Shelby Memorial Hospital Association, d/b/a Shelby Memorial Home *and* Teamsters, Chauffeurs, Warehousemen and Helpers Union No. 279, affiliated with the International Brotherhood of Teamsters, AFL–CIO[1] *and* Michele Yvette Sands. Cases 14–CA–20892, 14–CA–20988, 14–CA–21021, 14–CA–21022, 14–CA–21023, 14–CA–21024, 14–CA–21183, 14–CA–21265, and 14–CA–20946

December 23, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On July 15, 1991, Administrative Law Judge John H. West 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,[2] 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, Shelby Memorial Hospital Association, d/b/a Shelby Memorial Home, Shelbyville, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record nd find no basis for reversing the findings.

We affirm the judge's finding that the Respondent violated Sec. 8(a)(1) when, through its attorney, it informed employees, who it claimed were supervisors, that they could be discharged for engaging in union activity. The Regional Director later determined that these employees were not ''supervisors'' within the meaning of the Act. An employer acts at its peril when it takes steps calculated to chill the exercise of Sec. 7 rights by individuals who may later be found to be under the protection of the Act. See *Sav-On Drugs*, 253 NLRB 816, 820–821 (1980), enfd. 728 F.2d 1254 (9th Cir. 1984). We note that the last name of the Respondent's attorney was inadvertently misspelled in the judge's decision and that it should be ''Yocum.''

Michael Jamison, Esq., for the General Counsel.
Joseph A. Yocum, Esq., of Evansville, Indiana, for the Respondent.
Michele Yvette Sands, of Shelbyville, Illinois, pro se.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. These consolidated cases were tried in Charleston, Illinois, on April 1 through 3, 1991. The Teamsters, Chauffeurs, Warehousemen and Helpers Union No. 279, affiliated with the International Brotherhood of Teamsters, Chauffeurs, and Warehousemen and helpers of America (the Union) filed charges and amended charges, collectively, in all of the above-described cases except Case 14–CA–20946 in which Michele Yvette Sands filed the charge. On March 7, 1991, a Regional Director of the National Labor Relations Board (the Board) issued a fourth order consolidating cases and amending the complaint (the amended complaint). The amended complaint alleges that Shelby Memorial Hospital Association, d/b/a Shelby Memorial Home (Respondent) committed unfair labor practices within the meaning of Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act). Respondent denies violating the Act.

Upon the entire record in this proceeding, including my observation of the witnesses and their demeanor, and after considering briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a not-for-profit corporation duly authorized to do business under the laws of the State of Illinois. At its place of business in Shelbyville, Illinois, it has been engaged as a health care institution in the operation of a skilled nursing home, providing inpatient medical and professional care services for the public. The complaint alleges, the Respondent admits, and I find that at all times material, Respondent has been 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. THE ALLEGED UNFAIR LABOR PRACTICES

Facts

Shelby Memorial Home is a nursing home for elderly people. It has approximately 85 beds and it operates 24 hours a day. The nurses employed at the home work on three shifts, namely, 6:45 a.m. to 3:15 p.m., 2:45 to 11:15 p.m., and 10:45 p.m. to 7:15 a.m.[1]

Albert Wimer, the former administrator of Respondent, testified that the Home had some severe financial problems in March and April 1990; that it was decided that certain changes would be made; that meetings were called and the employees were told that Respondent was going to have to make some cutbacks or it was going to have to make some changes in the operation of the facility to improve its financial picture; and that in February and March 1990 Respond-

[1] The 30-minute overlap in shifts allows the nurses who are finishing their shift to give the nurses who are starting their shift the oncoming shift report. Hereinafter the shifts will be referred to as the 7 to 3, 3 to 11, and 11 to 7 shifts.

ent started to cut back on staff and it continued after April 1990 and included janitors and the dietary department.

In April 1990, Licensed Practical Nurse (LPN) Judy Read, who had been employed by Respondent since April 1987, was told by Director of Nursing Joyce Turpin that the employee evaluations and wage increases were backlogged because they were being handled differently and it would be some time before Turpin had them all done.

Sometime between April and June 1990 employee Karen Endsley asked Turpin if she, Endsley, could attend nursing school. In June 1990, Turpin told Endsley that she had been approved to attend nursing school. Endsley testified that with other employees Respondent paid $1200 of their $1600 annual tuition.[2]

Employee Christina Welton, Read's daughter, testified that in April 1990 two kitchen employees were changed from full time to part time and it was her belief, based on what she had heard from other employees and possibly her supervisor, Mildred Fisher, that the changes were due to budget cuts.

Respondent's employee George Hopkins testified that in April 1990 he and his son, who also worked for Respondent, were laid off from their janitors jobs; and that he was told by his supervisor, Rich Carlson, that Respondent had to cutback.

On June 10, 1990,[3] Turpin told Edersheim and Endsley at an aides meeting that their requests to go to nursing school were approved and that the Respondent would help them.

Employee Brenda Toothman testified that in mid- to late June 1990 she and two other employees discussed contacting the Union. One of the other employees did contact the Union and a meeting of employees with a union representative was scheduled for July 5 at a park in Shelbyville.

Paragraph 5(A) of the amended complaint alleges that on or about June 25 Respondent, acting through Turpin, informed an employee that previously scheduled raises were being withheld and that Respondent would rescind its prior commitment to approve and pay for employees to attend nursing school because of employees' union activities. A copy of an agreement between the Respondent and one of its employees covering reimbursement for attending nursing school was received in evidence by stipulation (Jt. Exh. 1). Edersheim, who signed a union card at work and attended the union meeting in Shelbyville park, testified that on about June 25 he had a conversation with Turpin and she said that the Respondent would not be able to send him and Endsley to nursing school and they would not receive their raises because it would be considered payment for not voting for the Union.

Lisa Standefer, who attended a union meeting and signed a union card, testified that on June 25 she overheard a conversation between Turpin and Edersheim. Edersheim asked Turpin when he was going to get his evaluation and his raise. Turpin said, ''She couldn't do any evaluations or give any raises because of the union activities, it would be considered a bribe.'' Edersheim then said that he was going to vote yes anyway so she could not bribe him.

Paragraph 6(A) of the amended complaint alleges that on June 25 Respondent denied a previously scheduled wage increase to Edersheim.[4] Respondent and the General Counsel stipulated that employees receive salary changes which customarily are made annually on the employee's anniversary date but when conditions require, some other date may be used.

Paragraph 6(B) of the amended complaint alleges that since about June 25 Respondent has denied previously scheduled wage increases to other employees of Respondent whose identities were unknown to the Regional Director when the amended complaint was issued.

Paragraph 6(C) of the amended complaint alleges that since June 25 Respondent has refused to approve payment for employee Edershein to attend nursing school.

On June 29 Hopkins was recalled to work at the Home.

On July 5 the Union held a meeting of Respondent's employees at Forest Park in Shelbyville. Endsley attended and while there she signed a union authorization card. Toothman also attended the union meeting at the City Park in Shelbyville on July 5. While at the meeting, Toothman signed a union authorization card and gave it to the union representative present. Also she took some union cards with her when she left the meeting. She testified that during the meeting, at approximately 2 p.m., she saw Wimer's car driving in the park. As she left the meeting she saw Turpin driving toward the park. Toothman gave the union cards which she took from the meeting to Certified Nurses Aide Connie Hysel. Several of the cards were returned to Toothman. Read testified that she and her daughter, Welton, attended a union meeting at City Park in Shelbyville and she signed a union authorization card during the meeting. Read took some blank authorization cards which she gave to employees at work. Six of the cards were returned to her signed. She gave them to Toothman. Welton testified that she attended the meeting with her mother; that while at the meeting she signed a union authorization card and gave it to the union representative present; that she took one or two cards and she got employee Pam Stanford to sign an authorization card while at work; and that she gave Stanford's card to Toothman. Hopkins also attended the meeting and signed a union authorization card.

Wimer testified that to his knowledge he did not drive his car in the city park in Shelbyville on July 5; and that he never took a drive to see what was going on at a union meeting in the park in Shelbyville.

Paragraph 5(B) of the amended complaint alleges that on July 6, Respondent, acting through Supervisor Fisher interrogated an employee about the employee's attendance at a union meeting. Welton, who works for Respondent as a dietary aide, testified that on July 6 Fisher asked her if she or anyone else who works in dietary went to the meeting at the park. Fisher, who is the dietary supervisor at Respondent's facility, gave the following testimony on direct:

> Q. And turning your attention to June the 25th, 1990, did you have a conversation with an employee of the company about his or her attendance at a union meeting?

[2] Endsley gave the names of four employees who attended nursing school and were reimbursed. Subsequently Steward Edersheim gave the names of five employees who attended nursing school with Respondent's financial assistance.

[3] All dates are in 1990 unless indicated otherwise.

[4] Par. 6(M) of the amended complaint alleges that Respondent engaged in the conduct described in pars. 6(A)–(L) of the amended complaint because the employees named therein joined, supported, or assisted the Union, and engaged in protected concerted activities.

