

**Silver Lake Care Center and Teamsters Local No. 523, affiliated with International Brotherhood of Teamsters, AFL-CIO. Case 17-CA-19008**

May 31, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On June 3, 1998, Administrative Law Judge James M. Kennedy issued the attached decision. The Respondent filed exceptions and a supporting 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 brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> 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, Silver Lake Care Center, Bartlesville, Oklahoma, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Substitute the attached notice for that of the administrative law judge.

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<sup>1</sup> 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.

In addition, some of the Respondent's exceptions imply that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

<sup>2</sup> In adopting the judge's conclusion that Respondent violated Sec. 8(a)(3) of the Act by discharging Cooper, we find it unnecessary to rely on his finding that Holden agreed that the incident involving Cooper and Becker at the nurses' station occurred on January 29 rather than January 30. We also disavow the judge's comment regarding what approach a typical employer may or may not utilize for disciplining insubordinate employees. See sec. III, par. 21 of the judge's decision. On the basis of the credited evidence, however, we agree that the real reason for the timing of the February 3 discharge was not Cooper's alleged insubordination to Holden during the incident at the nurses' station, but Respondent's subsequent discovery of Cooper's and Becker's efforts to initiate a union organizing campaign.

Member Brame disavows the judge's speculation that because Holden was unsuccessful in delegating the duty to discharge Cooper to Schmidt, Cooper's allegedly insubordinate behavior was not especially important to Holden. See sec. III, par. 18 of the judge's decision.

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.

WE WILL NOT discharge or otherwise discriminate against any employee for supporting Teamsters Local No. 523, affiliated with International Brotherhood of Teamsters, AFL-CIO or any other union.

WE WILL NOT coercively interrogate employees about their union support or union activities.

WE WILL NOT threaten to discharge or discipline any employee because of his or her union activity.

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

WE WILL offer A. J. Cooper 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 together with interest.

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

SILVER LAKE CARE CENTER

*Richard C. Auslander, Esq.*, for the General Counsel.

*Steven A. Broussard, Esq. (Hall, Estill, Hardwick, Gable, Golden, & Nelson)*, of Tulsa, Oklahoma, for the Respondent.

*Joe Medearis, Business Agent (Teamsters Local No. 523)*, of Tulsa, Oklahoma, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge. This case was tried in Tulsa, Oklahoma, on October 29, 1997.<sup>1</sup> The original charge was filed on February 5, by Teamsters Local No. 523, affiliated with International Brotherhood of Teamsters, AFL-CIO (the Union); it was later amended on July 25. The amended complaint issued by the acting Regional Director for Region 17 on July 31, asserts that Respondent, Silver Lake Care Center, has

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<sup>1</sup> All dates are 1997 unless otherwise noted.

violated Section 8(a)(3) and (1) of the National Labor Relations Act. Respondent denies the commission of any unfair labor practices.

#### Issues

The issues raised by the complaint are whether Respondent discharged its employee A. J. Cooper on February 3 because he engaged in union organizing activity. In addition, the complaint accuses Respondent's new director of nursing, Donna Staton, of violating Section 8(a)(1) of the Act by interrogating and threatening an employee concerning her union activity.

#### I. JURISDICTION

Respondent admits it is a corporation that operates a long-term care nursing home in Bartlesville, Oklahoma. It further admits that its annual gross revenues exceed \$100,000 and it annually purchases and receives goods from outside Oklahoma valued in excess of \$5000.

Accordingly, it admits it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. LABOR ORGANIZATION

Respondent admits the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### Background

Respondent's sole shareholder is an individual named Phil Green. In early February, the nursing home's administrator was Susan Holden; its director of nursing was Barbara Schmidt; and the two assistant directors of nursing were Brandi Miller and Elizabeth Lawrence. Due to a disagreement with Holden regarding her management style, Schmidt resigned just as the union organizing began. Within days, Holden also removed herself from actively managing the facility. Before she left, however, she discharged Cooper. About 3 weeks later Staton replaced Schmidt as director of nursing.

Cooper had been employed at the facility for about 3 years. He had begun as a certified nurse's aide, becoming a restorative aide<sup>2</sup> in October 1996. He was discharged on February 3. He is a young man, about 22 years old. For about a year he had been in a romantic relationship with Gale Becker, a licensed practical nurse (LPN) at the nursing home. She served as a charge nurse 3 days per week. Becker is in her late 30's, married, and the mother of several children. Sometime during 1996 the two began cohabiting. Their connection caused some business related changes and also met with some moral disapproval.

