the union activity at the facility in July. John Mantione, who was employed at the time as a per diem x-ray technologist, testified that he attended his first union meeting on July 25 at a location outside the hospital. Mantione signed a card at this meeting to volunteer for the organizing committee, agreeing to assist the Union in its efforts. His testimony was corroborated by Denise Allegritti, the Union's staff organizer assigned to direct this campaign.

Mantione testified further that, on July 26, the day after Mantione attended his first union meeting, Montanino called a meeting of employees in the radiology department. According to Mantione, Montanino told the employees that he believed their was unionization going on in the hospital and that Montanino wanted to give the employees the facts. Montanino told the employees that the Union was trying to recruit people to spread their propaganda, but not to believe their lies. Montanino further advised the employees that the Union would try to get them to sign cards, but that the employees should not sign them because Respondent would know who signed. Montanino said that Respondent had ways of getting information, just like the Union did. Apparently to prove this point, Montanino looked directly at Mantione and said: "we know at least one person from x-ray has attended at least one union meeting." According to Mantione, Montanino continued by saying that Respondent was a small hospital, that if the employees signed cards and forced the Union to come into the hospital, Respondent would not be able to afford the benefits package and wage increases and would have to close its doors. Montanino also told employees at this meeting that a lot of people, even if they got involved with the Union, would not be eligible to be in the Union because there are many tiers in the Union. Mantione testified that he asked Montanino if per diems would be able

to get in the Union and Montanino replied: "No, you don't count."²

Montanino admitted holding a meeting with radiology department employees in July and discussing his personal experiences with the Union. Montanino further admitted at the hearing that he told employees that Respondent would find out who signed union cards. According to Montanino this statement was made in the context of his experience that, on the filing of a petition for an election, the employer sees the union cards to determine who is eligible. Montanino admitted further that he told employees at this meeting that per diem employees would not be eligible to vote in a union election. He denied saying anything about the Union directly to Mantione and further denied being aware of Mantione's involvement in the Union. This latter testimony was contradicted by an affidavit Montanino signed during the investigation in which he admitted becoming aware of Mantione's involvement with the Union some time in the summer. I credit the testimony of Mantione regarding this meeting. His recollection of the meeting was more detailed than that of Montanino. Moreover, Montanino corroborated Mantione regarding some of the statements attributed to him and did not specifically deny others. Finally, Montanino's testimony at the hearing was at times inconsistent and contradicted by his pretrial affidavit, making him an unreliable witness.

There is no dispute that Mantione openly displayed his support for the Union in September when he and Allegritti handed out leaflets outside the entrance to the hospital and in the parking lot. One of the leaflets invited employees to attend a union meeting on September 10, establishing that this activity occurred before that date. Montanino admitted seeing Mantione engaged in this activity and further admitted that he sent a security guard to tell them to move. As part of his responsibilities, Montanino supervises the security department.

It is also undisputed that, on September 16, Montanino held another meeting with radiology department employees. Minutes of this meeting, signed by Montanino, reveal that he told the employees that:

[U]nion meetings are still being held on Wednesday evenings. Union propaganda continues to be spread. Mr. Montanino again reiterated the "pros and cons" regarding unions such as "1199." He also stated that union materials can only be distributed outside the hospital. No union propaganda is to be posted on cork boards or anywhere else on the hospital premises. Mr. Montanino should be notified if staff members will not remove it.

Mantione's testimony regarding what Montanino said about posting and distributing union literature is consistent with the minutes signed by Montanino.

² Counsel for the General Counsel conceded at the hearing that any allegation that Montanino's statements at this meeting were unlawful was time-barred under Sec. 10(b) of the Act. The General Counsel stated that this evidence was offered to establish Respondent's antiunion animus. The Board has found such statements are relevant to animus, even though they cannot be found unlawful. See *Douglas Aircraft, Inc.*, 307 NLRB 536 fn. 2 (1992). See also *Gencorp*, 294 NLRB 717 fn. 1 (1989).

¹ All dates are in 1996 unless otherwise indicated.

At the hearing, Montanino attempted to clarify the no-distribution rule reflected in the minutes of the meeting. According to Montanino, union material had been found posted throughout the hospital, on bulletin boards, walls, lockers in locker room areas, and left on the windshields of cars in the parking lot. Montanino testified that he was also concerned about nonemployee union organizers coming into the hospital handing out union literature. Montanino testified that, in his statements at the meeting, he meant to limit employee solicitation and distribution only in patient care areas and that when he told employees such distribution could only be done outside the hospital, he did not include the cafeteria in that prohibition. He acknowledged that the cafeteria is hospital property and that there is a bulletin board in the cafeteria for use by employees to post personal notices.

Respondent already had a rule prohibiting solicitation and distribution during working time and in patient care areas. A copy of the written rule was submitted into evidence. The rule is silent regarding posting of literature on bulletin boards. Montanino conceded that the rule, which permits solicitation and distribution during breaks and mealtime and specifically defines patient care areas, is not generally distributed or communicated to employees. Rather, it is kept in a sizable "Personnel Policies and Procedures Manual" which is accessible to employees on request, but not generally distributed. Montanino also conceded that he did not mention this policy at the September meeting or any subsequent meetings at which the no-distribution rule was reiterated and that the written rule was not posted. Montanino also admitted that he did not expressly refer to patient care areas in his meetings with employees. Regardless of what Montanino meant to say at the meeting, I find based on the testimony of Mantione, as corroborated by the minutes of the meeting and Montanino's pretrial affidavit, that he told employees that they could distribute union literature only outside the hospital and could not post union materials anywhere on Respondent's premises.

