

Medtech Security, Inc. and Eugene Acosta. Case 2–CA–30250

October 29, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND BRAME

On October 7, 1998, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel 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 conclusions² 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, Medtech Security, Inc., Bronx, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Ruth Weinreb, Esq., for the General Counsel.
Scott Steiner, Esq., for the Respondent

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in New York, New York, on June 29 and 30, 1998. The charge was filed on March 28, 1997, and the complaint was issued on January 26, 1998. In substance, the complaint alleged that: (a) the Respondent interrogated employees about their union activities, (b) threatened employees with reprisals, and (c) discriminatorily discharged Eugene Acosta.

The Respondent asserted, inter alia, (a) that it discharged Acosta for "abandoning his post" and (b) that Acosta was a supervisor and therefore not protected by the Act. If the Respondent is correct in its assertion that Acosta was a supervisor, then the complaint should be dismissed in its entirety.

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.

² In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) of the Act by terminating Eugene Acosta, we rely additionally on the absence of any evidence that the Respondent has discharged other employees under similar circumstances.

Member Brame does not pass on the Board's "small plant" doctrine. *United L-N Glass*, 297 NLRB 329, 348 (1989). He agrees with the judge that, under all the circumstances of this case, an inference may be drawn that the Respondent possessed knowledge of Acosta's pronoun activity or, at the least, discharged him based on suspicions that Acosta engaged in such activity.

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

FINDINGS OF FACT

I. JURISDICTION

The parties agree and I find that the Company 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. SUPERVISORY STATUS

Section 2(11) of the Act defines a "supervisor" as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is read in the disjunctive and the possession of any one of the aforementioned powers is sufficient to make a person a supervisor. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Nevertheless, the party asserting that a person is a supervisor has the burden on that issue. *Adeo Electric*, 307 NLRB 1113 fn. 3 (1992). Moreover, as pointed out by the Board in *Cassis Management Corp.*, 323 NLRB 456, 457–458 (1997):

The Board has observed that, in enacting Section 2(11), Congress stressed that only persons with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen . . . and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). Therefore, the Board has a duty to employees "not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied . . . rights which the Act is intended to protect."

Having a supervisory title is not all that important. It is the power and authority of the person in dispute that is determinative of his or her supervisory status. Moreover, persons who exercise only sporadic or irregular supervisory functions or occasionally or sporadically engage in actions which otherwise might indicate supervisory authority are generally not considered to be supervisors within the meaning of the Act. *Latas de Alumino Reynolds*, 276 NLRB 1313 (1985); *Commercial Fleet Wash*, 190 NLRB 326 (1971). For example, where a "crew leader" had occasionally been consulted about an employee's progress and an employee had been given a raise after the leader recommended the raise, these actions were so isolated that without other evidence of authority they were insufficient to establish supervisory authority as defined in the Act. *Highland Telephone Cooperative*, 192 NLRB 1057 (1971); *Robert Greenspan, D.D.S. P.C.*, 318 NLRB 70 (1995).

At the time that Acosta was terminated, he had the title of senior supervisor. He was paid more than the typical security guard and was paid on a salary basis instead of an hourly basis as were the other security guards. Also, Acosta did not wear a uniform whereas the others did.

The General Counsel concedes that for a period of time (in 1994 and part of 1995) Acosta did indeed have supervisory authority as defined in Section 2(11) of the Act. (Such as hiring, scheduling of work, etc.) But she contends that in April 1995, Respondent hired Larry Fontanez to become its general manager and, that as a consequence, the authority that CEO Steven Hunter had previously given to Acosta, was withdrawn and turned over to the person who occupied this newly created position. (Subsequently in November 1996, Harry Rodriguez replaced Fontanez as the Company's general manager.) It is the General Counsel's contention that after April 1995, Acosta no longer was a supervisor and, at most, should be considered a leadman.

The Respondent contends that Acosta, as a senior supervisor, was the site supervisor at a group of buildings known as Beth Abraham Hospital and that his responsibilities, at the time of his discharge, included the assignment of work, the direction of work, and the disciplining of employees. It contends that in the course of his duties Acosta could and did issue warnings and could effectively recommend employee discipline and discharges.