A. No, sir. I did not.

Q. Okay. At any other time, did you ask employees of the nursing facility about their union activities?

A. No.

On cross-examination Fisher testified that she heard employees talking about the fact that Welton attended the union meeting in the park; that she also heard from employees that Welton's mother, Read, also attended, along with other employees including Toothman; that she did not ask Welton if she attended that meeting; that Wimer told supervisors at a meeting what they could and could not say to the employees; that Wimer told supervisors that they were not to try to influence the employees in any way since it was their right to do as they see fit but supervisors could voice their opinion; that these matters came up during the meeting at which Respondent's attorney addressed the nurses; that subsequently Wimer indicated what could or could not be said respecting the Union; that Wimer did not say what the employees could be asked before the meeting at which Respondent's attorney addressed the nurses; and that before that meeting ''about all we heard was rumors.''

On July 10 the Union filed a petition for an election.

Paragraph 5(C) of the amended complaint alleges that on July 13 or 20 Turpin informed an employee that previously scheduled raises would not be given because of employees' union activities. Read testified that on July 13 or 30 she asked Turpin about the evaluations and raises and Turpin said that all evaluations and raises were ''held due to the pending union activities.''

Paragraph 6(A) of the amended complaint alleges that on July 13 Respondent denied a previously scheduled raise to employee Read.

Paragraph 5(D) of the amended complaint alleges that on July 15 Respondent, acting through Supervisor Carlson, interrogated an employee about employees' union activities. Hopkins testified that on July 15 Carlson said to him

> I've got to ask you this question. You can tell me it's none of my business if you want to. Has any of the nurses or aides harassed you about the union.

Hopkins assertedly told Carlson ''no.'' Carlson testified that he did not have a discussion in July with Hopkins about his union activity; that Hopkins asked him about the Union and he told Hopkins that he had a right to vote how he felt about it; and that he did not ask Hopkins in mid-July if the nurses had talked to him about this union matter.

General Counsel's Exhibit 2 is a memorandum dated July 18 from Respondent to all employees which reads as follows:

> THIS IS TO ADVISE YOU THAT THE NLRB HAS TENTATIVELY SET A HEARING ON WEDNESDAY, JULY 25TH, TO DECIDE WHO CAN VOTE IN A UNION ELECTION. OUR POSITION IS SUPERVISORS, RN'S, AND LPN'S CANNOT VOTE. WE WILL KEEP YOU ADVISED.

Paragraph 5(E) of the amended complaint alleges that on July 19 Respondent, acting through its agent, told employees they (1) could not vote in a Board-conducted election, (2) could not participate in union activities and they would be subject to dismissal for engaging in union activities, and (3) had to be loyal to Respondent and threatened to discharge employees if they engaged in union activities.

Regarding a meeting which was held at Respondent's facility on July 19,[5] Sands, who signed a union authorizing card, testified that a day or two before the meeting there was a notice posted that there was a mandatory meeting for registered nurses (RNs), LPNs, and department heads; that present at the meeting were basically all of the RNs, LPNs, department heads, Dan Colby, Wimer, and Respondent's attorney, Joseph Yokum; that Yokum stated that (a) it was their opinion that the RNs and LPNs were supervisors and would not be allowed to vote in the upcoming election, (b) since they were supervisors they were expected to be loyal to the home because in the event the Union did get in and they went out on strike, the home would need all of the RNs and LPNs to come in and work, and (c) loyalty meant that supervisors would not engage in union activity; that employee Amy Feldpouch asked if they could be fired before the Board determined whether they were supervisors; that when she asked why the Respondent did not want the Union in Yokum answered, ''Well, for one thing they cost too God damn much money'' for the employees ''do you think those dues come out of thin air''; and that near the close of the meeting Yokum said, ''Now don't get me wrong, we are not going to fire anybody.''

Feldpouch testified that Yokum stated at the above-described meeting (a) it was the position of the home that the LPNs were supervisors and would not be able to vote in the election and (b) if LPNs were found to be participating in union organizing or union affiliation or anything such as that it was grounds for dismissal; and that when she asked him if they could be fired before the Board determined whether they were supervisors he answered, ''Yes.'' Feldpouch also recalled Yokum stating at the meeting ''now don't get me wrong, we're not going to fire anybody.''

Toothman testified that on July 19 Yokum told those assembled that the only thing the Union would do would be to break up the communication line between department heads; and that Yokum said that the Home demanded the loyalty of those assembled and if there was a strike they would have to work. Toothman did not hear Yokum say that no one was going to get fired over this but she indicated that she was sitting in the back and there was a lot of commotion in that area of the room.

Wimer testified that the nurses assembled were told that Respondent considered them to be supervisors and, therefore, they were not eligible to vote, should not participate in union activities and were required to be loyal to the Company; and that if they were supervisors and if they engaged in union activity, they could be discharged.

Paragraph 5(F) of the amended complaint alleges that sometime during the week of July 23 Respondent, acting through Wimer, informed employees that previously scheduled raises were being withheld because of employees' union activities. Employee Deanna Bly, who signed a union card and attended a union meeting in Shelbyville Park at the Lyons Club, testified that on July 23 she and employee Marlena Pritzman spoke with Wimer. Pritzman asked Wimer

[5] At one point Sands apparently agreed with the General Counsel that the meeting took place on July 9.

when she was going to get her merit raise.[6] Wimer said that there would be no further merit raises ''because of union activity, because that was against the law because the union took it as a bribe.'' Wimer testified that he told employees that because raises were recommended by their supervisors ''it could be construed as unfair labor on . . . [Respondent's] part with regards to the union activities'' and, therefore, Respondent could not give raises.[7]

Paragraph 6(A) of the amended complaint alleges that since July 26 Respondent has denied a previously scheduled wage increase to Pritzman.

Paragraph 5(G) of the amended complaint alleges that on July 30, Respondent, acting through Turpin, informed an employee that previously scheduled raises were being withheld and Respondent would rescind its previous commitment to approve and pay for employees to attend nursing school because of employees' union activities. Endsley testified that on July 30 she asked Turpin about her overdue raise, her anniversary date was in March, and about going to school; and that Turpin said that everything had been on hold because of the Union.

Paragraph 6(A) of the amended complaint alleges that on July 30 Respondent denied a previously scheduled wage increase to Endsley.

Paragraph 6(D) of the amended complaint alleges that on July 30 Respondent refused to approve payment for Endsley to attend nursing school.

On August 2 there was a hearing at the Board's St. Louis, Missouri office. Sands, Feldpouch, Briana Nohren, and Tina Hooper testified for the Union. Respondent called Wimer and Turpin as witnesses therein.

On August 10 a new nurse's schedule was posted. A copy of it was received by stipulation herein, Joint Exhibit 2. The General Counsel and Respondent stipulated that employee Rosemary Stretch began her employment with Respondent on January 26, 1987, and that she is employed as a LPN on a part time and on call status; and that employee Paula Rentfro first began her employment with Respondent on April 13, 1981, as a nurse's aide, resigned on June 14, 1981, was reemployed by Respondent from September 17, 1985, until she again resigned on September 8, 1987, and was reemployed again by Respondent on February 8, 1989, until she again resigned on March 14, 1991.

Paragraph 5(H) of the amended complaint alleges that on August 13 Respondent, acting through White, informed an employee that the employee had been removed from the work schedule because employees engaged in union and protected activities. Regarding the August 10 schedule, Sands testified that some time before this Turpin told her that she, Sands, could have all the day-shift work she wanted up to full time and Stretch, who was a temporary employee, would get anything that was left; that Stretch was temporary and she did not work any weekends, holidays or evenings and would work strictly on the 7 to 3 shift when the Respondent needed her; that Turpin indicated that Stretch was a temporary employee and Stretch's name on the work schedules was always designated in the past as temporary; that before this schedule was posted she was working an average of 32 hours a week; that she did not work on August 10 but she met Feldpouch and several others for lunch and Feldpouch showed her a copy of the schedule which had just been posted, which schedule removed her name from the schedule and put her on a oncall list; that there was a note on the schedule that the employees on the oncall list were to be called in the order listed; that she was number 3 on the list and, therefore, she would only be called after Stretch and Rentfro; that Rentfro came back to work at Respondent in June; that she had seniority over both Stretch and Rentfro; that when she telephoned Respondent to ask about the schedule Kendra White, the assistant director of nursing, told her that she had been placed on call due to financial reasons and that Stretch and Rentfro would be called in before her; that when she mentioned to White that Stretch was temporary and that Rentfro had just came back to work at Respondent's a couple of months ago, White said that Respondent was going by hire dates and Rentfro never quit from the last time she had worked; that when she asked White why the rules had changed and all of a sudden Stretch and Rentfro were ahead of her, White said that she would have to speak to Turpin; that she told White that she did not want to speak to Turpin because she was a liar as she demonstrated during her testimony at the aforementioned Board hearing; that White then said, ''Look we didn't ask for this''; that after she was placed oncall she was lucky if she worked 1 day a week; that the director of nursing indicated that Respondent had a policy of following seniority; and that the regular monthly schedule still had about 2 weeks to run when it was replaced by the above-described schedule.

