

Beverly Health and Rehabilitation Services, Inc., its Operating Regional Offices, wholly owned subsidiaries and individual facilities and each of them and/or its wholly-owned subsidiary Beverly Enterprises-Alabama, Inc. d/b/a Tyson Health and Rehab Center, a single employer and United Food and Commercial Workers Union, Local Union No. 1657, AFL-CIO. Case 15-CA-14269

July 23, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On February 19, 1999, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

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,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Beverly Health and Rehabilitation Services, Inc., Beverly Enterprises-Alabama, Inc. d/b/a Tyson Health and Rehab Center, Montgomery, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Charles R. Rogers, Esq., for the General Counsel.

Keith R. Jewell, Esq., for the Respondent.

J. Cecil Gardner and Mary E. Olsen, Esqs., for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Montgomery, Alabama, on November 17, 1998. The charge was filed on March 17, 1997, and amended on June 27, 1997.¹ The complaint was issued on June 27. It was amended at the hearing to reflect the correct names of the Respondent and Charging Party. The complaint alleges that Respondent Beverly, a single employer, at Tyson Health and Rehab Center, violated Section 8(a)(1) and (5) of the National Labor Relations Act by failing to provide the Union with re-

¹ 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), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

¹ All dates are in 1997 unless otherwise indicated.

quested relevant information. The Respondent's timely answer denies all violations of the Act.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is a health care institution engaged in the operation of nursing homes at various locations including its Tyson Health and Rehab Center facility in Montgomery, Alabama, where it annually derives gross revenue in excess of \$100,000 and purchases and receives goods valued in excess of \$5,000 directly from points located outside the State of Alabama. I find and conclude that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The answer admits, and I find and conclude, that United Food and Commercial Workers Union, Local Union No. 1657, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. SINGLE EMPLOYER

The complaint alleges, and the answer denies, that Beverly Health and Rehabilitation Services, Inc., its operating regional offices, wholly owned subsidiaries, and individual facilities are a single employer. The General Counsel requested that I take judicial notice of the Board decision in *Beverly California Corp. (Beverly III)*, 326 NLRB 232 (1998), in which the Board found, as it had in *Beverly I* and *II*,³ that Respondent Beverly was a single employer. Counsel for Respondent, although refusing to concede that Respondent was single employer, advised that he intended to offer no evidence on the single employer issue. Consistent with the finding in *Beverly III*, I find that Respondent Beverly is a single employer.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Union was certified as the exclusive collective-bargaining representative of Respondent's nonprofessional employees at the Tyson facility on December 30, 1996. The majority of these employees, 70 in a unit of 87, work as certified nursing assistants (CNAs) providing direct care to patients. Skilled care is provided by 6 registered nurses and 22 licensed practical nurses who are excluded from the unit. On January 6, the Union, in a nine page letter signed by Secretary-Treasurer Ted A. Deason, requested information regarding bargaining unit employees, rules that employees are expected to follow, and other information including, in paragraph IV, information relating to staffing and workloads. At issue in this case is the information sought in the following four subparagraphs of paragraph IV, 1:

² R. Exhs. 9 and 10 were received, without objection, after the hearing closed.

³ *Beverly Enterprises (Beverly I)*, 310 NLRB 222 (1993), enf'd. as modified, 17 F.3d 580 (2d Cir. 1994); *Beverly Enterprises (Beverly II)*, 326 NLRB No. 29 (1998). In *Beverly I*, the Respondent admitted that it was a single employer.

j. [T]he average number of Medicare Part A residents for each month of 1996.

k. [T]he number of therapy units performed for each therapy discipline[:] PT [physical therapy], OT [occupational therapy], ST [speech therapy], for each month of 1996.

l. [T]he Nursing Monthly Trend Report for each month of 1996.

m. [T]he nursing hours of labor per patient day for each pay period of 1996. Please specifically include the hours of labor per day for CNAs, or copies of your Labor Reports.

The Respondent, by letter dated January 13 and signed by R. Wade Lemon, Jr. Respondent's regional director of labor and employment, requested that the Union negotiate regarding the manner and form of production and the allocation of costs regarding all of the requested information. The letter then requests clarification of the relevance of certain information, including the information sought in subparagraphs j, k, and l, and subparagraph m insofar as it relates to nonunit employees.