Mantione also testified in more detail regarding Montanino's comments about the Union at the September 16 meeting. According to Mantione, Montanino said that Respondent knew who was involved, that it was mainly dietary and housekeeping. When Montanino began to "badmouth" the Union, Mantione spoke up and asked why are unions so bad and related his good experience as a member of the Laborers' Union before becoming an x-ray tech. Montanino then asked Mantione why he was so interested in the Union since he is a per diem and can't vote. Montanino described his experience as an 1199 member and being on strike while union officials spent union funds on lavish meals. Montanino admitted at the hearing that Mantione spoke up at this meeting and asked what was so bad about unions. Montanino's testimony regarding what he told employees about his personal experience as a union member is also consistent with Mantione's testimony.

Mantione further testified, regarding the September 16 meeting, that Montanino announced that there was an opening for an x-ray tech in the stereotactic unit. According to Mantione, Montanino said that he understood that Mantione was in line for a full-time position, but that Respondent was

going to hire a woman for this position.³ Montanino's minutes from this meeting show that he did announce a job opening for a per diem, rather than a full-time, x-ray tech with mammography experience preferred. Mantione further testified that Montanino finished the meeting by saying that anyone who hadn't yet received their yearly evaluation should see Montanino before he left the floor. According to Mantione, he approached Montanino after the meeting and told him that he had not received an evaluation and that Montanino chuckled and said, as he walked away, "you won't be needing it." Montanino denied saying anything about yearly evaluations at this meeting, testifying that all employees receive their annual evaluations in January, regardless of their respective anniversary dates, and that therefore no evaluations were due in September. Again, I credit Mantione as a generally more reliable witness.

Mantione's union activities continued after this meeting. He testified that he signed a union membership card on October 2, but conceded that he did not know whether Montanino or any other representative of Respondent was aware of this. Respondent was aware, however, that Mantione again leafleted in Respondent's parking lot on behalf of the Union in December. Mantione testified that Dr. Surapaneni, chief of radiology, and Stephen Anderson, Respondent's chief executive officer, took leaflets from him and that Montanino observed his activity. Montanino admitted observing Mantione leafleting in December. Montanino also admitted that he continued to talk about the Union at radiology department meetings on November 20 and January 10, 1997. The minutes of those meetings, neither of which was attended by Mantione, reflect that Montanino repeated the no-distribution rule he had first announced in September and talked about the "pros and cons" of unions at both meetings.

Mantione testified that, after he became involved with the Union, he noticed a change in Respondent's treatment of him with respect to scheduling. Mantione acknowledged that he was hired as a "per diem" employee and that this meant he did not have a fixed schedule and received no benefits. Instead, he would be called to work, as needed. Mantione further testified that from the time he started, in August 1995, until approximately March 1996, he would generally be called by Isolina Perez either the day before, or the same morning, and asked to come in to work a shift.⁴ There is no dispute that Mantione never turned down an opportunity to work and was considered a reliable and dependable employee. This is reflected in his January 1996 evaluation prepared by Montanino, which is the only one Mantione received during his tenure with Respondent. Earnings statements introduced into evidence from this period show that

³The stereotactic unit does mammographies in conjunction with needle biopsies and Respondent's policy generally is to employ women to do mammography and related procedures.

⁴Perez is now the radiology department supervisor, having been promoted in March 1997. At the time of the alleged unfair labor practices, she was employed as a full-time x-ray technologist with additional responsibilities, including scheduling employees. No party contends that she was a supervisor prior to March 1997. Moreover, the evidence in the record suggests that whatever authority she had was limited to carrying out the instructions of Montanino, who admittedly was in charge of the department.

Mantione averaged 59 hours regular time and about 11 hours overtime biweekly.

According to Mantione, in about March, he was asked to work the Sunday 4 p.m. to the midnight shift and the on-call shift on a regular basis. The latter shift covers the period between midnight and 7 a.m. when no x-ray technologist is on duty at the hospital. The x-ray tech assigned to this shift carries a beeper and, if an x-ray is needed during those hours, is paged to come in. The person working this shift receives a salary for carrying the beeper and is paid for any hours actually worked when called in. Mantione testified that Perez told him that Montanino asked her to offer Mantione the on-call shift and that the job was his as long as he wanted. Mantione further testified that, beginning in about March, not only did he work the Sunday evening shift and on-call, but he continued to be called in to work regularly for other shifts, sometimes being asked to work a particular shift for a full week. His earnings statements for the pay periods ending April 13 through August 3 show that he averaged 103 hours regular time and 16 hours of overtime biweekly. His gross earnings, including call and miscellaneous pay, averaged approximately \$3000 biweekly during this same period.

Respondent's witnesses, Montanino and Perez, admit that Mantione was asked to take the on-call shift when the per diem employee who previously was assigned this shift resigned. They do not dispute that Mantione was regularly assigned the Sunday evening shift, or that he was regularly scheduled to work other shifts during this period. According to Respondent's witnesses, Mantione worked so many hours during this period because he was the only per diem who did not have a job elsewhere and because Respondent was short staffed in radiology due to the resignations of several full-time technologists and vacations being taken by two long-term employees who had to use accumulated vacation or lose it.