The relationship required Respondent to arrange their work so that Becker did not directly oversee Cooper's work. He was assigned to corridors other than those over which Becker was in charge. In October 1996 when he became a restorative aide, he was given an office away from the nurses' station<sup>3</sup> to reduce the opportunities to socialize with her.

<sup>2</sup> A restorative aide assists patients in regaining lost physical capabilities, such as feeding oneself, walking, etc. The appropriate therapy is given pursuant to a physician's order.

<sup>3</sup> A one-story building, the facility is designed so that the nurses' station is in the center of a round room from which five spokes radiate. Each spoke is a corridor. Business offices are located between the corridors and face the nurses' station that can be seen through interior windows.

#### Becker and Cooper Contact the Union

There is evidence that Holden's administration of the nursing home was in some disarray. She admits she did not have the respect of the staff and that she was undergoing some personal problems that affected her abilities to give proper oversight to the home. Her performance had drawn some criticism from her subordinates, including some anonymous letters written to, owner, Phil Green, approximately 2 weeks before the organizing began in late January.

On Wednesday, January 29,<sup>4</sup> from her office Holden observed Cooper at the nurses' station speaking to Becker, the charge nurse for some of the corridors. Holden, rightly or wrongly, concluded that Cooper was wasting time and was improperly socializing with Becker. There is evidence, however, that Cooper was speaking to Becker on a legitimate patient therapy question. (It may also be true that earlier that shift, Cooper had been unnecessarily conversing with Becker.)

Holden decided to put a stop to what she perceived as Cooper's repeated transgressions and left her office to talk to him. There is little dispute about what happened. For the purpose of this discussion I shall quote her testimony:

A. It was in the afternoon. I just—when I spoke to A. J., I recall Gale [Becker] being present.

Q. Anyone else?

A. No. I know there were residents around in the area because they are always sitting around the nurses station, but I don't recall actual names, faces, who was there.

Q. And who started the conversation?

A. I walked—I did.

Q. Well, tell me what happened.

A. I walked up to A. J. and told him that if he wasn't Gale's personal assistant that I would like for him to leave the nurses station.

Q. What was his response?

A. "She's my supervisor" or something to that effect.

Q. Did he say anything else?

A. The next sentence was, "We're talking about work."

Q. And what did you respond to that?

A. I said, "You've been standing, you know, you've been standing here too long. You need to get back to work." He motioned his head backwards. Do I need to talk to somebody else? Which would have been Barbara Schmidt's office was directly behind him like this and indicating that I did not have the authority to even discuss anything with him.

Q. Well, now wait a minute. Did he say you didn't have any authority?

A. Indicating I did not have—

Q. Well, that—that was in your mind, right? He only made a statement and that's what you indicated. Is that correct?

A. If that's the way you want to put it.

Q. Okay. So, tell me again what he said.

A. From the beginning?

Q. After you told him that he shouldn't be standing there, and he said—well, after he said we're talking about work, what did he say?

<sup>4</sup> All of the witnesses except Holden testified the incident occurred on January 29. She eventually accepted that date, although, initially she thought it was January 30. For our purposes it makes no difference. It was one or the other.

A. After he said "we're talking about work," I said "You need to get away from the nurses station and do your—do your work."

Q. Okay.

A. She's—he said, "She's my supervisor." And I said "I'm your supervisor." And then he motioned, do I need to go talk to someone else, indicating the person—

Q. All right. Don't—

A. Okay.

Q. Okay. He said—"Okay." And after he said, "do I need to talk to someone else," what was the next thing that was said?

A. I told him he could talk to whoever he wanted to, that I was his supervisor.

Q. Did you use the word 'supervisor' or the word 'boss'?

A. I'm really not sure.

Q. You could have used the word 'boss'?

A. Could have.

Q. Both times when mentioned yourself as a supervisor, you could have used the word?

A. Could have.

Q. Is that correct?

A. Could have.

Q. Okay. Now, the second time that you told him you were his supervisor or boss, what happened then?

A. He indicated that he had someone else he could talk to that could change my mind or.

BY MR. AUSLANDER: After the second time you told Mr. Cooper that [you] were his supervisor or his boss, what did he reply if anything?