By letter dated January 24, Deason, on behalf of the Union, responded as follows:

Section IV. 1. (j) (k) (l) (m) is relevant in that residents receiving multiple therapies often require a greater level of hands on nursing care especially with activities of daily living (ADLs). This relates directly to staffing. The *Nursing Monthly Trend Report* is relevant in that much of the data such as the number of residents with pressure sores, the number [of] pressure sores, the number of acquired pressure sores, the number of falls and the number of residents with falls directly bears on staffing. The nursing hours of labor per patient day for CNAs is extremely relevant because it indicates staffing levels.

On January 29, Respondent provided some information to the Union. The letter forwarding that material did not mention the information sought in subparagraphs j, k, l, and m. Additional information was forwarded on February 12. A negotiating session was scheduled for May 14. On April 23, Deason wrote Lemon listing the information that the Union had not yet received. The list included the information sought in subparagraphs j, k, l, and m. On May 2, Suzanne Sherlock, executive director of the Tyson facility,⁴ responded to this letter, noting that Respondent had requested that the Union clarify the basis for its request for the information, which the letter characterized as confidential and/or proprietary, sought in subparagraphs j, k, l, and m. Deason responded to this letter on May 6, referring Sherlock to the Union's letter of January 24 to Lemon in which the Union had explained the relevance of the information.

In May the parties began discussing dates upon which the Respondent would permit the Union to come to its facility to copy records. By letter dated June 24, Respondent withdrew its objection to providing the "arguably irrelevant documents" responsive to the request for monthly units of physical therapy and hours of labor per patient day for CNAs. The letter refers to Sherlock's May 2 letter which characterized the information as confidential, and requests "further clarification, discussion, and

negotiation" regarding the information sought in subparagraphs j and k, insofar as it related to occupational and speech therapy, and subparagraph l. The Respondent never advised the Union that it was refusing to provide any information because of alleged confidentiality.

On August 5, the Union's organizing director, Elaise Fox, and another union representative went to the Tyson facility to make copies of documents. As Sherlock was showing them to the building in which the documents had been placed, Fox asked for the monthly trend reports. Sherlock responded, "I have what you need to copy." At this point Fox stopped walking and stated, "Ms. Sherlock, what I'm asking you about is the items that's listed in the letter that's j, k, l, and m. If you do not have these items available for me, then don't waste my time." Sherlock replied, "I have the material for you to copy. Follow me." The group then proceeded to a small room containing a copying machine and about six boxes filled with folders and ring binders containing material the Union had requested relating to safety, in-service training, and other matters. Sherlock testified that there was a manila folder on the top of one of these boxes that contained, among other items, a one page handwritten compilation of the hours of labor per patient day for CNAs and a typed copy of the same information. The copy bears the handwritten notation "IV m." The folder also contained a one sentence letter, bearing the notation "IV l k," that states the total annual number of physical therapy units. Sherlock did not recall if she had placed these documents in the folder, but she swore that these documents were in the folder and that the folder was on top on one of the boxes. Sherlock did not mention the manila folder to Fox. Fox recalled that the boxes did not have tops on them. She did not see anything lying on the top of the open boxes. Fox and the other union representative spent about three hours going through the materials. They did not see the manila folder or documents.

The Respondent presented no evidence regarding the basis for its decision to provide the "arguably irrelevant" information relating to units of physical therapy, but not similar information regarding occupational therapy and speech therapy. Although requesting further clarification of the relevance of that information, Respondent never stated the basis for its claim that the information was not relevant, nor did Respondent dispute the basis of relevance stated in the Union's letter of January 24. Respondent never specifically addressed the relevance of the information requested in subparagraphs j, k, l, and m during negotiations.