The Respondent is engaged in the business of providing security services for nursing homes and similar types of institutions. Currently, it has contracts with about seven clients, the biggest of which involves a nursing home and rehabilitation clinic known as Beth Abraham Hospital located at 612 Allerton Avenue, Bronx, New York. This customer has a main building, which constitutes its nursing home and, at the time of these events, three senior citizen, assisted residential buildings, which are located in close proximity to the nursing home. Additionally, Beth Abraham contracts to provide services for a daytime clinic in Westchester at which the Respondent also provides guard services. (Consisting of one guard.)

All the events discussed in the present case took place at Beth Abraham Hospital, which is where Eugene Acosta was assigned to work.

Medtech's contract with Beth Abraham requires it to provide security services at the nursing home on a 7-day, round-the-clock basis, and at the residential buildings to a lesser extent. Medtech deploys about 25 security officers at the Beth Abraham complex. At the nursing home, it operates on six overlapping shifts.

The duties of the security guards at Beth Abraham, and presumably at the other locations, are to sit at the front desk where they confront visitors, have them sign in, and direct them to the proper locations; monitor closed circuit video cameras; monitor various alarms (fire or doors), respond to alarms when they go off (by going to the source of the alarm), making sure, at the nursing home, that patients do not leave; and making rounds in the respective locations to which they are assigned. On the evening shift, to which Acosta was assigned, there were two guards (including Acosta) who were assigned to the front desk at any given time, three guards assigned to the residential buildings, and one guard who, with a dog, was assigned to patrol the parking lot. (For a total of seven.) Acosta and the other guard assigned to the front desk, alternated making rounds in the nursing home, and if anything unusual occurred (such as an open door, suspected entry by an outsider or an attempt by a patient to leave), it was Acosta's job to make an incident report and make an entry into the log. A sample of the log was introduced into evidence and samples of incident reports signed by Acosta and other employees were also received into evidence.

It should be noted that incident reports are not meant to be warnings.¹

According to Harry Rodriguez, each site location has its own site supervisor reporting to him and each shift has its own supervisor who is supposed to report to the site supervisor.² Rodriguez and his predecessor, Larry Fontanez, had offices right next to Beth Abraham, where about 25 out of the Company's total complement of about 50 or 55 guards are stationed. In this regard, Rodriguez testified that he spends about 60 percent of his time or about 30 hours per week at this location. Everyday he makes rounds of this facility and talks to the guards on duty. He testified that he can be reached 7 days a week at any time so that he can be responsive to any problems that may arise. According to Rodriguez, although he interviews and hires security officers, he cannot, on his own, discipline or discharge a guard, requiring instead approval from CEO Steven Hunter for such actions. He testified that he is the person responsible for scheduling the guards.

Although Rodriguez testified that the site or shift supervisor can make calls to obtain coverage in the event that a guard does not report in as scheduled, the evidence did not show that a supervisor, other than himself, can order a guard to come in. A review of the evidence indicates that the single biggest problem and the cause of most discharges is when a guard fails to notify the company, ahead of time, that he or she will be not show up for the scheduled shift. (Described on termination notices either as no-call/no-show, or job abandonment.)³

The guards are given assignments and are given their schedules by the operations manager (Harry Rodriguez). It appears to me that their duties are relatively simple and routine. While at the front desk, he or she greets visitors and otherwise looks at video monitors. The route a guard takes in making rounds is determined ahead of time and the guard uses an electronic device to record exactly where he goes at what time. This is not meant to minimize their importance and it seems to me that although the nature of the guard's assignment is essentially routine and stereotypical, a guard will hopefully utilize patience, good sense, and good social skills when and if confronted with an intruder or with a possible dispute between patients or with a patient who decides in the middle of the night to make her way out of the front door. On a day-to-day basis, however, it seems to me that this record shows that Acosta's work was essentially the same as the other guards who were assigned to work at the front desk, except that he would make entries in the log and he, more likely than the other guards on duty, would probably write up an incident report if anything unusual happened.