Mantione testified that after he attended his first union meeting and Montanino held his meeting with the employees on July 26, Perez began to send him home in the middle of a scheduled shift, or to call him in on short notice and then, shortly after he got there, send him home. In both instances, according to Mantione, Perez told him it was Montanino who instructed her to send Mantione home. Mantione identified only two occasions when this happened. Perez and Montanino admit this occurred on a couple occasions but testified that this was consistent with Respondent's practice of sending employees home during a shift if, due to cancellations of procedures, it found itself overstaffed on a given shift. Under this practice, per diem employees were asked to go home before full-time employees. The complaint does not allege, and I do not find, that these isolated incidents constitute discrimination in violation of Section 8(a)(3) of the Act. Moreover, I note that Mantione's earnings statements from the period ending August 17, the first pay period after his involvement with the Union began, through the period ending October 12, show that he worked an average of 91.5 hours regular time and 8.5 hours overtime biweekly and grossed an average of approximately \$2600 biweekly. This does not represent a significant reduction in Mantione's work hours.

Mantione further testified that, in October, after he had leafleted and spoken up at the September 16 meeting, he found that his hours were drastically reduced and that an 8

a.m. to 4 p.m. shift he had been working and had told Perez he was available to continue working in October, was assigned to someone else. In contrast to the slight decline in Mantione's hours and earnings between July and October, his earnings statements from the pay period ending October 26, the first one covering work scheduled after the September 16 meeting, through the period ending January 4, 1997, show that Mantione averaged little more than 47 hours regular time biweekly and had no overtime. His gross biweekly earnings averaged about \$1400, less than half his previous average.

Perez admitted that she reassigned a shift for which Mantione had previously been scheduled based on Montanino's instructions to rotate shifts among the new per diems. There is no dispute that, when Mantione asked why his hours were being taken away, Perez told him to see Montanino. Shortly thereafter, Mantione encountered Montanino in Perez' office. Montanino said that he heard that Mantione wanted to speak to him. Mantione denied making such a request, but said, "since you're here, I don't understand what's going on. I've always been a good worker and dependable, but all of a sudden, in July you start sending me home, or calling me into work only to send me home. I don't understand why you're doing this." Montanino replied that he couldn't justify Mantione's hours anymore and that he was going to save the department money by cutting his hours. Montanino admitted having a conversation with Mantione in which he gave Mantione this reason for the reduction in his hours.

Respondent's witnesses denied taking any action to reduce Mantione's hours because he attended the union meeting in July, leafleted in September, and spoke up at Montanino's meeting in September. According to Perez and Montanino, Mantione's earnings and hours declined slightly because Respondent had hired two per diems in July, Paul Ventura and John DiScipio, and one in September, Ann Marie Coletti, and had more people available to work. As noted above, however, Mantione's hours did not significantly decline after Ventura and DiScipio were hired in July. Montanino also testified that the excessive amount of overtime that Mantione had been working since March had "blown the overtime budget for the department." According to Montanino, in view of losses in revenue Respondent had suffered, it was necessary to reduce expenses throughout the hospital and one way to do that was to spread the work among the per diems more equitably to reduce the amount of overtime.⁵ However, Montanino admitted that its records showed that Coletti, one of the new employees, worked 66.25 hours of overtime in the fourth quarter. There is no evidence regarding how many regular hours Ms. Coletti worked, nor how many hours the other new per diem x-ray technologists were working during this period.

Mantione testified that, in December, after he leafleted the second time, Perez called him and told him that Mantione would no longer be working the on-call shift, that those hours were being spread out among the other per diems.

⁵ To prove that Respondent had lost money, Respondent offered the 1996 audited financial statements which show year-end results for calendar year 1995 and 1996. Obviously, these financial statements were not available to Montanino at the time he made the decision to reduce expenses by reducing overtime in the radiology department.

When Mantione asked why, Perez repeated that Montanino wanted to spread out the work and suggested that Mantione call Montanino if he wanted a further explanation. Mantione admitted that he did not speak to Montanino about this. Later in December, when Perez called Mantione to invite him to the department Christmas party, he asked her why he was being alienated from the department and not being called to work. Perez told him that Montanino had instructed her not to call him in. Mantione testified that he last worked a regular shift in December and that he had not been assigned any hours, nor called into work since then. His earnings statements for January 1997, however, show that he did work 9 hours during the first pay period and 7 hours in the second pay period of the month. Although Mantione testified that these were hours he was called in while still on call, they appear more consistent with Perez' testimony that the last time he was scheduled was an on-call shift on January 13, 1997, and the Sunday evening shift (4 p.m. to 12 a.m.) on January 19.

Perez and Montanino admit that a decision was made to take away Mantione's Sunday evening shift and his on-call shift, effective the beginning of January. Montanino testified that this was a business decision to reduce overtime costs and to spread work around more equitably among the per diem employees. According to Montanino, the newly hired per diems were asking for more hours and he had to satisfy them in order to keep them. Montanino admitted that the call shift had historically been assigned to one employee and was not rotated and that on-call pay is not counted in overtime hours. As noted above, no evidence was offered to show how many hours the new per diems actually worked, other than Coletti's overtime hours.