Nursing homes receive payment pursuant to Medicare Part A for eligible patients who are admitted to the nursing home within 30 days of a 3-day hospitalization and who require skilled care. Reimbursement is limited to 100 days. The Respondent's director of nursing at the Tyson facility, Nettie Bly, explained that the Tyson facility offers a full range of care, from supervision and minimal assistance to total care. Medicare Part A patients are treated in a section of the facility referred to as the skilled unit. As soon as the 100 days expires, even though the patient may still require skilled care, the patient is moved in order to make that bed available for another Medicare Part A patient. A minimum staffing level for nursing homes is set by the State of Alabama, and, according to Bly, "We try to basically go along with the state guidelines that give us a base-line for staffing. We try to exceed when possible."

Gary Gomes, business agent for Local Union No. 1996, is a former employee of Respondent Beverly, having left in 1995.

⁴ The term executive director rather than administrator began being used in early 1997. Suzanne Sherlock married after the relevant events herein. Her name is now Suzanne Pugh. To avoid any confusion, I have identified her as Sherlock throughout this decision.

For his last 4 years of employment, Gomes was administrator of the Respondent's Windermere Nursing Home in Augusta, Georgia. In addition to his duties as business agent, Gomes assists with various union research projects. Gomes testified that, in his experience, the skilled unit of the facility in which Medicare Part A patients are located is more heavily staffed than the rest of the facility, explaining that Medicare Part A patients require more staffing because they are more acutely ill and require more therapies. With regard to therapies, Gomes explained that there is a direct correlation between the amount of therapy a patient is receiving and the labor required from a CNA to assist these patients. Using the example of a patient who is being rehabilitated after a stroke, Gomes explained that such a patient receives instruction from a therapist regarding how to become self-sufficient again, including how to dress and perform personal hygiene, such as brushing one's hair. The therapist, in addition to instructing the patient, would also show the CNA who was responsible for that patient what the patient was being instructed to do. Thereafter, when the therapist was not present, the CNA would be responsible for working with the patient regarding the activities of daily living that the therapist wanted the patient to attempt. Executive Director Sherlock acknowledged that Medicare Part A patients required "more skilled labor" than other patients, referring to care provided by registered and licensed practical nurses, and she did not dispute Gomes' testimony that the skilled unit is more heavily staffed.⁵ Despite this, she testified that these patients are no more sick than other patients and that they receive no more attention from CNAs than other patients.

Bly explained that therapy units are typically measured in 15-minute increments. As a general rule, physical therapy refers to use of the legs and involves walking, sitting, and standing. Occupational therapy refers to the use of the arms and includes personal grooming and hygiene. Speech therapy refers to use of the mouth, which includes swallowing. Some patients undergoing speech therapy must be monitored whenever they eat to assure that they do not choke. Bly testified that a CNA would not necessarily be present throughout the time that a patient was actually receiving one or more units of therapy from a therapist. She acknowledged that the therapist would instruct the CNA in the plan of care that the therapist wanted to be carried out. Although Bly testified that whether a patient was receiving therapy had no effect upon a CNA's duties, she was not asked whether the fact that a patient was receiving therapy and was under a plan of care had any effect upon a CNA's workload.

The document identified as The Nursing Monthly Trend Report in the information request is now designated as the Quality Trend Indicator. This document does not identify any patient by name. It reflects various items including the number of patients on psychotropic medications, the number of patients who require siderails on their beds, and information relating to bedsores or pressure sores. The report used in Georgia with which Gomes was familiar also included falls by patients, which accounts for the reference to falls in the letter of January 24. A redacted version of the report used in Alabama does not have a category covering falls. The report does reflect information regarding bedsores, referred to on the report as "decubs" from

the medical term decubitus ulcers. It notes the number of patients with decubs, the number of decubs, the number of patients who had decubs when they were admitted, and the number who acquired decubs after being admitted. Much of this same information is reported on a form submitted to state surveyors when they visit the facility; however, that form is only a report of the situation on the day of the visit. Thus, unlike the Quality Trend Indicator, it does not reflect the status of patients over a period of months.

Gomes credibly explained that decubs are an indicator of the quality of care being provided, that if patients are not being turned regularly because the staff is inadequate, the number of decubs increases. Bly testified that staffing at the Tyson facility was adequate, that the CNAs were to turn patients who required turning at least every 2 hours. She admitted that sometimes a CNA, because of other duties, would not get back to a patient every 2 hours. She acknowledged the obvious fact that, if there were more CNA's on duty, the likelihood of this occurring would be diminished.