Bly found out about the new schedule on August 12 while attending the Illinois State Fair when her sister told her that Sands had mentioned that Bly had been laid off. On August 14 Bly telephoned Turpin who then informed Bly that her position had been changed from full time to oncall. When she asked Turpin why she was going to be called after Stretch who was a temporary employee, Turpin told her that she, Turpin was going by the hire-in dates and Bly was just rehired in July. Bly testified that she thought Rentfro was a part-time employee.[8]

With respect to the August 10 schedule, Toothman testified that she asked Turpin on August 10 why her schedule was changed so that she had to work the 3 to 11 shift when she had been working the 7 to 3 shift for the last year and a half; that she told Turpin that she could not understand why Stretch, who was classified as a temporary,[9] and Rentfro, who was classified as part time, were working the day shift; that Turpin said that she needed Toothman to work the 3 to 11 shift and Stretch and Rentfro worked days because that is the only shift they agreed to work; that when she said to Turpin ''I only agreed to work the 7 to 3 shift'' Turpin said well that is the way the schedule is; that Rentfro had been off for several years and came back in June 1990

[6] Bly's understanding of a merit raise was that Respondent evaluated employees on their anniversary date and depending on their evaluation they would get a raise.

[7] Wimer pointed out that when he first started working at Respondent percentage raises were given across the board. But when Colby took over as chief executive officer in late 1989 the policy was changed so that raises were given strictly on the employee's anniversary date and strictly on merit.

[8] Bly did receive some messages on her answering machine which referred to either last-minute requests to work or requests that she call back in 5 minutes or forget it.

[9] Toothman testified that Turpin had previously told her that temporary workers did not have any benefits or seniority.

on a part-time, oncall basis; that before the union organizing campaign seniority was taken into consideration regarding who received certain assignments and who received vacation time if more than one employee wanted to go on vacation at the same time; and that she had more seniority than Rentfro. On cross-examination, Toothman testified that the employee handbook does not refer to seniority; and that she was aware of cutbacks in different departments prior to the time she signed the union card.

Wimer testified that the August 10 schedule changes were a continuation of the cost cutting measures initiated in February; that there was a cutback in the number of LPNs and RNs on the various shifts; that the changes in schedules did not have any other purpose; that while the facility did not have a strict seniority policy, it tried to go by seniority as far as cutting back, shift assignments and as far as part-time versus full-time nurses; that the handling of some situations depended on whether the individuals were full time or part time and their dates of hire; that the union activities of the employees were not taken into consideration in making these schedule changes; that Turpin changed from the 30-day schedule she used for years to a 2-week schedule in August because of problems with employees such as calling in and not showing up; that this change was not due to economics; that when it came time to either make cutbacks or changes in schedules a temporary employee would suffer the cutback or change in schedule before a full-time employee; that the date of hire would determine whether a temporary or part-time employee would be cut first; that Stretch was a part-time employee; that Rentfro had more seniority than Sands; that in terms of their dates of hire, Stretch was senior, Rentfro was next, Sands was third and Bly was fourth; and that he was present in St. Louis when Sands testified in August.

Paragraph 6(E) of the complaint alleges that Respondent removed Sands from Respondent's work schedule and failed and refused to return her to the same or substantially equivalent position of employment until November 26.[10]

Paragraph 6(F) of the amended complaint alleges that on August 14 Respondent removed Bly from Respondent's work schedule and since that date has failed and refused to return Bly to the same or substantially equivalent position of employment.

On September 5 Toothman telephoned Sands to ask if Respondent had called Sands about working the 3 to 11 shift because Respondent had offered Toothman overtime to work those hours. Sands left her house at 2:45 p.m. to pick up her son at school. When she returned home that evening there was a message on her answering machine about working the 3 to 11 shift. Toothman testified that Paula Chesser asked her about 9:30 a.m. if she would stay over and work the 3 to 11 shift that day; that she declined asking Chesser if she had telephoned Sands since Stretch and Rentfro were both working that day and Sands was the next person on the oncall list; that she first telephoned Sands about 10 a.m. to find out if anyone from Respondent had called about working the 3 to 11 shift that day; and that she again telephoned Sands about 2:30 p.m. and was told that no one from Respondent had called about working that day.

On September 12 Hopkins was laid off when Carlson returned from his vacation. Hopkins testified that Carlson told him that Wimer got someone from the hospital to come to work at the Home once or twice a week and Respondent was either selling the nursing home or closing it.

On September 20 Toothman telephoned Sands and asked her if Respondent had telephoned her to work the 3 to 11 shift that day because Respondent had Donna Jones working overtime. Sands testified that she telephoned Turpin and asked her about the situation; that normally Jones works strictly 16 hours on the weekends so anything she works during the week is overtime; and that Turpin asked Sands if she wanted to work and then said that if ''we think we can call you we sure will then.''

On September 21 Turpin telephoned Sands and asked her if she could work the 7 to 3 shift on 2 days. Sands accepted the offer. Sands believed that the last time she had worked was August 8.

Paragraph 5(I) of the amended complaint alleges that sometime in late September, Respondent, acting through Wimer, informed an employee that Respondent would rescind its previous commitment to approve and pay for the employee to attend nursing school because of employees' union activities. Edersheim testified that he spoke to Wimer in late September; and that Wimer told him that he could not go to nursing school because it would be viewed as trying to affect his vote. Wimer testified that he told Edersheim that LPN training was on hold because the scholarship program is given with the recommendation of a supervisor and could not be given for the same reason as the wage increases.

Endsley began nursing school in September. She paid her own tuition and she testified that no one from Respondent has indicated that she would be reimbursed.

Paragraph 5(J) of the amended complaint alleges that on October 1 Respondent, acting through Turpin, interfered with employees' union activities by ordering employees to remove union patches from their clothing. Standefer testified that on October 1 she had a conversation with Turpin regarding the wearing of union patches. Standefer and Read had clocked in early and were sitting in the dining room when Turpin told them they were not authorized to clock in early and that they should go back and clock in at the appropriate time and bring the timecards to her office so that she could sign them. When they did as directed, Turpin told them that they were not authorized to wear the patches, that they were not part of the uniform and that they could not wear the union patches on their uniform. The employees took the patches off.[11] Standefer testified that she wears a yellow ribbon with her uniform to support the troops in the Middle East and no one has told her to take it off; and that during work she has seen other employees wear pins for different holidays like St. Patrick's Day and she had never known the employees to be asked to remove the pins. Read corroborated Standefer testifying that the patch was white and had a square in the center with a checkmark which said, ''Vote Yes,'' (ALJ Exh. 1); that she could not recall whether the lettering was black or

[10] Par. 6(O) of the amended complaint alleges that Respondent engaged in the conduct described in pars. 6(E) and (G)–(H) of the amended complaint because Sands filed charges and/or gave testimony under the Act.

[11] The patch was a stick on patch with a round circle and a checked off box which said vote yes. Teamsters representatives had told the employees that they could wear the patches 2 days before the election.

red; that Turpin had never told her before that she, Read, was not to wear anything on her uniform except her school or name pin although she had worn other pins,[12] which were not school or name pins, in the past in Turpin's presence; and that the prohibition in the employee handbook (R. Exh. 1), regarding the wearing of badges or pins was never followed during her employment at the nursing home.[13]

On November 1 the Union was certified. Respondent filed a request for review of the certification issued by the Regional Director. That request was pending before the Board at the time of the hearing herein.

In early November Sands was aware that Toothman was going on medical leave and that Feldpouch's position on the day shift had never been filled after she quit. On November 4 Sands filled out a request form for a full-time day position. Turpin had quit so Sands gave the form to Chesser, who was the assistant director of nursing. Sands was not offered full-time employment until the end of November. She testified that while she was on lay off Respondent hired Nancy Miller to work the 7 to 3 shift for over a month; and that Respondent used Stretch and Renfro ''quite a bit.''

Toothman went on medical leave on November 5 for carpal tunnel surgery. Before leaving, Toothman gave her doctor's statement with her last day of work and her approximate date of return, January 2, 1991, to Turpin.[14]

Paragraph 6(G) of the amended complaint alleges that on November 5 Respondent failed and refused to consider Sands for a full-time position that existed.

On November 16 Sands telephoned Chesser to find out if she had any days to work the following week. Chesser told Sands that she was on the schedule for Tuesday, Wednesday, and Thursday, which was Thanksgiving. Sands told Chesser that she, Sands, could not work on Tuesday and that since she worked at Respondent on Thanksgiving the year before it was her understanding that she should have this Thanksgiving off. Chesser assertedly said, ''Fine, so all you can work is Wednesday.''

On November 20 Chesser telephoned Sands and told her that the new director of nursing, Florence Glenn, wanted to know if she, Sands, was still interested in a full-time day position. Sands indicated she was and she was told that she would have to work every other weekend.

When she went to work on November 21 Sands spoke to Chesser about the fact that albeit she had agreed the week before that she, Sands, would not be able to work on Tuesday November 20, apparently Chesser left Sands name on the schedule for Tuesday. Sands also spoke to Glenn about working on Thanksgiving but was told that she was on the schedule and she had to work that day.

Endsley received a raise in November which was retroactive to her anniversary date in March. Wimer testified that in the fall of 1990 Respondent granted wage increases and made them retroactive to the employee's anniversary date.

About 1 week before Christmas Glenn asked Sands if she wanted to go back to part time since she was pregnant. Sands indicated that financially she could not afford to go on part time. Glenn then told Sands that at the beginning of 1991 Respondent would be cutting back and since Sands was the last one to fill a full-time position her hours would be cut back first.