A. Do I need to talk to someone else?

Q. Okay. And did you respond to that?

A. Yes.

Q. What did you respond?

A. You can talk to whoever you want to.

Q. Okay. And what was the next thing that was said or done after that?

A. I either said I am your boss or I am your supervisor.

Q. And then you left?

A. Yes.

Q. What did Mr. Cooper do at that time?

A. He remained at the nurses station.

Holden says she determined at that point that he had been insubordinate and deserved to be discharged. Yet the discharge did not occur until the following Monday, February 3, about 2:45 p.m.

Cooper says that during the previous week he had discussed obtaining union representation with about 25 of the employees at the Care Center.<sup>5</sup> During the day, on Friday, January 30,

<sup>5</sup> Cooper's testimony:

Q. Now, prior to this date that you talked to Mr. Medearis, did you talk to other employees about the union?

A. Yes, I had.

Q. And when was that?

A. The week prior. The whole entire week prior, but mostly the day before and the day before that. So, it would have been Tuesday and Wednesday.

Q. And when did you—where did—when did you talk to them?

A. On my break outside or after work as we were walking out to our cars.

Becker telephoned the Union's office in Tulsa to find out how one went about obtaining union representation. She spoke to the Union's business representative, Joe Medearis. Medearis described the procedures, including the requirement that majority status needed to be established. Afterward, she told Cooper what she had done and he asked for Medearis's telephone number. She gave it to him and on an afternoon break, Cooper, too, called Medearis. [Eventually, a meeting was arranged for employees to meet with Medearis on February 10 at a Bartlesville restaurant.]

After they had separately discussed the situation with Medearis, Cooper and Becker decided they needed to assess what the mood of the other employees was. They determined the best way to do that was to place a nonbinding petition on the breakroom table whereby employees who would be interested in union representation could sign and indicate their interest. On Sunday evening while at home, Cooper and Becker prepared a petition that apparently no longer exists. He described it as consisting of several identical pages. According to Cooper, it said something like: "This is a petition for organizing a union. If you're interested in a union, please sign below. This petition is not binding." Underneath, it had several lines where employees could sign their names.

On Monday, February 3, about 5:45 a.m., he placed a clipboard to which the pages were attached on the table in the breakroom. He did not sign it initially, but observed that by 6:30 a.m. five or six people had signed it. He then signed it himself. By 1:30 p.m. there were 12 to 15 signatures. As far as he knows, the petition was still on the breakroom table when he was fired at 2:45 p.m.

After being discharged he returned home and told Becker (who had not been scheduled to work that day) that he had been fired and that the petition had about 15 signatures on it when he had last seen it. Becker went to work about 6:30 a.m. on Tuesday, February 4, and immediately went to the breakroom to look at the petition. She found it but the page with all the signatures was missing. She is corroborated by carpet cleaner Paul Fugate, who had earlier that morning led another employee to look at the petition, only to discover that the top sheet had disappeared.

Becker says she was able to obtain some additional signatures on the remaining sheets and even arranged for a night-shift employee to take it with her when she went home. That arrangement lasted for a few days, but eventually that sheet disappeared as well. The whereabouts of those pages are now unknown. Becker says there were about 18–20 names on that sheet. Between the two pages approximately 35 individuals signed to express interest in union representation.

#### Respondent's Knowledge of Cooper and Becker's Union Activity

Becker had spoken to Medearis on January 30. On the following day, she told Director of Nursing Barbara Schmidt that she and Cooper had contacted the Union. That conversation occurred in Schmidt's office and Assistant Director of Nursing Brandi Miller was present during the discussion. On Sunday, February 2, Becker called the other assistant nursing director, Elizabeth Law-

Q. And approximately how many employees did you talk to?

A. Approximately 25, 20 to 25.

Q. And what, if anything, did they indicate to you?

A. They all seemed to be for a union. They seemed it might help. (sic)

rence, and told her that she and Cooper had gone to the Union. During that conversation Lawrence told her that Holden had already come out to the facility to speak to Schmidt and Lawrence about it.