The Respondent introduced a pamphlet entitled "Bad Care at Beverly," published by the Union in 1996, that catalogues citations received by Beverly's Alabama facilities from 1993 through 1995 and that argues for increased staffing. Respondent also introduced a letter publicizing the Board's decision in *Beverly III*. The letter, signed by Local Union President George L. Seidenfaden Sr., begins with the salutation "Dear Sponsor." Attached to the letter are excerpts from the Board's decision and a form and envelope addressed to the Union inviting requests for information regarding resident care, staffing, state records, lawsuits filed against Beverly, and "How I, as a Resident Sponsor, can get legal assistance on issues that affect my loved one." There is no evidence that any matter in either of these documents came from information provided to the Union by the Respondent. Respondent presented no evidence disputing the accuracy of any factual statement in either document.

Lemon, who serves as the Respondent's chief negotiator, testified that the Union was seeking a "me too" contract, similar to the existing collective-bargaining agreement between the Union and the Respondent at other Alabama facilities. Although it contains no staffing provisions, article 36 of that contract provides for a labor management committee that is empowered to address various topics including patient care and staffing. The Respondent was unwilling to agree to that contract. In a conversation away from the bargaining table, Seidenfaden, in support of the Union's demand for this contract, advised Lemon that the Union was "going to engage" in patient and class action lawsuits.

B. Analysis and Concluding Findings

It is well established that a union's request for information relating to bargaining unit employees is presumed relevant. *Samaritan Medical Center*, 319 NLRB 392, 397 (1995). Although the Respondent argues that the requested information was not presumptively relevant and that the burden was upon the Union to establish its relevance, I disagree. Information relating to workload and staffing relates directly to employee terms and conditions of employment and, therefore, enjoys the same presumption. *Ibid*; see also *Western Massachusetts Electric Co.*, 234 NLRB 118, 119 (1978). With regard to presumptively relevant information, "the employer has the burden to prove either lack of relevance or to provide adequate reasons why he cannot, in good faith, supply the information." *WCCO*

⁵ I do not credit Bly's testimony that there is no relationship between the number of Medicare Part A patients and staffing. Respondent presented no documents in support of Bly's testimony.

Radio, 282 NLRB 1199, 1204 (1987). The significance of staffing issues in nursing homes is demonstrated in various cases, including *Casa San Miguel*, 320 NLRB 534, 552, 556 (1995) and *Youville Health Care Center, Inc.*, 326 NLRB No. 52 (1998). In *Casa San Miguel*, a CNA responsible for Medicare patients was terminated after taking one patient to the dining room but then failing to respond quickly when a female patient refused assistance from a male CNA. *Youville Health Care Center, Inc.*, involved protected concerted activity related to staffing issues. In the instant case, the presumption of relevance regarding information concerning staffing was augmented by the Union's explanation in its letter of January 24.

The Respondent has not rebutted the presumed relevance of the information sought by the Union regarding staffing and workload. Gomes credibly testified that the Union was seeking the information with regard to proposing proper staffing levels. Respondent, in its brief, cites this testimony and argues that the Union was seeking this information in order "to tell Respondent how to run its operation." This argument fails to acknowledge the mutual obligation of both parties to confer in good faith regarding employee terms and conditions of employment. The record establishes, and I find, that staffing levels have a direct impact upon the workloads of employees. Even absent the presumed relevance of this information, the General Counsel has established that the information sought is relevant.

The Respondent argues that information regarding the number of Medicare Part A patients is not relevant since patients other than Medicare Part A patients require skilled care. I am mindful that other patients require skilled care, but I cannot find that information regarding the average number of Medicare Part A patients is irrelevant. The nursing home itself devotes a section of its facility to these patients and designates that section as the skilled care unit. The occupancy rate of this unit may not alter the duties of CNAs, but insofar as all of the occupants require skilled care, rather than the supervision or minimal assistance required by some patients, I find that the occupancy rate does have an impact upon the workload of the CNAs. Since the Respondent moves patients from the skilled care unit after their 100 days of reimbursement eligibility expires, I suspect that the occupancy rate would be close to 100 percent. If, contrary to my suspicion, the occupancy rate is only 50 percent, this information would clearly be relevant to the Union in evaluating the workloads of the employees it represents. The Union, however, is unaware of the occupancy rate the Respondent refused to provide that information. I find the information relating to the number of Medicare Part A patients to be relevant. Respondent's failure to provide this information violated Section 8(a)(5) of the Act.