Paragraph 6(I) of the amended complaint alleges that on December 27 Respondent gave Toothman a poor evaluation.[15]

Toothman testified that on December 27 she spoke to Director of Nursing Glenn and gave her a medical release form. Glenn told Toothman that she did not have a position open for her. When Toothman pointed out that she had more seniority than all but one of the LPNs on days, Glenn said that when she, Toothman, went on medical leave she gave up all of her rights to her job. Toothman then told Glenn that she, Toothman, went on medical leave before and returned without any problem; and that she knew of other LPNs who went on medical leave and returned without any problems. Glenn replied that she was new on the job and that she was following the policy book. Wimer testified that Respondent's employee handbook (R. Exh, 1) differentiates between medical absences and an unpaid leave of absence; and that Toothman took an excused leave of absence without pay and that he did not know if Toothman described it as a medical leave of absence when she took it. Glen testified that Toothman did not tell her that when she, Toothman, took a medical leave of absence before she was able to return to the same job with the same hours; that she did not remember Toothman telling her this; and that she did not tell Toothman that she had given up her right to her job when she took leave but rather she told Toothman that there was no opening for her.

On December 27 Sands asked Glenn about her hours and Glenn told her that there would not be any scheduled days for Sands but rather she would be on call. Sands was placed on call January 1, 1991, and up to the time of the hearing she worked a total of between 6 and 8 days.

Paragraph 6(H) of the amended complaint alleges that on January 2, 1991, Respondent laid off Sands and has since that date failed and refused to return sands to the same or substantially equivalent position of employment.

Paragraph 6(J) of the amended complaint alleges that from January 2 to 14, 1991, Respondent failed and refused to reinstate Toothman to her former position following a medical leave of absence.

On January 4, 1991, Glen telephoned Toothman at home and asked her if she would meet with Glenn on January 7, 1991. Charlene Hunter was present on January 7, 1991, when Toothman met with Glenn. Glenn said that there was an opening on the 3 to 11 shift. Toothman agreed to take the position but she told Glenn that she, Toothman, did not think that it was fair when she had more seniority than all but one

[12] Read testified that one day she wore one of her son's pins which read ''Your attitude is showing.'' The pin was about the same size as the involved patch. Read believed that Turpin saw her wearing the pin. She testified that some of the residents told her that they thought that it was cute and they laughed about it.

[13] The handbook, at p. 40, reads, as here pertinent, as follows:

> Badges, pins, and similar items which do not directly relate to better health care delivery, shall not be worn on duty or become a part of your work uniform.

[14] In April Toothman went through a similar procedure before she left for carpal tunnel surgery. When she was able to return to work about 2 months later she obtained a statement from her doctor, gave it to Turpin, and returned to her full-time position.

[15] Par. 6(N) of the amended complaint alleges that Respondent engaged in the conduct described in pars. 6(I)–(L) of the amended complaint because Toothman gave testimony under the Act.

of the LPNs on days and that if she did not get the day shift she was going to see a lawyer. Glenn then said that she was going to talk to the administrator and have him speak to Colby to determine which shift she would be working. During the meeting Toothman was given a written evaluation which was done by Diane Smith, who was an RN staff nurse, and Wimer. (G.C. Exh. 5.) The evaluators gave December 27 as the date on the form. Toothman testified that normally the evaluations were performed by the director of nursing and the assistant director of nursing. Wimer had never performed an evaluation on her before. In the light of other evaluations she had received, i.e. General Counsel's Exhibit 6, Toothman described the December 27 evaluation as a poor one. She wrote on the evaluation ''I feel this is an unfair evaluation due to my union activities and harassment from supervisors.'' While most of the categories on the evaluation were marginal or substandard, she did not recall ever receiving a substandard evaluation in the past. Also, while she received a substandard rating on this evaluation for attitude, she had never been reprimanded or disciplined about her attitude. Wimer testified that a discipline Toothman received October 17 for being absent 5 days, tardy 2 days, and leaving early 3 days and also a request from Toothman to go back to the 7 to 3 shift (R. Exh. 3), ''might have had something to do with'' the poor evaluation she received on December 27. On cross-examination Wimer testified that on the December 27 evaluation, under attendance, she was rated outstanding and under punctuality she was rated acceptable or standard.

Regarding Toothman's evaluation, Wimer testified that Diane Smith was serving at that time as acting director of nursing. As noted above, on December 27, the date of the evaluation, Toothman spoke with Director of Nnursing Glenn and gave Glenn her Toothman's medical release.

Paragraph 6(K) of the amended complaint alleges that on January 14, 1991, Respondent reinstated former employee Toothman but failed and refused to return Toothman to a position of employment which afforded Toothman the same terms and conditions of employment which were afforded her prior to her medical leave of absence. Toothman returned to work full time at Respondent on January 14, 1991, on the 3 to 11 shift even though she had previously worked on the 7 to 3 shift. Toothman asked Glenn if the other LPNs were going to stay on the 3 to 11 shift and Glenn said that they were. Toothman testified that 1 day after she began working LPN Paula Beeson, who was on the 3 to 11 shift, went to the other day-shift opening; that Beeson graduated nursing school in midsummer 1990; that she, Toothman, hired back in at Respondent's as an LPN in 1989; and that she believes that there is a distinction between a medical leave of absence and a leave of absence without pay and she was not on the latter since she received disability pay.

Toothman testified that on February 11, 1991, she copied 10 care plans to use as guidelines from a binder which was kept on one of the halls in the home; that LPNs quite frequently have to make notations on the care plans; that just before she went on her last medical leave Kim Russ, who was the care plan nurse, had quit and Turpin told the LPNs that they had to learn how to write the care plans to meet state requirements; that when she went on medical leave she did not receive any in-service training on how to write care plans; that while the need to write a care plan had not yet occurred, she decided that she had to learn how to write one; that while she was copying the care plans her supervisor, RN Norma Smith, asked her what she was doing; that when she asked Smith if it was alright to take the 10 care plans she copied home Smith replied that it was okay with her; that Smith showed her a care plan book which might be purchased in a bookstore; that she told Smith that she did not need all 10 of the copied care plans and she discarded 8 keeping 2 to use as guidelines; and that she cut the resident's names off the bottom of the two that she kept so that she would not invade their rights and she made copies of the two that she took. (G.C. Exhs. 3(a) and (b).)

Nora Smith, who was Toothman's immediate supervisor at the time she was discharged, testified that when she saw Toothman copying care plans she told Toothman that she could buy a book which showed how to do care plans and she showed Toothman a copy of the book; that Toothman said, ''Well, I can buy a book''; and that she did not tell Toothman that it was okay to copy the care plans.[16] On cross-examination Smith testified that there are no rules that the care plans cannot be copied; that Toothman did not ask her if it was okay to take some copies home; that the names of the residents were not cut off of the copies of the care plans Toothman had and she did not see Toothman remove the names of the residents later; that she could not tell who the care plans were for when she looked at the copies introduced herein, which copies did not have the name of the residents; that if Toothman cut off the names of the residents from the care plans she took that would not be a breach of any confidentiality; and that Toothman told her that she was going to school and she needed the care plans for that. Subsequently, Smith testified that while care plans have to be completed within a certain time, the nurses do not take them home to complete them but rather the nurses can come to work a little early to work on the care plans.

Toothman worked at Respondent's home on February 12 and 13, 1991. Nothing was said to her on these 2 days about the care plans. Nora Smith testified that she told Glenn on the afternoon of February 12 about seeing Toothman copying care plans; and that Glenn asked her to put it in writing which she did. Glenn testified that Smith told her that Toothman said the night before that she was going to Milikan University to become a RN and she needed to study the care plans to learn how to do that; that as soon as Smith told her she told Bill Morgan, who had been the administrator at Respondent's facility since January 2, 1991; that she and Morgan attended a meeting away from the facility on February 13 on residents' rights and she discussed the Toothman incident with a lawyer who spoke at the affair; that the lawyer asked if the employee was let go; that Morgan was sitting next to her when she spoke to the lawyer but she did not know if he, Morgan, overheard the conversation with the lawyer; and that she did not return to the nursing home after the meeting but went directly home. On cross-examination Glenn testified that ''Colby . . . more or less tells us what we should do''; that although Morgan told her that Toothman was to be discharged, Glenn assumed ''that it was

[16] When asked on direct whether she observed Toothman remove the copies of the care plains from the premises, Smith answered, ''She left—I think she left before I did'' and ''I don't recall. But usually she did.''

coming from Mr. Colby''; that she did not think that Toothman was at work on February 13; and that she doubted that Toothman was there on February 13 ''otherwise I would have spoken to her.'' Morgan testified that upon learning of the Toothman incident on February 12, 1991, he told Glenn to contact public health and get their opinion.

On rebuttal Toothman testified that she worked the 3 to 11 shift on February 11, 12, and 13, 1991.