The Respondent points to several incidents or documents which it believes will show that Acosta could either issue warnings and/or effectively recommend discipline.⁴

¹ The Company has used a number of different forms. One is the incident report described above. Another is an employee warning report. A third is an employee counseling report. Finally the Company has used two separate forms for terminations.

² At a site up in Greenberg, New York, there is one guard assigned who has the title of site supervisor, despite the fact that the only person he supervises is himself.

³ Of 16 documents introduced into evidence by the Respondent, which are explicitly labeled "termination reports," 12 were either for no-call/no-show, or job abandonment.

⁴ In his brief, counsel for the Respondent inadvertently asserted that in June 1996 Acosta wrote an incident report concerning guard David

Respondent's Exhibit 10 is an employee warning record signed by Acosta and given to Angel Calderon on April 27, 1996. It states that Calderon failed to report for duty, that he didn't call in, and that when Acosta called his home no one knew where Calderon could be located. On the report, Acosta wrote, "recommend termination." Respondent's Exhibit 9 is an employee termination report written up by General Manager Larry Fontanez and states that Calderon was hired on April 18, 1996, and has "proven to be very unreliable, not what Med-tech's looking for."

Respondent's Exhibit 20 is a document entitled "employee counseling report" which is dated May 28, 1996, and was written up and signed by Acosta. It basically states that security officer Mallory allowed a patient to break out of the hospital and also that, after being spoken to about his uniform, he continued to come to work out of uniform. Acosta wrote on the form that he was recommending termination. Nevertheless, there was no document, such as a typical termination report, to indicate whether Acosta's recommendation was followed or if Mallory was, in fact, discharged.

In both of these warnings, Acosta testified, without contradiction, that he spoke to Fontanez before issuing the documents and that Fontanez told him to issue the warnings with the respective recommendations.

On or about April 17, 1996, Acosta was involved in an incident with security guard Robert Font wherein Font disregarded his instruction to not wear a cap backwards when reporting for duty. This resulted in Font getting very angry with Acosta who wrote up an incident report, which was received into evidence as General Counsel's Exhibit 20, and wherein Acosta stated that he was strongly recommending Font's termination.⁵ In connection with this incident, I did not see any termination report for Font and the record does not demonstrate that Font was in fact discharged or otherwise disciplined as a result of Acosta's recommendation. And if he was not, the incident seems to speak to a lack of concern by employees for Acosta's supposed supervisory authority.

A similar type of confrontation over appropriate dress involved Acosta and another security officer named Rivera during the time that Rodriguez was the general manager. In this situation, Rivera became belligerent to Acosta when Acosta

criticized his dress. Acosta called Rodriguez who came over and witnessed a good portion of this incident. Acosta denied Rodriguez' assertion that Rodriguez asked him what to do about Rivera and that he told Rodriguez to squash the entire affair. In any event, Rodriguez did not take any action against Rivera and this too indicates to me that the employees did not think much of Acosta's alleged supervisory powers.

The record also indicates that one of the duties peculiar to Acosta was running alarm drills. In this connection, he would, on occasion, open a door in the building and record the amount of time that a guard would arrive with the appropriate keys. He gave a grade based on a standard established by Rodriguez and there is no indication that this function resulted in any punitive actions against any of the security officers.

Whatever may have been Acosta's function as senior security supervisor during the period from 1994 to May 1995, it seems to me that his authority was reduced when Hunter decided to hire Larry Fontanez as the general manager. And this reduced function was continued when Harry Rodriguez was hired to replace Fontanez as manager. Whatever relationship there might be between Rodriguez and the other sites, it seems to me that his close proximity to Beth Abraham and the amount of time that he spent there indicates that Rodriguez acts as the de facto site supervisor, preempting whatever supervisory responsibilities which might be required at this location.