Respondent's witnesses further testified that, after Respondent began rotating the hours in the radiology department, causing a decline in hours and earnings for Mantione, his attitude changed. Montanino testified that Mantione became aggressive and belligerent after Respondent began to rotate the call shift. He testified that he received reports from Perez and others in the department that Mantione was using derogatory names to refer to Montanino and that incidents of vandalism and theft began to occur which he attributed to Mantione. Montanino admitted that he never heard Mantione refer to him with a derogatory name personally. He also admitted that he had no proof that Mantione was responsible for the incidents of theft and vandalism and that he never confronted Mantione with these allegations. According to Mantione, he was afraid to confront Mantione because of Mantione's intimidating nature. Instead, he told Perez to let him stay on the schedule, but not to call him for any more hours. When asked specifically why he never issued a warning to Mantione for this alleged misconduct, Montanino replied: "why would I warn somebody that I'm only getting hearsay on? I can't go by what everybody else is telling me."

In an attempt to prove that Mantione in fact engaged in misconduct, Respondent offered the testimony of Perez and employee Michael Esposito. Perez testified that she complained to Montanino about Mantione's attitude. She could not recall when she made this complaint and, when asked what she complained about, she testified that Mantione would "stare people down and make people feel uncomfortable doing it." She also testified about a telephone call she

received from Mantione on Sunday, January 5. According to Perez, Mantione had gone to work at 4 p.m. that day in the apparent belief he was still working the Sunday evening shift. When he found that Coletti was working that shift, he called Perez at home and angrily demanded to know why he was taken off the 4 p.m. to 12 a.m. shift. When Perez told Mantione to call Montanino because it was his decision to rotate the shifts, Mantione referred to Montanino as a "little fat [expletive]" and hung up. Perez wrote up a report of this call and gave it to Montanino the next day.

Esposito, a full-time x-ray technologist who worked the 4 p.m. to midnight shift during the week, testified that Mantione came into the department on the evening of January 8 and said he wanted to make some copies. Mantione was not scheduled to work at the time. Esposito testified that Mantione said he needed the copies for his case with the Labor Board, but Mantione did not tell him what he was copying and Esposito did not see what Mantione copied. Esposito also testified that he did not see Mantione take any original documents when he left. While Mantione was there, he spoke to Esposito about the Union. According to Esposito, this was a casual conversation between coworkers and Mantione did not speak negatively about the department. Esposito testified that, in accordance with his normal practice, he wrote a report about this encounter. Esposito explained that he does this to protect himself in the event anyone has a question about incidents occurring on his shift because he is the only employee on duty during those hours. He also testified that, by writing a report and leaving it for the day shift, he hopes to avoid being called the next day at home with questions while he is trying to sleep. Respondent offered into evidence a typed report from Esposito dated January 10, 2 days after the incident. The report, which states that Mantione was copying work schedules, contradicts Esposito's testimony that he did not know or see what Mantione was copying. Although the report indicates he is writing it to inform Montanino of the presence of an off-duty employee in the department, Esposito acknowledged in his testimony that it is common for employees to hang around the hospital even when not scheduled to work.

Perez also testified about this incident on January 8, 1997. She testified that she arrived for work on January 10 to find her file cabinet broken into and the work schedules from early 1996 to late 1996 missing. She prepared an incident report and gave it to Montanino. Perez testified that the file cabinet is in the reception area accessible to many employees and that she did not suspect Mantione when she wrote the report. According to Perez, she wrote the report so that it could be investigated to determine who broke into the cabinet. There is no evidence that any investigation was ever conducted. No explanation was offered for the gap in time between Mantione's alleged visit to the department on January 8, 1997, and the preparation of written reports by Esposito and Perez on January 10, 1997.

Montanino testified that he also received a report from Coletti about vandalism she discovered when she was called in after midnight to do a call shift. This allegedly occurred immediately after Mantione had worked his last shift, from 4 p.m. to 12 a.m. on January 19, 1997. Montanino reports that Coletti found the department in a shambles with x-ray film exposed and strewn about, an ionic iodine solution squirted over equipment which had crystallized and view

windows taped over. According to Montanino, this was the last straw and he decided after that not to call Mantione for work any more. Coletti was not called as a witness and no written report of this incident was offered into evidence.

Finally, Respondent offered testimony from Esposito about an incident on February 6, 1997, when Mantione came to the department to pick up his paycheck. At the time, Respondent was no longer assigning Mantione any hours. Esposito testified that he told Mantione, pursuant to instructions from Montanino, that Mantione could not get his check until he returned the call beeper. Mantione became angry and started cursing Respondent and Montanino and punched a door. Mantione left the department at the same time that Esposito left to get dinner. Esposito testified that after he returned, he discovered the key to the portable x-ray machine missing and reached the conclusion that Mantione had taken it because only an x-ray tech would know what the key looked like.⁶ Esposito also wrote a report of this incident which, in contrast to his earlier report, was handwritten. Esposito admitted that he didn't know if the key was there before he went to dinner because he had not yet done a portable that shift. He also admitted that he wrote the report to protect himself because he did not want to be held responsible for the missing key.

Mantione specifically denied engaging in the misconduct alleged, although he admitted that he punched a door when he went to Respondent's facility to pick up his paycheck on February 6, 1997. By that time, the Union's attorney had already faxed a letter to Respondent's chief executive officer, with a copy to Montanino, accusing Respondent of harassing and retaliating against Mantione because of his support for the Union by "eviscerating his schedule" and advising Respondent that the Union was filing a charge with the NLRB on Mantione's behalf. Mantione had not yet been told that he was discharged when he went to pick up his paycheck.