Patients who receive therapy are typically placed on a plan of care and the CNAs are responsible for assuring that the plan of care is followed. Although, as Bly testified, plans of care which result in the successful rehabilitation of patients make the job of a CNA easier, it cannot be denied that, when assisting patients in following a plan of care, CNAs are spending more time with those patients than with patients who are simply supervised or receiving minimal assistance. Thus, I find that information regarding the units of therapy given is relevant in assessing the workload of unit employees. The presence of patients who require significant care but who, because they are unable to respond, do not receive therapy does not render irrelevant the requested information relating to the units of therapy. There is no contention that the Respondent provided the

requested information concerning units of occupational and speech therapy. Although the Respondent purportedly provided the total number of units of physical therapy for the entire year in the one sentence letter contained in the manila folder that Fox did not see, that letter was not responsive to the Union's request to provide the number of therapy units performed for each therapy discipline for each month of 1996. By failing to provide this relevant information, Respondent violated Section 8(a)(5) of the Act.

The Quality Trend Indicator, formerly the Nursing Monthly Trend Report, contains no information identifying any patient, thus there is no confidentiality issue. The relevance of the information on this report regarding the adequacy of staffing is established by the testimony of Gomes as well as by Respondent's director of nursing Bly who acknowledged that sometimes a CNA would not be able to turn a patient every two hours and that, if there were more CNA's on duty, the number of occasions that this occurred would be fewer. Respondent obviously considers the information contained on this report, including specifically the information regarding bedsores or pressure sores, to be significant insofar as it maintains this information on a monthly basis. Respondent's failure to provide the Union with the monthly Quality Trend Indicator reports violated Section 8(a)(5) of the Act.

The Respondent, in its letter of January 13, questioned the relevance of the hours of labor per patient day as to nonunit employees. It never questioned the relevance of this information as to CNAs. Respondent gave no explanation as to why this information, the relevance of which it never questioned, was not provided in its first or second submission of information on January 29 and February 12, respectively. Notwithstanding its contention that this information that relates directly to staffing was not relevant, Respondent contends it provided this "arguably irrelevant" information, a single handwritten sheet of paper and a typed copy, when it permitted the Union access to materials at its facility. I find otherwise. On August 5, Fox requested the information sought in subparagraphs j, k, l, and m of the Union's letter. Sherlock did not truthfully tell Fox that the monthly trend reports, to which Fox specifically referred, were not being provided but that a portion of the requested information was in a manila folder in the room to which she was being taken. Instead, Sherlock replied, "I have the material for you to copy. Follow me." At no time did Sherlock bring to Fox's attention the manila folder, which she swears was in plain view. Her failure to bring this information, which was at her fingertips and had been specifically requested only a moment before they entered the room, to Fox's attention does not fulfill the obligation to deal in good faith mandated by Section 8(d) of the Act. *Tower Books*, 273 NLRB 671, 679 (1984). The Respondent, by failing to provide this relevant information violated Section 8(a)(5) of the Act. Even if I were to find that placing this information in a manila folder and then placing that folder with six boxes of other material constituted provision of the information, I would further find that Respondent's delay in providing this one page document for over 6 months was an unlawful delay in providing requested relevant information in violation of Section 8(a)(5) of the Act.

The Union's request for nursing hours of labor per patient day specifically requests that the response "include the hours of labor per day for CNAs, or copies of your Labor Reports." Respondent's letter of January 13 requested that the Union explain the relevance of its request for nursing hours of labor

per patient day insofar as it related to nonunit employees. A request for information regarding nonunit employees does not enjoy a presumption of relevance. *Westinghouse Electric Corp.*, 239 NLRB 108 (1978). With regard to information that is not presumed relevant, “an articulation of general relevance is insufficient,” a specific need must be established. *F. A. Bartlett Tree Expert Co.*, 316 NLRB 1312, 1313 (1995). The Union did not articulate a specific need for this information as it related to nonunit employees. I shall, therefore, recommend that this allegation of the complaint be dismissed.