It is my conclusion that Acosta, at the time of his discharge, performed the duties of an ordinary guard and despite having a supervisory title, performed no supervisory functions as defined in Section 2(11) of the Act. To the extent that he may have issued written warnings after May 1995, these were not issued on his own authority but were issued only on the approval of the general manager. To the extent that he made recommendations for discipline, there is no credible evidence that his recommendations were either heeded or followed. To the extent that Acosta may have asserted to employees that he was a supervisor (as in the case of Font), it is equally clear that employees did not think much of his purported supervisory authority and this is evidenced by at least two incidents where employees simply disregarded his instructions about their dress.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Union commenced organizing the employees of the Respondent in January 1997 when Organizer Romero Nasmyth, entered the lobby of Beth Abraham and spoke to Acosta. Initially, Acosta put him off, saying that he was the wrong person to talk to because he was a supervisor. Nevertheless, according to Acosta, he said he would talk to the other guards and see how they felt about unionizing. He did this and subsequently informed Nasmyth that employees were interested in a union.

Over the next several weeks, Nasmyth visited with Acosta in the lobby to talk about the Union. This activity was not done surreptitiously and, although occurring at night, other guards such as Max Zayas and Jason Monet were present. Acosta passed out union authorization cards and solicited signatures. From this record, it appears that Acosta was the employee most active in obtaining employee support for the Union.

A petition in Case 2-RC-21816 was filed on February 12, 1997, by Allied International Union seeking an election in a unit of the security officers employed at Beth Abraham Hospital. The parties executed a Stipulated Election Agreement on February 25, 1997, and an election was held on March 20, 1997. The Union won by vote of 11 to 1 with 3 challenged

Perez that resulted in Perez' subsequent termination by Larry Fernandez on June 18, 1996. The incident report was written up by Officer Browne and essentially indicated that on June 13, 1996, David Perez quit because he was leaving for Florida.

⁵ The incident report states as follows:

S/O Font very belligerently stood and began saying "No you can't send me home, who the [f-k] do you thing you are, your just a [f-king] supervisor, you can't send me home." This he said repeatedly various times. I then said that I am not just a supervisor, I am the senior supervisor and I can and am sending you home. So punch out and go home. S/O Font replied that he is going to wait for Larry to take care of this. I then told him to wait outside for Larry that he is not to be in the building. At this point I also told S/O Font that while there is a supervisor on duty the security officers are not to beep G/M L. Fontanez or S/D S. Hunter, that the supervisors are to do that. The idea of having a security officer speaking out loud and using foul language to me while I am at the front desk at BAHs with various people walking in and out or being in the lobby is something that I nor any supervisor should have to tolerate from any security officer especially one which is still on probation. And I Sr. S/S Eugene M. Acosta am strongly recommending termination.

ballots. (Acosta was one of the three challenged voters, as the Company asserted that he was not eligible because of his supervisory status.) The Union was thereafter certified as the exclusive bargaining representative on March 28, 1997.

According to the credible testimony of Acosta, in February 1997, Harry Rodriguez approached him at the desk and asked if Acosta knew anything about someone from the Union going around to the sites trying to unionize the guards. Acosta said that he didn't know anything about this. (Presumably this took place before the petition was filed.)

Acosta also testified that in early March 1997 Steven Hunter called him into the office and asked if Acosta knew anything about someone trying to unionize the employees. When Acosta said that he did not, Hunter said that if he knew who was doing it, he "would have to do what he had to do." Acosta asked if Hunter was threatening him, and Hunter said that he was not, but that these things go on and he was going to have to do what he had to do. As Hunter did not testify, this version of the conversation was not contested.

Acosta credibly testified that in or about mid-March 1997, Hunter held a meeting of the "supervisors" to discuss the upcoming election. Acosta testified that Hunter said that it was an underhanded, dirty thing that these people were doing; trying to get this union in. Acosta testified that Hunter said that "we didn't need anyone from the outside coming and intervening" and that if he found out who was doing this, he was going to have to do what he had to do. According to Acosta, Hunter had some magazine articles describing alleged ties between the Union and organized crime. Acosta states that in an effort to throw the scent of him, he volunteered to make copies of the articles and post them on the bulletin board.

As noted above, the election was held on March 20, 1997. Despite the Company's position that supervisors were not eligible to vote, Acosta showed up to vote and this act likely indicated to the Employer that he was a union supporter. Six days later Acosta was discharged.