B. Analysis and Conclusion

1. No-distribution rule

The Board, with approval of the Supreme Court, has held that a health care employer may not lawfully prohibit employee solicitation and distribution during nonworktime in nonwork areas unless it can show that such a restriction on employee exercise of statutory rights is necessary to avoid disruption of health care operations or disturbance of patients. *NLRB v. Baptist Hospital*, 442 U.S. 773 (1979); *Beth Israel Hospital v. NLRB*, 437 U.S. 483 (1978); *St. John's Hospital*, 222 NLRB 1150 (1976), *enfd.* in part 557 F.2d 1368 (10th Cir. 1977). Rules which prohibit employee solicitation and distribution in immediate patient care areas, such as patient rooms, operating rooms, places where patients receive treatment and adjacent corridors, and waiting rooms have been found presumptively lawful. *Id.*; *Intercommunity Hospital*, 255 NLRB 468 (1981). Rules which extend beyond such areas to include places such as the cafeteria, main lobby, entrances, and gift shops, have been struck down by the Board as overly broad. *Southern Maryland Hospital Center*, 293 NLRB 1209, 1220 (1989), *enfd.* in relevant part 916 F.2d 932 (4th Cir. 1990). General prohibitions on solicitation

⁶The key is apparently disguised to look like a knob on a drawer or stove.

and distribution anywhere on hospital property are presumptively invalid. See *Health Care & Retirement Corp.*, 310 NLRB 1002, 1005 (1993).

The Board has also held that, while employees do not have a statutory right to use an employer's bulletin board, such use receives the protection of the Act when an employer permits its employees to use bulletin boards for the posting of personal notices. In these circumstances, an employer may not remove union notices or discriminate against employees who post such notices. *Container Corp. of America*, 244 NLRB 318 fn. 2 (1979). See also *Liberty House Nursing Home*, 236 NLRB 456 (1978).

Here, as found above, Montanino told employees at the meetings on September 16, November 20, and January 10, 1997, that they could only distribute union materials "outside the hospital" and that union propaganda could not be posted "on cork boards or anywhere else on the hospital premises." Montanino conceded that Respondent has a cafeteria where employees spend meal and break times and a bulletin board in the cafeteria where employees may post personal notices. Thus, the rule announced at this meeting encompasses nonwork and nonpatient care areas and is presumptively unlawful.

In defense, Respondent takes two approaches. First, it relies on the written solicitation and distribution rule contained in the personnel policies and procedures manual. While this rule may be presumptively valid under current Board law, there is no evidence that employees were aware of it. Montanino concedes he did not quote this rule, nor post or otherwise distribute it during his meetings with employees. In fact, there is no evidence that this rule has ever been communicated to any employee. Moreover, the written rule is silent with regard to posting of notices by employees within the hospital, a subject addressed by Montanino in the meeting. Thus, the only rule employees in the radiology department were told about is the overly broad rule set forth in the minutes of the meetings.⁷

Respondent also argues that Montanino's rule was valid because, in light of the size and physical layout of Respondent's facility, all areas of the hospital are patient care areas. While it may be true that the radiology department and adjacent areas, which include the corridor separating radiology from the emergency room and patient waiting rooms, is a patient care area, Montanino did not limit his prohibition to this area. On the contrary, he barred employees from distributing literature anywhere inside the facility, presumably including the cafeteria and any other nonwork areas. Respondent offered no evidence to show that a restriction on protected activity in the cafeteria, for example, was necessary to avoid disruption of health care operations or disturbance of patients. Similarly, while it may have been proper for Respondent to have prohibited posting of union notices on cork boards, walls, and other locations within the radiology department and other patient care areas, his announced prohibition was much broader and would apply even to the bulletin

⁷Respondent, on brief, makes much of the fact that no more than 5-10 employees attended these meetings. The overly broad rule announced by Montanino would be unlawful even were it communicated to only one employee because it would interfere with that employee's right to engage in protected activity.

board in the cafeteria which employees had been permitted to use to post personal notices.⁸

Having considered the evidence in the record and the arguments on brief, I conclude that Respondent has violated Section 8(a)(1) of the Act since September 16, as alleged in the complaint, by promulgating and maintaining an overly broad no-distribution rule.

2. Alleged discrimination against Mantione

In cases under Section 8(a)(1) and (3) which turn on employer motivation, the Board requires the General Counsel to establish a prima facie case that protected activity was a motivating factor in the employer's allegedly unlawful conduct. On such a showing, the burden shifts to the employer to establish that it would have taken the same action even in the absence of protected activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Accord: *Fluor Daniel, Inc.*, 304 NLRB 970 (1991); *Beth Israel Medical Center*, 292 NLRB 497 (1989). The Supreme Court approved the Board's burden-shifting analysis in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). The essential elements of General Counsel's prima facie case are protected activity, employer knowledge of that activity, antiunion animus and timing. Employer motivation may also be inferred from the totality of circumstances. *Abbey's Transportation Services*, 284 NLRB 698, 701 (1987), enfd. 837 F.2d 575 (2d Cir. 1988). It is also well settled that, where an employer's stated motive is found to be false, an inference may be drawn that the true motive is an unlawful one that the employer seeks to conceal. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966).