Lawrence, called by Respondent, does not really disagree, although her recollection is a bit different. She says that on Saturday, February 1, an employee name Goldie Epps came to her office upset that some employees were trying to organize a union. Lawrence suggested that Epps report the matter to Holden. Epps made such a call to Holden in Lawrence's presence. Although Epps did not testify, Lawrence says she did not hear Epps mention either Becker or Cooper's name while speaking to Holden. A little while later, according to Lawrence, she telephoned Schmidt at home and advised her of what Epps had said. Schmidt came to the facility and after the two discussed the matter further, Schmidt called Holden. Lawrence could hear Schmidt's side of the conversation. Her description of the conversation is truncated, and seems to emphasize the anonymous letters which owner Green had received about Holden a week or so earlier. Even so, if the conversation did turn in that direction, it also covered the union organizing. Organizing was the reason Lawrence had called Schmidt and it is why Schmidt had come in. Lawrence says she heard Schmidt tell Lawrence that she "didn't do this." She says the discussion then turned toward the issue of Holden not trusting Schmidt any more, in part due to the anonymous letters, and she heard Schmidt tell Holden that if that was the case she would resign. Schmidt tendered her resignation on the phone, seeking to give 2 weeks' notice. Holden agrees she told Schmidt that 2 weeks' notice wasn't necessary, she could leave right then.

In general, Lawrence's testimony demonstrates that Holden had become aware of the union organizing as of Saturday. She does not point specifically to Becker and Cooper as the organizers, but neither does she deny that on Sunday Becker told her she and Cooper were the responsible parties.

#### Holden Discharges Cooper

As observed above, on Monday, February 3, at 2:45 p.m., Holden called Cooper to her office and discharged him. He had placed the petition on the breakroom table that morning and was one of the early signers. Moreover, by that time Lawrence had become aware that he and Becker were the two individuals who had gone to the Union.

Holden did tell Cooper that he was being discharged for insubordination, specifically that which she had perceived the previous Wednesday when he was at the nurses' station. Her delayed response raises the question of why she waited until the following Monday to discipline him.

Holden explained that she had not discharged him earlier because she had initially wanted Schmidt to do it. When Schmidt resigned on Saturday, she says the duty fell on her. She did not say why one of the assistant directors of nursing couldn't have done it, although Lawrence has discharged employees in the past and Brandi Miller certainly had the authority. Nor does she explain very well her reasons for not doing something about it on Wednesday, Thursday, or Friday. She claims that Schmidt was deliberately avoiding her so she could not be given the task. That does not seem to be a credible reason. If Holden were truly angry enough to have wanted to discharge Cooper over the incident, but didn't want to do it herself, she would have gone straight to Schmidt, insisted on Schmidt seeing her and would have ordered the discharge to be carried out.

Instead, matters were put off until Monday afternoon, the very day when Cooper's organizing manifested itself. Respondent

argues that Holden was never told who the responsible employees were. I disagree. By then Lawrence at the very least knew of Cooper's and Becker's activity and, it may be fairly inferred, Holden did, too. After all, Lawrence had gotten Epps to report the matter to Holden and had reported the matter to Schmidt as well. When Becker told her on Sunday who the actual individuals were, there is no reason to think that Lawrence would not have reported that, too. The fact that there is no direct evidence that Holden knew Cooper had placed the petition on the breakroom table is of little significance. Of the two known union organizers, only Cooper was on duty that day. It would not take much thought for Holden to have deduced that the union activist who was on duty was the person responsible for the petition.

Finally, Respondent argues that discharge, according to the company policy statement is the only available response to acts of insubordination. First, I question whether Cooper had in fact been insubordinate. I agree that he is young and perhaps could demonstrate a more mature approach to his interpersonal relationships. Even so, the more credible evidence is that he was at the nurses' station for legitimate reasons. None of the nurses who attended the incident has suggested otherwise. Holden's directions to him seemed arbitrary and unreasonable in the circumstances. Nonetheless, he did not refuse her, but only asked to whom he should speak if he couldn't talk to Becker, the charge nurse for that patient. Holden took the question to be insubordinate, when it clearly was not. She also perceived his delay in following her instructions to leave the station to be insubordinate as well. The latter might have been, but given the fact that she had essentially told him that he was not to do his job, the confusion which that directive caused is understandable. He knew she was his supervisor, knew Becker was in charge of the patient, and knew that he needed instructions. The administrator had told him he couldn't communicate with his immediate supervisor about the matter, so that left him confused. His delay in leaving the station while he tried to figure out what to do and whom he should see for instructions hardly qualifies as insubordination in the circumstances.