On March 26, 1997, Acosta, shortly before reporting to work, received a call from his mother advising him that she had left her car keys in the car and that she and Acosta's children were at Pelham Parkway. Acosta, who lives near Beth Abraham, walked over to the facility and on the way met Harry Rodriguez. He told Rodriguez what had happened to his mother and that he was going to go to the maintenance shop to make a "slim jim" in order to open the door of the car at Pelham Parkway which is about 8 blocks away from the nursing home. This conversation occurred at about 3:30 or 3:35 p.m. and Rodriguez said, "OK." At this point, according to Rodriguez, he thought it possible that Acosta would not be able to report by 4 p.m. He concedes that he did not object.

After notifying Rodriguez, Acosta went to the maintenance shop to make the slim jim and before leaving, passed by the front desk which was manned by Sharon Browne, whose shift did not end until 5 p.m. He thereupon opened the car door and returned at about 4:35 p.m.

In the meantime, according to Rodriguez, he went back to his office and at about 4:10 or 4:15 p.m. received a call from Hunter who was very angry and who said that Acosta had left the premises, leaving Sharon there by herself to cover the post. Rodriguez testified that he told Hunter about the car key problem and that Hunter told him that when Acosta returned, he was to get Acosta's ID and keys.

Acosta returned to the nursing home at about 4:35 p.m., at which time Rodriguez told him to go home and to hand over his ID and keys. Acosta asked if he was being fired and Rodriguez told him that he was not; that he was to come in the next day and speak to Hunter. Acosta left, but on reflection figured that he probably was being fired and returned to get his personnel effects.

On March 27, 1997, Acosta spoke to Hunter and was told that he was fired for "job abandonment." Acosta maintained that he did not abandon his post and that he had notified Rodriguez before going to open the car door. He states that Hunter called in Rodriguez who confirmed that Acosta had spoke to him before leaving. Nevertheless, Hunter insisted that Acosta had abandoned his post and stated that he was being terminated.

It is evident from the testimony of Rodriguez and from General Counsel's Exhibit 14 that the only reason asserted by Hunter for discharging Acosta was the incident, which occurred on March 26, 1997.⁶ Nevertheless, on that day Acosta had notified General Manager Rodriguez of his need to open a car door and Rodriguez approved this even though he was aware that this would probably mean that Acosta would be late to work. Given these circumstances, plus the facts that the post was manned by Browne and that Acosta returned no later than 4:30 or 4:35 p.m., leads me to the conclusion that Acosta was being punished for a nonoffense. In other words, it is my opinion that the Respondent's asserted reason for discharging him was a pretext.⁷

The Respondent contends that the General Counsel has not proven that it had knowledge of Acosta's union activities. And indeed, there was no direct proof of such knowledge. Nevertheless, I am convinced that the General Counsel has satisfied her burden of showing circumstantial evidence of company knowledge.

In *Darbar Indian Restaurant*, 288 NLRB 545 (1988), the Board stated:

[T]he Respondent contends . . . that the General Counsel failed to establish that it had knowledge of Saha's union activities. Although there is no direct evidence of the Respondent's knowledge, we believe that the circumstances here support an inference of knowledge based . . . on the Respondent's general knowledge of union activity among the small group of seven dining room employees, the timing of the discharge, the contemporaneous 8(a)(1) conduct, the shifting and pretextual reasons asserted for the discharge, and the absence of any incident involving Saha or any conduct by him to explain his discharge on June 8.

In *Collectramatic, Inc.*, 267 NLRB 866, 872 (1983), the administrative law judge, in an opinion adopted by the Board, stated:

⁶ Although the Respondent offered into evidence what purported to be prior warnings to Acosta in 1995 and in March 1997, the testimony of Rodriguez tends to show that they were not relied on in Acosta's discharge. Further, the March 1997 "warning" was never shown to Acosta and, according to Rodriguez, was not intended to be anything other than an oral warning.