The Respondent, citing the Union’s 1996 publication and Seidenfaden’s 1998 letter publicizing the *Beverly III* decision, asserts that the Union’s request for information was made in bad faith and for the purpose of improperly harassing and damaging the Respondent. The Respondent argues that this is established by the evidence that the “me too” contract being sought by the Union contains no staffing provisions. In the Respondent’s view, the absence of staffing provisions in the “me too” contract made any information relating to staffing irrelevant. Respondent fails to note that the contract does provide for a labor management committee. I am unaware of any precedent pursuant to which a determination of relevance is made on the basis of the substance of proposals that a union intends to make but to which the employer has not agreed. In the instant case, Respondent did not agree to the contract that was in effect at its other Alabama locations. Consequently, all matters relating to employee terms and conditions of employment, including the workload of CNAs, were on the bargaining table. Staffing levels directly affect employee workloads; thus, the information sought was relevant. If the Respondent had agreed to the “me too” contract, the information would be relevant to the Union representatives on the labor management committee that is established in that contract since patient care and staffing are included among the issues that the committee is empowered to address. A request for relevant information is presumed to be in good faith “until the contrary is shown,” and the “requirement that an information request be made in good faith ‘is met if at least one reason for the demand can be justified.’” *International Paper Co.*, 319 NLRB 1253, 1266 (1995). Seidenfaden’s statements regarding lawful avenues that the Union might pursue away from the bargaining table do not establish bad faith on the part of the Union. The Union, some 3 months prior to the commencement of negotiations, had requested the information at issue in connection with staffing and workload issues, a legitimate request that was augmented by the Union’s letter of January 24. Respondent has failed to establish that the Union’s information request was made in bad faith.

CONCLUSION OF LAW

By failing to provide information reflecting the average number of Medicare Part A residents for each month of 1996, the number of therapy units of physical therapy, occupational therapy, and speech therapy performed for each month of 1996, the Quality Trend Indicator report for each month of 1996, and the CNA hours of labor per patient day for each pay period of 1996, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, 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 unlawfully failed to provide the Union with the relevant information it requested reflecting the average number of Medicare Part A residents for each month of 1996, the number of therapy units of physical therapy, occupational therapy, and speech therapy performed for each month of 1996, and the Quality Trend Indicator report for each month of 1996, it must provide that information. Although Respondent also unlawfully failed to provide the Union with the CNA hours of labor per patient day for each pay period of 1996, that information has now been provided and, therefore, it need not be provided again.

The Respondent’s brief suggests that any recommended order provide for bargaining regarding confidentiality safeguards. Although Respondent characterized the information that it failed to provide as confidential and/or proprietary, Respondent never advised the Union that it was refusing to provide any information because of alleged confidentiality. No information sought identifies any patient, thus there is no issue regarding patient confidentiality. The Union’s 1996 publication reflects public information, citations issued by the State of Alabama. The letter publicizing the *Beverly III* decision and offering sponsors assistance in learning of their legal rights divulges no confidential information. Thus, this case is unlike *Good Life Beverage Co.*, 312 NLRB 1060, 1061 (1993), cited in Respondent’s brief. *Good Life Beverage Co.* involved a failure to provide a union with additional information during a hiatus in negotiations after the union had made public information that the employer had previously provided. In those circumstances, the Board found no violation of the Act as a result of the respondent’s refusal to provide additional information without discussion of the respondent’s “substantial and legitimate confidentiality concerns.” *Id.* at 1062 fn. 10. In the instant case, there is no evidence that the Union has publicized any confidential information provided by Respondent. Board precedent establishes that “it is irrelevant that there may also be other reasons for the [information] request or that the information may be put to other uses.” *Electrical Workers IBEW Local 292 (Sound Employers Assn.)*, 317 NLRB 275, 276 (1995). Respondent’s subjective concerns regarding the use to which the Union might potentially put the information it is seeking are unsupported by objective evidence of prior misuse of information by the Union. In the absence of objective evidence establishing “substantial and legitimate confidentiality concerns,” I find no basis for altering the traditional remedy of providing the requested relevant information.