In the instant case, the General Counsel has clearly made out a prima facie case of discrimination. Thus, there is no dispute that Mantione was involved in union activity and that Respondent was aware of this activity. Montanino admitted in his pretrial affidavit that he knew during the summer that Mantione supported the Union, and testified at the hearing that he saw Mantione leafletting on behalf of the Union at Respondent's facility in September and December. Montanino further acknowledged that Mantione spoke up in favor of the Union at the September 16 radiology department meeting. Respondent's antiunion animus is established by the finding above that Respondent promulgated an unlawfully overbroad no-distribution rule on September 16, and reiterated it in meetings with employees on November 20 and January 10, 1997. Moreover, Montanino's statements to employees at the July 26 meeting included a threat to close the hospital if employees selected union representation and statements creating the impression that employees' union activities were kept under surveillance. Such statements would be unlawful but for the expiration of the Section 10(b) statute of limitations and provide further evidence of Respondent's hostility toward its employees' exercise of their statutory right to form, join, or assist a union. Finally, the evidence in the record supports Mantione's testimony that it was not

⁸In his testimony, Montanino also cited his concern with union notices being posted on lockers in locker rooms and left under windshields on cars in the parking lot. Such locations clearly are non-work, nonpatient care areas. This testimony confirms that the broad reach of the rule he announced at the meetings was intended.

until he openly displayed his support for the union that Respondent reduced his hours and ultimately stopped offering him work as a radiologic technologist, thus satisfying the element of timing.

In order to rebut this prima facie case, Respondent asserts that Mantione's hours would have been reduced even absent his union activity because of a business decision to reduce overtime hours in the radiology department and because Respondent needed to rotate hours more equitably among Mantione and new per diem technologists who were hired between July and November. Respondent further asserts that it stopped assigning Mantione shifts and calling him for work because of serious misconduct attributed to Mantione, including disparagement of his supervisor and theft and vandalism of hospital property. As the Board has noted, it is not enough for an employer to merely assert a good reason for its allegedly unlawful action. In order to rebut a prima facie case of discrimination, the employer must show by a preponderance of the evidence that it would have taken the same action for the asserted reasons in the absence of protected activity. *Abbey's Transportation Service*, supra; *Peter Vitalie Co.*, 310 NLRB 865, 871 (1993).

There is no dispute that, prior to his involvement with the Union, Mantione was considered a satisfactory employee who was dependable, and willing and able to work whenever needed. Payroll records establish that, in fact, Mantione worked long hours to assist Respondent at a time when it was short-staffed in the radiology department because of resignations and vacations of full-time employees. Respondent argues that the need for Mantione to work such long hours ended when Respondent hired additional per diem employees who were also available to work the hours previously offered only to Mantione. Moreover, according to Montanino, as a result of being the only per diem available to work whenever needed, Mantione worked an extraordinary number of overtime hours, particularly in the third quarter of 1996. Montanino testified that Mantione "blew" the department's overtime budget single handedly. Montanino further testified that it was necessary to reduce expenses, including overtime, because Respondent had lost \$2 million in revenue in 1996 and that Mantione's hours were reduced to accomplish this savings.

Although it may be true that the hiring of additional employees who were available to fill open shifts would have a tendency to reduce the hours worked by Mantione, Respondent has not proved by a preponderance of the evidence that Mantione's hours would have been reduced as drastically as they were absent his union activity.⁹ If, as Montanino claimed, he sought to keep the new per diem technologists happy by rotating shifts and call-ins, one would expect an "equitable" distribution of hours among the per diems. However, the record reflects that between October and January 1997, Mantione went from working essentially full time, averaging more than 80 hours regular time every 2 weeks with additional overtime, to working only one shift per pay

⁹Respondent focuses on Mantione's total earnings on a quarterly basis and argues that his earnings decreased by only \$900 between the third and fourth quarters. This method of considering the evidence ignores the downward trend in hours worked and earnings which is plainly shown on Mantione's biweekly earnings statements and which culminates in January 1997 with his working only 7.5 hours per period and earning only \$158.25 in his last pay period.

period. Moreover, payroll records show that Mantione worked no overtime after October 12. Montanino admitted that Ann Marie Coletti, an inexperienced per diem hired right out of school in September, worked more than 66 hours of overtime during this same period.¹⁰ Because Respondent did not offer payroll records to show how many hours other per diem's worked during the same period that Mantione's hours were reduced, it has not carried its burden of showing that shifts and hours were rotated "equitably" among per diems, the asserted goal of Montanino's actions, once a full complement of per diems had been hired.¹¹

Moreover, Respondent did not seriously dispute Mantione's testimony that, in March, he was asked to work the Sunday evening shift and the on-call shift as his regular shifts and that he continued to be regularly assigned these shifts through December. Montanino acknowledged that, prior to December, the on-call shift had always been assigned to one employee. Respondent offered no explanation for admittedly taking these shifts away from Mantione in December. Because the on-call shift did not count as overtime, and because Mantione could have worked his regular Sunday evening shift without incurring overtime if other hours were being assigned equitably, Respondent's asserted need to reduce overtime costs does not explain this decision. Nor does the hiring of additional per diems explain the departure from Respondent's historic practice of not rotating the on-call shift.