⁷ I note that a hearing officer in a decision dated June 5, 1997, reached essentially the same conclusion after a hearing regarding Acosta's claim for unemployment benefits. In this regard, the Board has permitted into evidence decisions of litigated unemployment cases even though they are not binding on the Board by way of collateral estoppel or res judicata. *Whitesville Mill Service Co.*, 307 NLRB 937, 945 fn. 6 (1992).

Respondent asserts that it cannot be found to have discriminatorily discharged employees unless it is specifically found to have known of each of their union activities. In the circumstances of this case such a specific finding is unnecessary. Respondent clearly knew of the union activity generally and of the Union's bargaining request. It also reacted to such activity by engaging in unfair labor practices. The well-timed discharges are of the same character, particularly since they are unsupported by declining sales or other economic considerations. Respondent decided on a power play—a mass discharge rather than a layoff—of a group of employees to demonstrate that it would and could meet a union threat with economic force and thereby stifle any union support.⁸

Acosta was a union supporter who engaged in solicitations among the Company's employees. He was also questioned by management as to what he knew about union activity. The Company was clearly aware of union activity from at least February 12, 1997, when the election petition was filed and Hunter expressed his opposition to unionization. The reason given for Acosta's discharge strikes me as being pretextual and his discharge occurred shortly after the election which was won by the Union and where Acosta's attempt to vote was challenged on the grounds that he was a "supervisor."

All of these circumstances lead me to conclude that the General Counsel has met her burden of showing that the Company was aware of Acosta's union support. I also conclude that she has further met her burden for establishing an 8(a)(3) violation as set out in *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). As I do not believe that the Respondent has met its burden of showing that it would have discharged Acosta for legitimate reasons apart from his union or protected activity, I conclude that the Respondent has violated Section 8(a)(1) and (3) in this respect.

In addition to the above, I make the following conclusions based on the uncontradicted testimony of Acosta who I conclude was not a supervisor as defined in the Act.

1. That in March 1997 the Respondent, by Steven Hunter, interrogated Acosta concerning the union activities of its employees.

2. That in March 1997 the Respondent, by Steven Hunter, made implied threats to its employees if they joined or supported the Union. *Wellstream Corp.*, 313 NLRB 698, 703-704 (1994).

CONCLUSIONS OF LAW

1. By discharging Eugene Acosta because of his union activity, the Respondent has violated Section 8(a)(1) and (3) of the Act.

2. By interrogating an employee concerning the union activities of its employees, the Respondent has violated Section 8(a)(1) of the Act.

3. By threatening an employee with unspecified reprisals in regard to employee union activities or support, the Respondent has violated Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

⁸ See also *Best Plumbing Supply*, 310 NLRB 143 (1993); and *Active Transportation*, 296 NLRB 431 (1989), for cases dealing with the issue of company knowledge.

THE 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.

Having discriminatorily discharged Eugene Acosta, the Respondent must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of discharge to the date of his 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).

ORDER

The Respondent, Medtech Security, Inc., Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because of their support or activities on behalf of Allied International Union or any other labor organization or because of any concerted activity protected by Section 7 of the Act.

(b) Interrogating employees concerning their activities or support for the aforesaid union or any other labor organization.

(c) Threatening employees with reprisals because of their support or membership in the aforesaid union or any other labor organization.

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

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

(a) Within 14 days from the date of this Order, offer Eugene Acosta 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 and make him 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.

(b) Remove from its files any reference to the unlawful discharge of Eugene Acosta and notify him in writing that this has been done and that the discharges will not be used against him in any way.

(c) 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.

(d) Within 14 days after service by the Region, post at its facility in Bronx, New York, copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 2 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60

⁹ If this Order is enforced by a Judgment of the 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."

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 March 1, 1997.

(e) 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.

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 discharge or otherwise discriminate against any of you for engaging in union or other protected concerted activities.

WE WILL NOT threaten any of you with reprisals because you join or support Allied International Union.

WE WILL NOT interrogate any of you about your union membership, support, or activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer Eugene Acosta 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 and WE WILL make him whole for any loss of earnings and other benefits resulting from 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 Eugene Acosta 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.

MEDTECH SECURITY, INC.