Paragraph 6(L) of the amended complaint alleges that on February 14, 1991, Respondent discharged Toothman and has since failed and refused to reinstate her to her former or substantially equivalent position. Toothman testified that on February 14 she went to the Home to pick up her check which had a note on it that she should see director Glenn; that Glenn took her to Morgan's office; that Glenn asked her if she made copies of care plans because she was going back to school; that she told Glenn that she did not tell Norma Smith that that was the reason why she made copies of the care plan; that she did tell Glenn that she planned to go back to school at Milikan; that when Glenn said that it was an invasion of the patient's rights she told Glenn that the copies did not have the names on the bottoms since she had cut the names off; that Glenn told her that Respondent was going to have to let her go; that Glenn also asked her if the union guys wanted the copies of the care plans; that before she quit, nurse Kim Ruff, who was in charge of developing care plans, took care plans home to work on them; and that she did not believe that care plans were medical records. Glenn testified that when she came to work on the morning of February 14 Morgan told her that Toothman would be let go because of residents' rights; that when Toothman came in to get her paycheck that morning she took her to Morgan's office; that while they were in Morgan's office, with him present, she told Toothman that she, Glenn, understood that Toothman wanted to go to Milikan University to become an RN; that Toothman said there or Lakeland; that she then told Toothman that Glenn understood that Toothman was ''copying some care plans last night [sic] so that you could study them—take them home and study. And she says, yeah. She said, I took about ten home''; that Toothman said that other people copy things; that Toothman was already discharged by the time she, Glenn, asked anyone if they copied care plans; that she did not remember when she asked anyone if they copied care plans; that Toothman said she did not ask anyone's permission because she did not think she had to; that she told Toothman that she could not bring anything out of the facility without permission from the residents because of residents' rights; that when Toothman offered to bring them back she, Glenn, told her that ''it's too late. It's been out of the facility. I don't know what you've done with them''; that she told Toothman that what she did violated resident's rights and ''[i]f the state or federal government came in, we'd really get it''; that she did not remember if she reported the incident to the State of Illinois; that when Morgan told her that Toothman was going to be discharged he did not tell her the reason but she assumed it was because of the incident she told him about; that Colby is ''over the nursing home and the hospital . . . and so most decisions have rested with him''; that Morgan usually discusses things with Colby, ''[h]e [Morgan] goes there every day and discusses things''; that Toothman did not say that she cut off the name of the resident from the copy; that if the name of the resident had been removed there would have been no breach of confidentiality; and that she did not ask Toothman if she was going to give the care plan to the Union. When asked on direct whether he consulted with Colby about Toothman's discharge or whether it was his, Morgan's, decision, Morgan responded that it was his decision. Regarding the discharge, Morgan testified that Toothman admitted to Glenn that she, Toothman, copied and took resident care plans out of the home; that when Toothman was discharged he had no knowledge that she had in fact disseminated the resident information to anyone; that Toothman did not tell him and Glenn the day she, Toothman, was terminated that she removed the resident's names from the copies she made; that even if she did remove the names of the residents from the care plans she copied, Toothman still breached confidentiality by removing the records from the facility without permission; that during the meeting with Toothman she indicated that other LPNs make copies of care plans and he investigated this assertion after Toothman was discharged; that Toothman said that she was going to use the information at Miliken University; that he was fully aware at the time of her discharge of Toothman's union activities;[17] that on the morning of February 14 Glenn told him that Toothman had violated Respondent's policies and she should be discharged; that he told Glenn Toothman was going to be discharged and Glenn agreed; that he telephoned Colby on the morning of February 14, 1991, but he was not available; that when Toothman came to his office Colby telephoned back and he told Colby what had occurred; that Colby asked him what he was going to do and when he told Colby that he was going to discharge her Colby said alright; and that before Glenn questioned Toothman he had decided to discharge Toothman if she admitted taking copies of the care plans out of the facility. On rebuttal, Toothman testified that when she told Glenn and Morgan that she, Toothman, had cut the names off the copies Glenn said that it was still an invasion of the resident's rights; and that when she gave an affidavit, the first one after she was fired, to a Board agent she gave him the copies of the care plans which had the resident's name cut off.[18]

On February 16, 1991, Respondent told Sands that it wanted a note from her doctor that she was able to work. Sand's baby was born on March 6, 1991. Sands had a note from her doctor that she was able to work until she delivered.

Morgan testified that when he became administrator of Respondent he reviewed its financial records. He sponsored Respondent's Exhibit 4, a copy of which is attached hereto as Appendix A.

Analysis

As noted above, paragraph 5(A) of the amended complaint alleges that Respondent violated the Act when Turpin informed an employee that previously scheduled raises were being withheld and Respondent would rescind its prior commitment to approve and pay for employees to attend nursing

[17] Morgan also testified that he had been told of Sands' union activities and the fact that she testified at a Labor Board hearing in St. Louis sometime in August 1990.

[18] According to the record, it appears that Toothman gave the Board six affidavits, namely, on February 20 and 22, July 31, September 5, October 4, and January 10, 1991.

school because of employees' union activities. Turpin did not testify herein so she does not refute Edersheim's testimony that on June 25 she told him that Respondent would not be able to send him and Endsley to nursing school and they would not receive their raises because it would be considered payment for not voting for the Union. Standefer testified that when Edersheim asked about his evaluation and raise she overheard Turpin state that she could not make any evaluations or give any raises because of the union activities since it would be considered a bribe. On brief, the General Counsel contends that on June 10 Edersheim and Endsley were told by Turpin that their requests to attend nursing school were approved and Respondent would follow its normal practice of paying for most of their schooling; that shortly thereafter Edersheim and other of Respondent's employees began an organizational drive for the Union; that thereafter Turpin made the above-described no raise no nursing school statement to Edersheim; that Turpin's statement violated Section 8(a)(1) of the Act in that the Board has found a violation where an employer refused to follow an established practice of assisting employees in attending seminars or receiving training where the reason was the employees' union activities, *St. Francis Hospital*, 263 NLRB 834, 837 fn. 2 (1982), and *Norwalk Hospital*, 245 NLRB 418 fn. 2 (1979); and that the Board has also found a violation where an employer withheld previously scheduled raises and contended that to give the raise would appear to be a bribe or unlawful promises, when the real reason was the employees' union activities, *Champion Road Machinery Corp*., 264 NLRB 927 (1982), and *Gossen Co*., 254 NLRB 1339 (1981). Respondent, in its nine-page brief, argues that Endsley and Edersheim quit in November and October, respectively; that to take advantage of an offer from Respondent to be reimbursed for attending nursing school an employee ''must continue in the employ of Respondent and work for it for a year after completion of the schooling'' (actually, the agreement speaks to 2 years and not 1 year); that there is no claim that either of these employees was forced to quit or resign; that it ''would seem,'' therefore, that by definition they could not have honored their obligations under any contract to receive payment for attending school; and that, therefore, Respondent did not violate the Act. Regarding the cessation of the evaluation/raise procedure, Respondent argues that even though some wage increases were withheld due to a concern over the commission of a possible unfair labor practice, effective September 1 and retroactive to an employee's date of hire, a merit increase of 7 percent was given to all employees and, therefore, it would seem difficult to conclude that any employee lost anything (in an 8()(3) context), particularly since the wage increases were made retroactive.

Recently the Board in *Retlaw Broadcasting Co*., 302 NLRB 381 (1991), with Chairman Stephens dissenting, determined that an employer could suspend evaluations and raises at the advice of its attorney during a union organizing campaign, and even during the employer's appeal of the results of the subsequent election. The majority cited *Atlantic Forest Products*, 282 NLRB 855 (1987), which held that an employer can postpone a wage adjustment so long as it makes clear to employees that the adjustment would occur whether or not they select a union and that the sole purpose of the adjustment's postponement is to avoid the appearance of influencing the election's outcome. In *Retlaw* the employees were told that the suspension of the evaluation program was based on Respondent's attorney's advice that to continue it could be considered unlawful interference in the election; and that the Respondent therein would reinstate the program as soon as it was advised that it was legal to do so. Here Respondent eventually reinstated the evaluation/raise program and it gave the raises retroactively. (Apparently, however, not all of the employees received retroactive raises, i.e., Edersheim.) Nonetheless, Respondent herein did not explain to employees when it suspended the evaluation/raise program that it would reinstate the program whether or not the employees selected a union. With respect to paying for most of the nursing school costs for Endsley and Edersheim, it is noted that the approval was given and a verbal commitment was made by Respondent before the organizing drive even began. Consequently, Respondent would not have been running any real or reasonably perceived risk of being charged with trying to influence the outcome of any union election if it lived up to its commitment. When Turpin made the June 25 statement to Edersheim Respondent violated the Act as alleged.

Paragraph 5(B) of the amended complaint alleges that on July 6 Fisher interrogated an employee about the employee's attendance at a union meeting. On brief, the General Counsel contends that the testimony of Welton should be credited over the blanket denial by Fisher since Welton is no longer employed by Respondent and has nothing to gain by falsely testifying about the conversation. Welton is credited. Fisher did not impress me as being a credible witness. Her testimony on direct, which is set forth above, was not a specific denial of the allegation but rather appeared to be brief responses to carefully couched questions. According to her own testimony on cross, she was not told what was prohibited until after July 6. Respondent violated the Act as alleged.

Paragraph 5(C) of the amended complaint alleges that on a specified day in July Turpin informed an employee that previously scheduled raises would not be given because of employees' union activities. Turpin did not refute Read's above-described testimony. It is credited. For the reasons described above, Respondent violated the Act.

Paragraph 5(D) of the amended complaint alleges that on July 15 Carlson interrogated an employee about employees' union activities. As noted above, Hopkins testified that Carlson asked him if any of the nurses or aides harassed him about the union. Carlson denies asking Hopkins if the nurses had talked to him about the union matter. On brief, the General Counsel contends that Hopkins should be credited over the blanket denial of Carlson because Hopkins is no longer employed by Respondent. Respondent, on brief, asserts that even if Hopkins version of this conversation is correct, it would not rise to the level of an unfair labor practice since Carlson was not asking about Hopkin's union activity. Hopkins is credited. He impressed me as being a very honest and sincere individual. What Carlson was really asking was which employees talked to Hopkins about the Union. Such an activity would be a protected union activity. Respondent violated that Act.