Moreover, the efficacy of the policy statement is not clear. It has never been published to the employees, although Holden thinks the bookkeeper gives it to new hires and says it is supposedly available for review at the business office. Neither Becker nor Cooper had seen it before the hearing. It is not in booklet form intended to be easily handed out, but is instead a letter-sized nine-page document which is kept in a loose-leaf binder somewhere. The discipline portion of the document is on the next to last page and, given the handwritten entries made for each of the possible infractions, appears to be subject to ad hoc adjustment. That page appears more likely to be either an unfinished draft or a model from which policies could be drafted, rather than firmly adopted disciplinary policies. Whatever it may be, I am not convinced that it was known by employees to be in effect at the time Cooper was discharged. The document is not impressive as setting forth behavior rules and the penalties for transgressions. Moreover, that the only available penalty for insubordination is discharge (as set by a handwritten X) seems close to absurd as progressive disciplines are set forth for other violations. Clearly there are different levels of insubordination that can be envisioned, many of which would not warrant discharge. Usually employers do not wish to rid themselves lightly of employees in whom they have invested training and who otherwise have good records. Lesser, but corrected, levels of insubordination allow that investment to bear fruit.

I find, based on the evidence, that the General Counsel has made out a prima facie case that Respondent discharged Cooper because he was known to be engaged in union organizing. The precipitous nature of the discharge alone gives rise to strong suspicion, occurring within hours of his having placed the petition on the breakroom table. But it is more than suspicion. Holden had actual knowledge of union organizing as of Saturday when Epps reported it. Moreover, Respondent must be charged with Lawrence's actual knowledge that Cooper was involved as of Sunday. Third, animus may be inferred from the assigned reason, which I find to be a pretext. Even if Cooper demonstrated some mild form of insubordination on the preceding Wednesday, it did not become a dischargeable offense until he placed the petition on the breakroom table 5 days later. If he had been viewed as insubordinate on Wednesday, disciplinary steps would have been taken much sooner and they would have been much milder. More likely a supervisor would have counseled him. Discharge was a heavy ax to swing for the supposed offense.

Therefore, I conclude that Respondent has not rebutted the prima facie case. Accordingly, I find that Respondent discharged Cooper because he had begun to organize a union.<sup>6</sup> The discharge violated Section 8(a)(3) and (1) of the Act.

#### Staton Meets Becker

Donna Staton was hired as the director of nursing to replace the departed Barbara Schmidt. She reported to work about February 20. It appears that she had been at the facility in that capacity for at least a few days before she met Becker, probably due to the staggered scheduling. Their first meeting, perhaps February 27, was memorable for Becker. She testified:

BY MR. AUSLANDER: Okay. And you said that you had a conversation with her (Staton) the first week after she came there?

A. Yes.

Q. And where did that conversation occur?

A. She called me into her office.

Q. And who was present at that time?

A. Just myself and her.

Q. Tell us what was said at that time.

A. She told me that she knew more about me the first week, and then she said let me rephrase that, the first hour that I worked here than I ever would have cared to have known. And I did not respond at that point, and she went on to ask me what my involvement was with the union, what my involvement was with A. J. [Cooper]. I told her initially it was none of her business. And then I did later in the same conversation tell her that yes, I was one of the first initial people to contact a union representative. She then—she then said to me she didn't believe I was doing my job. She had been hired to be, and this was her exact words, the axe person to clean the place up and get it back on track, and she was by god going to do that job.

Becker continued to work at Respondent until May 8, when she resigned.

<sup>6</sup> While it is true that Holden held Becker and Cooper in low esteem because of their personal relationship, and Cooper's somewhat immature approach to work did not sit well with her, these factors contributed to his discharge in only the most peripheral way. Their personal relationship while at work was known to be manageable and Holden herself countenanced a certain amount of immaturity, particularly her use of toys such as squirt guns in the workplace.

Staton denies the conversation occurred. She says she never had any conversation with Becker about the Union and asserts that she did not learn there had been any union organizing until sometime in April when another employee filed unfair labor practice charges over her discharge.