The General Counsel has requested several extraordinary remedies, including an employerwide cease-and-desist order and access to Beverly facilities for organizational purposes. The predicate for this request is the Respondent’s “extensive and repeated course of conduct and pattern of unfair labor practice violations” as found by the Board in various cases. Insofar as the Board has issued an employerwide cease-and-desist order in *Beverly III*, I find such an order unnecessary in this case that involves discrete 8(a)(5) violations at this single facility that the Union successfully organized. In the absence of any allegation relating to interference with organizational activity, I find no basis for a remedy relating to access for organizational purposes. In view of the foregoing, I deny the request for extraordinary remedies and urge swift compliance with the traditional

remedies I have recommended. *Beverly Health and Rehabilitation Services*, 325 NLRB 897, 903 fn. 33 (1997).

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

ORDER

The Respondent, Beverly Health and Rehabilitation Services, Inc., Beverly Enterprises—Alabama, Inc., d/b/a Tyson Health and Rehab Center, Montgomery, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union, Local Union No. 1657, AFL—CIO, as the exclusive representative of the employees in the appropriate unit described below, by refusing to furnish the Union the information it requested reflecting the average number of Medicare Part A residents for each month of 1996, the number of therapy units of physical therapy, occupational therapy, and speech therapy performed for each month of 1996, the Quality Trend Indicator report for each month of 1996, and the CNA hours of labor per patient day for each pay period of 1996. The appropriate unit is:

All full-time and regular part-time nursing assistants, dietary aides, laundry aides, housekeepers and/or janitors, restorative aides, rehabilitative aides, maintenance assistants, recreational services assistants, unit secretary/supply clerk, receptionist, and cooks; Excluded: all temporary and casual employees, registered nurses, licensed practical nurses, recreational services director, social services personnel, licensed therapists, business office clerical and confidential employees, dietary services managers, beautician, medical records clerks, feeders, all office clerical employees, guards and supervisors as defined in the Act.

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

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

(a) Provide the Union with the information it requested reflecting the average number of Medicare Part A residents for each month of 1996, the number of therapy units of physical therapy, occupational therapy, and speech therapy performed for each month of 1996, and the Quality Trend Indicator report for each month of 1996.

(b) Within 14 days after service by the Region, post at its facility in Montgomery, Alabama, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 15, 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

⁶ If 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.

⁷ 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."

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 January 29, 1997.

(c) 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 that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, February 19, 1999

APPENDIX

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

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

WE WILL NOT refuse to bargain collectively with United Food and Commercial Workers Union, Local Union No. 1657, AFL—CIO, your exclusive collective bargaining representative in an appropriate unit, by refusing to furnish the information it requested reflecting the average number of Medicare Part A residents for each month of 1996, the number of therapy units of physical therapy, occupational therapy, and speech therapy performed for each month of 1996, the Quality Trend Indicator report for each month of 1996, and the CNA hours of labor per patient day for each pay period of 1996. The unit is:

All full-time and regular part-time nursing assistants, dietary aides, laundry aides, housekeepers and/or janitors, restorative aides, rehabilitative aides, maintenance assistants, recreational services assistants, unit secretary/supply clerk, receptionist, and cooks; Excluded: all temporary and casual employees, registered nurses, licensed practical nurses, recreational services director, social services personnel, licensed therapists, business office clerical and confidential employees, dietary services managers, beautician, medical records clerks, feeders, all office clerical employees, guards and supervisors as defined in the Act.

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

WE WILL provide the Union with the information it requested relating to the average number of Medicare Part A residents for each month of 1996, the number of therapy units of physical therapy, occupational therapy, and speech therapy performed for each month of 1996, and the Quality Trend Indicator report for each month of 1996. WE HAVE provided the Union with information relating to the CNA hours of labor per patient day for each pay period of 1996.

BEVERLY HEALTH AND REHABILITATION SERVICES,
INC., BEVERLY ENTERPRISES—ALABAMA, INC., D/B/A
TYSON HEALTH REHAB CENTER