Paragraph 5(E) of the amended complaint alleges that on July 19 Respondent, through Yokum, violated the Act by telling employees they (a) could not vote in a Board conducted election, (b) could not participate in union activities

or they would be subject to dismissal, and (c) had to be loyal to Respondent and they would be discharged if they engaged in union activities. On brief, the General Counsel contends that an employer acts at its own risk when, notwithstanding any good-faith belief, it advises employees that they are supervisors and cannot vote during a Board election, and the employees are subsequently found not to be supervisors as defined by the Act; that Yokum's statements that LPNs could not vote in the election amounted to interference, restraint, and coercion and violated the Act; that Respondent acted at its peril when Yokum advised the LPNs that they could be discharged for union activities if they were supervisors; and that it was a violation of the Act when Yokum told LPNs that they could be fired for disloyalty even before the Board reached a decision on whether they were supervisors. Respondent, on brief, argues that the function of the meeting was to advise all concerned of Respondent's position on supervisory issues at an upcoming representation case hearing; and that all Respondent did was to state its legal position and advise no action would be taken against anyone about such issues. Contrary to Respondent's assertions on brief, Respondent did not merely state its legal position and advise that no action would be taken against anyone about such issues. Respondent engaged in intimidation, in coercion. It put LPNs on notice that it did not want them voting in the upcoming election and it did not want them engaging in union activity. Yokum divulged the true nature of the purpose of this meeting when he answered ''yes'' to one of the question asked at the meeting, namely, if LPNs could be fired before the Board reached a determination as to whether they were supervisors under the Act. The fact that near the close of the meeting Yokum thought to state ''now don't get me wrong, we are not going to fire anybody'' does not change the fact that his earlier statements violated the Act in that this afterthought did not result in his total withdrawal or repudiation of his earlier statements. Respondent violated the Act as alleged.

Paragraph 5(F) of the amended complaint alleges that sometime during the week of July 23 Wimer informed an employee that previously scheduled raises were being withheld because of employees' union activities. Wimer admits making a statement to the effect that raises would not be given because they could be construed as unfair labor practices. For the reasons given above, regarding Turpin's statement, Wimer's statement violated the Act.

Paragraph 5(G) of the amended complaint alleges that on July 30 Turpin told an employee that previously scheduled raises were being withheld and Respondent would rescind its previous committment to approve and pay for employees to attend nursing school because of employees' union activities. Turpin did not testify herein and deny that on July 30 she told Endsley, regarding her overdue raise and about going to nursing school, that everything had been put on hold because of the Union. For the reasons given above, Turpin's statement violated the Act.

Paragraph 5(H) of the amended complaint alleges that on August 13 White informed an employee that the employee had been removed from the work schedule because employees engaged in union and protected activities. On brief, the General Counsel contends that Sands testimony stands uncontested that Assistant Director of Nursing White told Sands ''look we didn't ask for any of this'' when Sands asked for an explanation for why she had been removed from the normal work schedule and placed on an oncall list; that this outburst amounts to an admission; that there can be no other interpretation except that White was saying Respondent did not ask for the employees to organize a union and therefore the schedule change for Sands and others is what the employees deserved; and that this explanation clearly imparted a threat. Respondent, in its nine-page brief, does not specifically address this matter. I agree with the General Counsel's interpretation of the involved unrefuted testimony. White's statement constituted an unlawful threat in violation of the Act.

Paragraph 5(I) of the amended complaint alleges that sometime in late September Wimer told an employee that Respondent would rescind its previous commitment to approve and pay for the employee to attend nursing school because of the employees' union activities. Wimer did not deny that he told Edersheim in late September that he could not go to nursing school because of the union activity. For the reasons given above, this was a violation of the Act.

Paragraph 5(J) of the amended complaint alleges that on October 1 Turpin interfered with employees' union activities by ordering employees to remove union patches from their clothing. On brief, the General Counsel contends that both Read and Standefer testified that employees often wore buttons and similar sized insignia to work on their uniforms without problems despite Respondent's employee handbook rule prohibiting the wearing of such insignia. Turpin did not testify to deny the assertions that she had witnessed the wearing of these other insignia. The General Counsel contends that since Respondent had never enforced the rule and employees regularly wore various pins and buttons, the rule is no defense. Respondent, on brief, argues that the rules applicable to employees in general are not usually applied to those operating facilities in the health care industry; and that it would seem clearly proper for Respondent to have required LPNs who dealt directly with patients to refrain from electioneering during the course of their nursing duties. As noted above, Turpin did not testify herein. Consequently, Read's and Standefer's testimony is not refuted. Turpin did not limit the prohibition to any specific area, i.e., immediate patient care area. Rather, Turpin told the two LPNs that they could not wear the patches since they were not a school or a name pin. It appears that Turpin was relying on the above-described rule in the employee handbook. However, notwithstanding the uniform rule, employees were permitted to wear pins and other paraphernalia on their uniforms. Accordingly, Turpin selectively and disparately enforced Respondent's uniform rule and since Respondent has not demonstrated that the patch was provocative or offensive, it violated the Act through Turpin.

Paragraphs 6(A) and (B) of the amended complaint allege that on specified dates in June and July 1990 Respondent denied previously scheduled wage increases to Edersheim, Endsley, Read, Pritzman, and other unnamed employees. On brief, the General Counsel contends that Respondent's argument about such wage increases being perceived as bribes is wholly specious; and that Respondent's argument that since it gave the raises later, this somehow negates its earlier 8(a)(3) conduct in withholding raises is likewise without merit. Respondent's argument on brief is set forth above. Also, the reasons for concluding that Respondent violated the

Act are set forth above. The fact that Respondent eventually gave some retroactive raises does not negate the violation. It appears that at least one of the employees never received the raise.

Paragraphs 6(C) and (D) of the amended complaint allege that on specified dates in June and July 1990 Respondent refused to approve payment for Edersheim and Endsley to attend nursing school. The arguments on brief regarding this alleged violation are covered above. While the General Counsel contends that this denial is like Respondent's denial of regularly scheduled wage increases, here the attendance at the nursing school had already been approved and Respondent made a verbal commitment to Endsley and Edersheim before the organizing drive even began. Consequently, any recommendation supporting the approval would have had to be given before the organizing drive began and, therefore, it was not reasonable for Respondent to even take the position that this was the same situation as wage increases which may have had to have been approved during the organizing drive. Also, unlike the wage question, here Respondent did not attempt to belatedly right the wrong. Endsley returned to work for Respondent after she quit. Respondent did not attempt to belatedly live up to its original commitment. For the reasons given above, Respondent violated the Act both when it told the employees that it was not going to live up to its prior commitment and when it did not live up to its prior commitment.

Collectively paragraphs 6(E), (G), (H), (M), and (O) of the amended complaint allege that Respondent violated Section 8(a)(3) and (4) of the Act by removing Sands from the work schedule from August until November 1990, by refusing to consider her for a full-time position that existed in November, and by laying her off on January 2, 1991. On brief, the General Counsel contends that Respondent was aware of Sands' support for the Union by the way she questioned Yokum during the July 19 meeting regarding the loyalty the LPNs assertedly owed to the Respondent and because she testified on behalf of the Union during the representation hearing on August 2; that it was no accident that just 8 days later Sands was taken off the work schedule and placed on the on-call list behind Stretch, who was a temporary employee who had no seniority compared to Sands with respect to hours offered to employees, and Rentfro, who had not worked for months after possibly quitting and returned just before Sands was taken off the regular work schedule; that the economic defense is pretextual and it does not explain why Respondent changed from a monthly schedule to a weekly schedule; that the testimony of Sands and Toothman demonstrate that Respondent did not make an honest attempt to utilize Sands on an oncall basis even when work was available; that although Sands requested to fill in for Toothman when she went on a medical leave of absence in early November, Respondent never considered Sands even though there was work available; that while Sands was placed on a full-time schedule in late November she was returned to part time on January 1, 1991, because she was the last employee to go full time; that Respondent's conduct violated Section 8(a)(3) and (4) of the Act because it was partially based upon Sands testimony during the representation hearing and because Sands filed unfair labor practice charges on August 16; and that Respondent's motive was revealed by Supervisor White when she told Sands ''look we didn't ask for any of this.'' Respondent, on brief, argues that any scheduling changes were necessitated by economic facts and not union activity, particularly when the staff reductions began prior to the advent of any type of union activity at Respondent; that the changes had an impact on many, many employees—not just those who assert antiunion animus as the motivation behind these changes; that Sands had a continuing health problem related to her pregnancy; and that for her to expect Respondent to make some sort of special accommodation was most unreasonable.