Finally, Respondent has not proved that lost revenues were the cause of the actions it took against Mantione. As noted above, the year-end financial statements offered into evidence to show Respondent's loss in revenue during calendar year 1996 were obviously prepared after Montanino made the decision to take shifts and hours away from Mantione. No other contemporaneous evidence was offered to establish that there was a particular need to reduce expenses at the time Montanino made his decision which would have resulted in the drastic reduction in Mantione's hours after October 1996. As noted above, the 66 hours of overtime worked by Coletti in the fourth quarter of 1996 belies any real effort to reduce overtime expense in the radiology department. Respondent also did not offer any evidence to show any other steps it took to reduce expenses around the time that actions adversely affecting Mantione were taken. Based on the above, I conclude that the asserted business justification for reducing Mantione's hours during the period from October through January 19, 1997, was pretextual and that the true motivation was retaliation against Mantione for his open support of the Union.

The complaint also alleges that Respondent discriminatorily discharged Mantione on January 19, 1997. There is no dispute that January 19, 1997, was the last date that Mantione was scheduled for work and that Respondent

¹⁰ Absent records to the contrary, it must be inferred from the amount of overtime Coletti was working that she also was working a substantial amount of hours at regular time as well. Overtime ordinarily would not be paid unless an employee had worked a full 8 hours/day, or 40 hours/week.

¹¹ Respondent asserts that it hired five new per diem employees between June and November. In fact, Montanino admitted that one of those was hired to replace another per diem, Leo Pompeo, who was terminated in August. Thus, the net increase was four per diem employees by November.

has not called Mantione to work since that date, even though, according to Perez, Mantione's name still appears on the schedule as a per diem employee. Montanino testified that he instructed Perez not to schedule or offer work to Mantione because of his belief that Mantione had engaged in serious misconduct. Montanino conceded that he made this decision even though he had no proof that Mantione engaged in the misconduct alleged and that he never confronted Mantione with the accusations against him.

At the hearing, Respondent attempted to prove that Mantione broke into Perez' filing cabinet and stole work schedules on January 8, 1997, that he vandalized the department on his last scheduled shift on January 19, 1997, and that he stole a key from the portable x-ray machine on February 6, 1997. Respondent also offered evidence that Mantione referred to Montanino in a derogatory way during a telephone conversation with Perez on January 5, 1997, and in a conversation with a fellow employee on February 6, 1997. Significantly, all of these incidents occurred after Respondent took away Mantione's Sunday evening and on-call shifts and otherwise reduced his hours, conduct found unlawful above. Respondent cited no misconduct by Mantione before the December decision to reduce his hours. On the contrary, the evidence in the record, including the only performance evaluation received by Mantione, paints the picture of a hard-working, dependable employee not prone to misconduct. Thus, this case is not like those cited by Respondent where the Board and courts have found the discharge a union supporter lawful because the employee had a documented history of poor performance or misconduct prior to engaging in protected activity.

Moreover, Respondent has failed to prove that Mantione in fact committed the alleged acts of misconduct. The testimony of Esposito with regard to the January 8, 1997 incident was inconsistent with the typed statement he prepared on January 10, 1997. Although in his unsworn statement, Esposito says that Mantione came to the department to copy work schedules, in his sworn testimony at the hearing, Esposito specifically denied seeing what it was that Mantione copied. Moreover, at no time did Esposito say that he saw Mantione break into the file cabinet or take company documents from the department. Because Perez did not discover the file cabinet broken into and records missing until January 10, and admitted that the file cabinet was in an area accessible to people in addition to Mantione, the possibility exists that someone else broke into the file cabinet between Mantione's alleged visit to the department on the evening of January 8 and the morning of January 10, 1997. Yet Respondent offered no evidence of any investigation undertaken in response to Perez' and Esposito's January 10, 1997 statements and admittedly never questioned Mantione regarding its suspicions. Respondent, on little more than suspicion, apparently reached the conclusion that Mantione was guilty of this serious accusation.

Respondent did not even attempt to prove that Mantione vandalized the department during his last shift on January 19, 1997, offering only hearsay testimony from Montanino regarding what Coletti told him. Coletti herself was not called as a witness, nor were any contemporaneous incident reports or other documentation offered to prove that such vandalism in fact occurred. Thus there is no proof that it even happened. Moreover, even if such an incident occurred, it could

not have been the basis for Montanino's decision not to assign any more work to Montanino. Because Perez admitted preparing the schedules at least 2 weeks in advance, and because there is no dispute that January 19 was Mantione's last scheduled shift, the decision to terminate Mantione had to have been made before the alleged January 19, 1997 vandalism.

Similarly, the alleged February 6, 1997 theft of the key for the portable x-ray machine occurred after Montanino had made a decision to terminate Mantione. Thus, Mantione went to the radiology department that evening to pick up his last paycheck and Montanino left instructions for Esposito to ask Mantione to return the beeper, a clear indication that Mantione would no longer be employed by Respondent. Anything that may have occurred on February 6, 1997, could not have been a basis for a decision already made. Moreover, Esposito's speculation that Mantione stole the key cannot be a basis for a finding that he in fact did so inasmuch as Esposito admitted that he did not know if the key was there before he went to dinner, he only knew that it was not there when he went to use the machine after dinner. Again there is no evidence that Respondent undertook any investigation of this alleged theft of hospital property. Certainly, Mantione was never questioned by Respondent regarding this allegation.