Staton's denial is straightforward and creates a credibility issue. Both she and Becker agree that at some point she believed Becker's work performance could be improved. Becker characterizes it as occurring in the same breath as the inquiry about union organizing, leading to the suggestion that it was a threat of discharge for organizing. Staton recalls the incidents as relatively minor counseling:

BY MR. BROUSSARD: Ms. Staton, when was the first time you remember having a counseling session or discussion with Ms. Becker?

A. The first time?

Q. Yes.

A. I really don't remember the first time.

Q. Okay. A specific date?

A. I really don't remember like a first counseling session with Ms. Becker. There were some counseling sessions, yes, but I don't remember the date of a first one.

Q. Okay. What did those counseling sessions pertain to? What did you talk to her about?

A. It would pertain to nursing practices or her work practice.

Q. Okay. What kind of concerns do you remember having about that?

A. My concerns about her was her talking, her not taking care of residents, her conversations with employees that did not pertain to the care of the residents there at Silver Lake, gossiping on the job.

In terms of resolving their relative credibility, one fact strikes me as rather odd. If Staton was being brought in to replace Schmidt, how is it that she was entirely ignorant of any union organizing? The original charge in this case was filed on February 5, only 2 days after the discharge and would have been under investigation at the time she was hired. Surely, Owner Green would have apprised her of the NLRB investigation involving Cooper's discharge that she might have to deal with as the new director of nursing. And, he would have wanted to make certain this newly hired supervisor would be prepared to handle the union organizing issues which had recently come up [the February 10 meeting which was well published] and those which were likely to follow. Her claim of ignorance cannot be credited. That being so, I cannot credit her denial of Becker's version of their first conversation.

Becker said Staton asked her about her union organizing and connected it to a threat that persons would be discharged if they "weren't doing their jobs." The matters are too closely connected to be ignored. It seems to me that it is reasonable to conclude that Staton meant she would discharge union organizers using as justification a claim that they were not performing their work properly.

While no one can quarrel with the concept that employees who are not performing properly are subject to losing their jobs, it is another thing entirely to say that persons engaging in protected activity will lose their jobs and that the real reason will be masked by claiming a false reason. Indeed, that is a threat of serious dimensions. It is aimed at preventing employees from engaging in any protected activity at all. The message is starkly clear: "If you engage in union organizing, I will fire you and I will do it in such

an underhanded manner that you will not be able to obtain any redress even if you are entitled to it.”

I credit Becker’s version and am obliged to conclude that both remarks violated Section 8(a)(1) of the Act. The inquiry aimed at determining if Becker had been engaging in union organizing had no noncoercive purpose. The threat which followed is painfully obvious.

#### 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. Respondent having discriminatorily discharged Cooper, 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). The affirmative action shall include the requirement that Respondent expunge any record it may have of Cooper’s February 3 discharge and shall require Respondent to post a notice to employees announcing the remedial steps it has undertaken.

#### CONCLUSIONS OF LAW

1. 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. Respondent violated Section 8(a)(3) of the Act when it discharged its employee A. J. Cooper on February 3, 1997, because he was engaged in union organizing.

4. Respondent violated Section 8(a)(1) of the Act on or about February 27, 1997, when its director of nursing, Donna Staton, interrogated employee Gale Becker about her activities on behalf of the Union.

5. Respondent violated Section 8(a)(1) of the Act on or about February 27, 1997, when Staton threatened Becker with discharge if she were to continue to engage in union organizing activity.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>7</sup>

#### ORDER

The Respondent, Silver Lake Care Center, Bartlesville, Oklahoma, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Teamsters Local No. 523, affiliated with International Brotherhood of Teamsters, AFL–CIO or any other union.

(b) Coercively interrogating any employee about union support or union activities.

(c) Threatening to discharge or discipline any employee because of his or her union activities.

(d) In any like or related manner 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) Within 14 days from the date of this Order, offer A. J. Cooper 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) Within 14 days from the date of this Order, remove from its files any reference to Cooper’s unlawful discharge, and within 3 days thereafter notify Cooper in writing that this has been done and that the discharge 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 Bartlesville, Oklahoma, copies of the attached notice marked “Appendix.”<sup>8</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent’s authorized representative, shall be posted by Respondent immediately on 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 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, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since February 3, 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.

<sup>8</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

<sup>7</sup> 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.