Taking Respondent's last above-described point first, Sands was not asking Respondent for some sort of special accomodation unless one is willing to describe an employee's request to work as a request for a special accomodation. The record does not support Respondent's assertion that Sands had a continuing health problem related to her pregnancy. And it is noted that Respondent is not asserting that the schedule change had a negative impact on many, many employees. The regular schedule had 2 weeks to run. Why not let it run out before making this change? Why was it necessary to make this change at that time? Was there a pressing need to make the change before the current schedule ran its course? Once again Turpin did not testify so we do not have her reason for making the change. Wimer asserts that the cutbacks of LPNs and RNs on various shifts were due to Respondent's financial condition and that the reduction in the time period covered by the schedule was due to scheduling problems with employees who would call in and not show up for work. Regarding the former, the financial evidence introduced by Respondent herein only goes up to the month of June 1990. It shows that Respondent's monthly losses went from a high of $32,759 in November 1989 to lows of $3,277 in April 1990 and $3,457 in June 1990. And if the cause of the schedule change was financial, why change the period covered by the schedule? Wimer offers that this was done because employees were calling in and not showing up. No one else, especially those who would have first-hand knowledge, testified that this is the reason. Turpin does not testify. White does not testify. No records of call offs were introduced. Respondent, in my opinion, realized that there had to be an ostensible reason for this change coming at that time. In my opinion the schedule was changed to punish Sands. As pointed out by the General Counsel, White's outburst ''look we didn't ask for any of this'' when Sands questioned her about the schedule change reinforces this conclusion. Also, this conclusion is reinforced by Respondent's subsequent conduct toward Sands while she was on the oncall list. Even when it had work for Sands while she was on the oncall list, Respondent made sure Sands did not work. When Sands questioned this on September 20 Turpin, taking advantage the position Respondent put Sands in, asked Sands if she wanted to work and then said if ''we think we can call you we sure will then.'' This unlawful discrimination continued when Respondent failed to consider Sands for the full-time position she requested. After finally giving Sands a full-time position, Respondent shortly thereafter told Sands sorry you are the first to, in effect, be laid off because you were the last to be given a full-time position. Sands was targeted for her union activity and because she filed a charge with the Board against Respondent and gave testimony under the Act. Respondent, in taking these

actions against Sands, violated Section 8(a)(3) and (4) of the Act.

In my opinion the reasons given by Respondent for the actions taken against Sands are pretextual. This is not a dual-motive case under *Wright Line*, 251 NLRB 1083 (1980), enfd. 622 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). If it were to be treated as a dual-motive case, in my opinion the business justifications advanced by Respondent do not demonstrate that Sands, absent her union and protected activities, would have been subjected to the discriminatory treatment she received.

Paragraph 6(F) of the amended complaint alleges that Respondent unlawfully removed Bly from the work schedule on August 14. On brief, the General Counsel contends that Bly's treatment was part of the Respondent's plan to punish Sands in that it could not discriminate against Sands without placing Bly behind Sands on the oncall list; and that Bly was in the same position as Sands before the schedule change, namely, a regular part-time employee which up to that time meant that she, like Sands, had benefits and seniority over temporary employees such as Stretch, who was basically a fill in who had no seniority for work purposes over regular part-time employees. I agree with the General Counsel's analysis of the situation. Bly was a casualty in Respondent's war against Sands. Respondent violated the Act in its treatment of Bly.

Collectively, paragraphs 6(I)–(N) of the amended complaint allege that Respondent violated Section 8(a)(3) and (4) of the Act when it gave Toothman a poor evaluation on December 27, when it failed and refused to reinstate Toothman to her former position following a medical leave of absence, when it did reinstate her but refused to return her to a position which afforded her the same terms and conditions of employment which were afforded her prior to her medical leave of absence, and when it discharged her on February 14, 1991, all because she assisted the Union and engaged in concerted protected activities and gave testimony under the Act. On brief, the General Counsel contends that Toothman was one of the most vocal supporters of the Union and she helped organize the first union meeting held in Shelbyville City Park on July 5, signed a union authorization card, and solicited other employees to sign union cards at work; that Toothman also provided numerous statements to agents of the Board in the various cases and charges against Respondent; that Wimer admitted having heard rumors in July 1990 that Toothman was involved in trying to organize the Teamsters union; that Glenn was aware that Toothman was involved in organizing the Teamsters union; that Respondent's employee handbook makes a distinction between leave of absences without pay and medical absences; that Toothman followed the medical absence procedure by presenting the physician certification; that even if Respondent considered it a leave of absence, since it was an approved leave, under Respondent's procedure Toothman should have received a similar position at the same salary when she returned yet Respondent refused to reinstate Toothman; that Toothman's December 27 evaluation was done by Diane Smith, who was not Toothman's supervisor, and by Wimer who admitted that he never performed that task before; that Diane Smith did not testify herein and Wimer could not explain why or even remember if he participated in the evaluation; that the evaluation indicated that Toothman had a poor attitude but Wimer could not reasonably explain why she received this rating; that Toothman was evaluated poorly for one reason, namely, her union activities; that Respondent offered Toothman the 3 to 11 shift beginning January 14, 1991, instead of her normal daytime shift because she engaged in union activity; that regarding the care plans, Nora Smith, Toothman's immediate supervisor, and Glenn conceded that if the names were removed there would be no breach of confidentiality; that it is not logical that Respondent would wait 2 days to discharge Toothman if Respondent really believed Toothman had engaged in a serious breach of confidentiality; and that there is good reason to believe that the care plans are not confidential documents since the information on the care plans is not of a medical nature and merely describe goals regarding the care of the resident. Respondent, on brief, argues that Toothman expected some sort of special accomodation from Respondent and that her expectation was unreasonable under the circumstances; that Toothman admitted that she knew the facility's policy against the disclosure of any medical information about the condition of a resident; that those who supervised Toothman viewed the care plans as medical records; that the decision as to what penalty to impose would clearly be with her supervisors; and that it would be odd for Toothman to be rewarded for conduct that she knew was wrong, which in a real sense simply invited severe disciplinary action.

Regarding the December 27 evaluation, Respondent did not call Diane Smith as a witness to explain the evaluation. Wimer's explanation regarding her role in the evaluation, namely, that she was acting nursing director, seems to conflict with other evidence of record that Glenn, as director of nursing, had a meeting on December 27 with Toothman. A review of the summary of Wimer's testimony set forth above demonstrates that Wimer could not explain Toothman's poor evaluation of December 27. Wimer did testify that he was aware that Toothman was involved in union activity. In my opinion, the General Counsel has demonstrated union animus on the part of Respondent. On the other hand, Respondent has not demonstrated that it had a legitimate business reason for giving Toothman the poor evaluation. Consequently, Respondent violated the Act when it gave Toothman a poor evaluation for her union activity which, to Respondent, apparently demonstrated a poor attitude.

When Toothman asked to come back to work on December 27 Glenn initially told her that she had given up all her rights to her job by taking the leave of absence. Toothman is credited on this point. Contrary to the impression Wimer apparently attempts to convey, Respondent does have sick leave without pay. Toothman had given Respondent her doctor's note. She was being treated differently from her last leave when she had carpel tunnel surgery on her other wrist. On December 27 Respondent was not going to take her back assertedly until it had an opening. Respondent violated the Act as alleged. The General Counsel has made a prima facie case. On the other hand, Respondent has not demonstrated any justifiable business reason for its conduct in this regard.

When Toothman returned to work full time on January 14, 1991, on the 3 to 11 shift she asked Glenn if the other LPNs then on the 3 to 11 shift were going to remain on the 3 to 11 shift and Glenn said that they were. Glenn does not deny saying this. Toothman is credited. Toothman also testifies

that 1 day after she began on the 3 to 11 shift, contrary to what Glenn said just the day before, one of the LPNs was transferred from the 3 to 11 shift to the day shift. The LPN involved, Beeson, just graduated nursing school in midsummer 1990 while Toothman had been hired back by Respondent as an LPN in 1989. Glenn does not deny or explain any of this. Toothman is credited. Toothman had worked on the day shift before her surgery, she asked to be able to return to the day shift, she had been able to return to the day shift the last time she took time off for carpel tunnel surgery, and Respondent had to transfer someone with less seniority than Toothman to fill an opening it had on the day shift. Toothman saw what was going to happen before it happened. Does Respondent even attempt to explain these machinations? The General Counsel has made a prima facie case regarding Toothman. Respondent does not offer any business justification for denying Toothman an opening on the day shift one day and on the next day filling an opening on the day shift with someone from the 3 to 11 shift who had less seniority that Toothman. As Wimer admitted, while the facility did not have a strict seniority policy, it tried to go by seniority with respect to shift assignments. No reason was given here why seniority was not utilized in making this shift assignment. As Toothman suspected, Respondent was not going to place her on the day shift but rather would put her on the 3 to 11 shift and move one of the LPNs on the 3 to 11 shift to the day shift. That is just what Respondent did. Once again Respondent violated the Act in its treatment of Toothman.

Regarding Toothman's termination, there is no reason to doubt Toothman's assertion that she removed the residents' names from the care plans she took out of the nursing home. Toothman is credited. Nora Smith testified that there is no rule prohibiting the copying of care plans. No one refuted her testimony on this point. Both Nora Smith and Glenn testified that if the residents' names were removed from the copies taken from the nursing home, there would be no breach of confidentiality. Morgan, who claims that he was the individual who decided to terminate Toothman, testified that it did not matter whether Toothman removed the residents' names from the copies she took from the facility. In my opinion Toothman was not discharged for any breach of confidentiality—none occurred. It was a pretext. As indicated above, Respondent had already violated Federal law twice in its dealings with Toothman. It is conceded that Morgan was fully aware of Toothman's union activity at the time. Respondent seized this opportunity. The evidence demonstrates that the decision to terminate Toothman was made before Morgan and Glenn spoke with Toothman.