Respondent also relies on Mantione's alleged use of derogatory names to refer to his supervisor as a basis for terminating Mantione. The only incidence of this which occurred before Respondent stopped offering work to Mantione was the January 5 telephone conversation with Perez. Even assuming Perez is credible regarding this conversation, Respondent has failed to show that it would have terminated or refused to schedule Mantione for this reason absent his union activity. Respondent offered no evidence to show that other employees have been terminated based on such conduct, particularly where this is the first instance of misconduct from an otherwise good employee.¹² Moreover, the alleged name-calling occurred in the context of a discussion of Respondent's discriminatory reduction in Mantione's hours and may well have been provoked. In any event, Respondent took no immediate action regarding this alleged misconduct, even though Montanino was aware of it from Perez' memo about her telephone conversation with Mantione that she submitted the next day. A delay between alleged employee misconduct and an employer's disciplinary action is evidence of pretext. See *Care Manor of Farmington*, 314 NLRB 248, 255 (1994); *Aquatech, Inc.*, 297 NLRB 711, 717-718 (1990), enfd. 926 F.2d 538 (6th Cir. 1991); *Abbey's Transportation Service*, supra at 699-700.

For the above reasons, particularly the fact that most of the alleged misconduct occurred after Respondent made a decision not to employ Mantione and noting that Respondent failed to investigate the alleged misconduct and failed even

¹² Montanino and Perez offered generalized complaints about Mantione's "attitude" and his "intimidating" nature which were not specific as to time, other than to acknowledge that Mantione's "attitude" changed after his hours were reduced. Montanino also made an unsupported and uncorroborated claim that Mantione's work slowed down after his hours were reduced. None of these contentions, even if I were to credit them, negates the above finding that Mantione was a good employee before Respondent began to discriminatorily reduce his hours.

to apprise Mantione of the accusations against him, I find that the alleged misconduct was pretextual. Accordingly, Respondent has not established by a preponderance of the evidence that it would have terminated, or failed to offer work, to Mantione after January 19, 1997, in the absence of his union activity. Respondent has thus violated Section 8(a)(1) and (3) of the Act as alleged in the complaint.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(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. By promulgating and maintaining a rule that restricted employees to distributing union materials outside the hospital and prohibited the posting of union material anywhere on hospital premises, Respondent has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

4. By taking away John Mantione's Sunday evening and on-call shifts and otherwise reducing his work hours and by thereafter terminating Mantione, the Respondent has discriminated against its employees in order to discourage membership in the Union in violation of Section 8(a)(3) and (1) of the Act.

5. Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

The Respondent having discriminatorily discharged John Mantione on January 19, 1997, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In order to remedy the discriminatory reduction in Mantione's hours which preceded his discharge, Respondent shall be ordered to reinstate Mantione to the Sunday evening and on-call shifts he previously had and to offer him additional shifts and hours on a nondiscriminatory basis. Respondent shall also be ordered to make Mantione whole for any earnings lost between October 12, 1996, and January 19, 1997, as a result of Respondent's discriminatory failure to assign him shifts and hours of work during that period. At a minimum, this would include pay for the Sunday evening and on-call shifts taken away from Mantione in January 1997 and the shift which Perez admitted taking away from him in October 1996 at Montanino's instructions. The precise amount of any additional backpay owed to Mantione will be left to determination at the compliance stage. As noted previously, Mantione's hours of work and earnings would have decreased to some extent as a result of Respondent's hiring of additional per diems, particularly after November. By comparing the number of hours assigned to Mantione with those

assigned to other per diems during this period, it can be determined how often Mantione would have worked but for the unlawful discrimination against him.

Respondent shall also be ordered to rescind the overly broad no-distribution rule announced by Montanino at meetings with employees on September 16, November 20, and January 10, 1997, and to post the notice to employees attached hereto as an appendix.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹³

ORDER

The Respondent, Doctors' Hospital of Staten Island, Inc., Staten Island, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and maintaining any rules which prohibit employees from distributing union materials in nonwork areas during the employees' nonworking time.

(b) Reducing the work hours, discharging or otherwise discriminating against any employee for supporting Local 1199, National Health and Human Service Employees Union, AFL-CIO or any other union.

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

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

(a) Rescind the overly broad no-distribution rule promulgated by Peter Montanino at employee meetings on September 16 and November 20, 1996, and January 10, 1997.

(b) Within 14 days from the date of this Order, offer John Mantione immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Restore Mantione to the Sunday evening and on-call shifts he previously was assigned and offer him additional shifts and hours of work on a nondiscriminatory basis.

(d) Make Mantione whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge and within 3 days thereafter notify Mantione in writing that this has been done and that the discharge will not be used against him in any way.

(f) 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.

(g) Within 14 days after service by the Region, post at its facility in Staten Island, New York copies of the attached no-

tice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 3, 1997.

(h) 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.

¹⁴If 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 promulgate and maintain any rules prohibiting our employees from distributing union materials in nonworking areas during employees' nonworking time.

WE WILL NOT reduce your hours of work, discharge, or otherwise discriminate against any of you for supporting Local 1199, National Health and Human Service Employees Union, AFL-CIO or any other union.

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

WE WILL rescind the overly broad no-distribution rule promulgated by Peter Montanino, assistant executive director of operations, at employee meetings on September 16 and November 20, 1996, and January 10, 1997.

WE WILL, within 14 days from the date of the Board's Order, offer John Mantione immediate and full reinstatement to his former job, including the Sunday evening and on-call

¹³If 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.

shifts he previously was assigned and offer him any additional shifts and hours available on a nondiscriminatory basis or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make John Mantione whole for any loss of earnings and other benefits resulting from the discriminatory reduction in his hours of work and his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of John Mantione and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

DOCTORS' HOSPITAL OF STATEN ISLAND, INC.