Toothman's termination is not a dual motive situation. If it were considered to be such, it is noted that on the one hand the General Counsel made a prima facie showing that Toothman engaged in union activity and Respondent, which engaged in a number of acts demonstrating its union animus—including some against Toothman herself, knew. On the other hand, Respondent did not provide a real business justification for the discharge. Once again Respondent violated the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by:

(a) Informing an employee that previously scheduled raises were being withheld and that Respondent would rescind its prior commitment to approve and pay for employees to attend nursing school because of employees' union activities.

(b) Interrogating an employee about the employee's attendance at a union meeting.

(c) Informing an employee that previously scheduled raises would not be given because of employees' union activities.

(d) Interrogating an employee about employees' union activities.

(e) Telling employees that they could not vote in a union election.

(f) Telling employees that they could not participate in union activities and they would be subject to dismissal for engaging in union activities.

(g) Telling employees to be loyal to Respondent and threatening to discharge employees if they engaged in union activities.

(h) Informing an employee that previously scheduled raises were being withheld because of employees' union activities.

(i) Informing an employee that previously scheduled raises were being withheld and Respondent would rescind its previous commitment to approve and pay for employees to attend nursing school because of employees' union activities.

(j) Informing an employee that the employee had been removed from the work schedule because employees engaged in union and protected activities.

(k) Informing an employee that Respondent would rescind its previous commitment to approve and pay for the employee to attend nursing school because of employees' union activities.

(l) Ordering employees to remove union patches from their clothing.

4. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by:

(a) Denying previously scheduled raises to specified and unspecified employees.

(b) Refusing to approve payment for employee Stewart Edersheim to attend nursing school.

(c) Refusing to approve payment for employee Karen J. Endsley to attend nursing school.

(d) Removing Charging Party Sands from its work schedule and failing and refusing to return her to the same or substantially equivalent position of employment until November 26.

(e) Removing employee Deanna Bly from its work schedule and failing and refusing to return Bly to the same or substantially equivalent position of employment.

(f) Failing and refusing to consider Charging Party Sands for a full-time position that existed.

(g) Laying off Charging Party Sands and failing and refusing to return Sands to the same or substantially equivalent position of employment.

(h) Giving employee Brenda Toothman a poor evaluation.

(i) Failing and refusing to reinstate employee Brenda Toothman to her former position following a medical leave of absence.

(j) Reinstating employee Brenda Toothman but failing and refusing to return Toothman to a position of employment which afforded Toothman the same terms and conditions of employment which were afforded her prior to her medical leave of absence.

(k) Discharging employee Brenda Toothman on February 14, 1991.

5. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (4) of the Act[19] by:

(a) Removing Charging Party Sands from its work schedule and failing and refusing to return her to the same or substantially equivalent position of employment until November 26.

(b) Failing and refusing to consider Charging Party Sands for a full-time position that existed.

(c) Laying off Charging Party Sands.

6. Except as specifically found herein, Respondent engaged in no other unlawful conduct.

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

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it will be directed to cease and desist from engaging in such conduct and take affirmative action, more fully described below, designed to effectuate the policies of the Act.

Respondent will be directed to offer Charging Party Sands and employees Brenda Toothman and Deanna Bly reinstatement to positions they held or would have held but for Respondent's unlawful conduct and they should be made whole for any loss of earnings they may have suffered by reason of the above-described unlawful actions by making payments to them of a sum of money equal to that which they normally would have earned had Respondent not engaged in the above-described unlawful action, with backpay and interest as computed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[20] Respondent will be directed (a) to preserve and make available to the Board, upon request, all payroll records and reports, and all other records necessary and useful to determine the amount of backpay due in compliance with this Decision and Order, and (b) to remove from Brenda Toothman's personnel file all documents related to those of Respondent's action which were determined to be unlawful labor practices.

Respondent will be directed to make whole Stewart A. Edersheim, and any other employee denied a timely raise, for the retaliatory denial of wage increases by making payments of a sum of money equal to that which they would have earned had Respondent not engaged in the above-described unlawful action, with backpay and interest thereon to be computed in the manner set forth in the next preceding paragraph.

Respondent will be directed to reimburse Karen J. Endsley for the cost of attending nursing school, to the extent Respondent reimbursed other employees for their nursing school costs before the involved union organizing drive, and interest thereon will be computed in the manner set forth in the second preceding paragraph.[21]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

ORDER

The Respondent, Shelbyville Memorial Hospital Association, d/b/a Shelby Memorial Home, Shelbyville, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing an employee that previously scheduled raises were being withheld and that Respondent would rescind its prior commitment to approve and pay for employees to attend nursing school because of employees' union activities.

(b) Interrogating an employee about the employee's attendance at a union meeting.

(c) Informing an employee that previously scheduled raises would not be given because of employees' union activities.

(d) Interrogating an employee about employees' union activities.

(e) Telling employees that they could not vote in a union election.

(f) Telling employees that they could not participate in union activities and they would be subject to dismissal for engaging in union activities.

(g) Telling employees to be loyal to Respondent and threatening to discharge employees if they engaged in union activities.

(h) Informing an employee that previously scheduled raises were being withheld because of employees' union activities.

(i) Informing an employee that previously scheduled raises were being withheld and Respondent would rescind its previous commitment to approve and pay for employees to attend nursing school because of employees' union activities.

(j) Informing an employee that the employee had been removed from the work schedule because employees engaged in union and protected activities.

(k) Informing an employee that Respondent would rescind its previous commitment to approve and pay for the employee to attend nursing school because of employees' union activities.

(l) Ordering employees to remove union patches from their clothing.

(m) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist labor organizations,

[19] While it is alleged that Respondent violated Sec. 8(a)(1) and (4) with respect to Toothman, it was not demonstrated that Toothman testified at the prior hearing before the Board or specifically that Respondent was even aware that she had given a number of affidavits to the Board.

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

[21] Since Edersheim is no longer employed by Respondent and it is not alleged that he was constructively discharged, there will be no remedy for him regarding any payment for attending nursing school in the future.

[22] 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.

to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

(a) Offer Charging Party Sands and employees Brenda Toothman and Deanna Bly immediate and full reinstatement to positions they held or would have held but for Respondent's unlawful conduct or to substantially equivalent positions, without prejudice to their seniority or other rights or privileges and make them whole for any loss of pay they may have suffered by reason of Respondent's discrimination against them and they should be made whole for any loss of earnings they may have suffered by reason of the above-described unlawful actions by making payments to them of a sum of money equal to that which they normally would have earned had Respondent not engaged in the above-described unlawful action, with backpay and interest thereon to be computed in the manner set forth above.

(b) Remove and expunge from Brenda Toothman's personnel file all documents related to those of Respondent's action which were determined to be unlawful labor practices, and make whatever record changes are necessary to negate the effect of these documents and Respondent's unlawful actions.

(c) Make whole Stewart A. Edersheim, and any other employee denied a timely raise, for the retaliatory denial of wage increases by making payments of a sum of money equal to that which they would have earned had Respondent not engaged in the above-described unlawful action with backpay and interest thereon to be computed in the manner set forth above.

(d) Reimburse Karen J. Endsley for the cost of attending nursing school, to the extent Respondent reimbursed other employees for their nursing school costs before the involved union organizing drive, and interest thereon will be computed in the manner set forth above.

(e) Preserve and on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payroll records, timecards, personnel records and reports, and all other records necessary and useful to determine the amount of backpay due under the terms of this recommended Order.

(f) Post at the Shelbyville, Illinois nursing home copies of the attached notice marked ''Appendix B.''[23] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[23] 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.''

APPENDIX A

SHELBY MEMORIAL HOME

COMPARATIVE STATEMENT OF INCOME—FY 1990

	Sept.	*Oct.*	*Nov.*	*Dec.*	*Jan.*	*Feb.*	*Mar.*	*Apr.*	*May*	*June*	*Y-T-D*
OPERATING FUND											
Patient Service Rev.											
Daily Patient Rev.	$153,191	$157,676	$150,924	$164,628	$165,099	$145,336	$161,938	$164,145	$162,622	$172,588	$1,598,147
Other Nurs. Serv.	23,107	31,013	29,339	27,441	35,798	24,001	30,170	22,175	22,140	23,000	268,184
Other Prof. Fees											
Gross Pt. Rev.	$176,298	$188,689	$180,263	$192,069	$200,897	$169,337	$192,108	$186,320	$184,762	$195,588	$1,866,331
DEDUCT FROM PATIENT SERVICE REVENUE											
Medi, IPA, Con.	($30,681)	(35,925)	($46,373)	($36,114)	($48,214)	($36,647)	($39,390)	($35,802)	($44,759)	($46,755)	($400,660)
Free Service											
Prov. Uncoll Acts											
Total Rev. Ded.	($30,681)	($35,925)	($46,373)	($36,114)	($48,214)	($36,647)	($30,390)	($35,802)	($44,759)	($46,755)	($400,660)
Net Pt. Ser. Rev.	$145,617	$152,764	$133,890	$155,955	$152,683	$132,690	$152,718	$150,518	$140,003	$148,833	$1,465,671
Other Oper. Rev.	381	$513	$1,499	395	671	359	393	357	$453	$487	$5,508
Total Oper. Rev.	$145,998	$153,277	$135,389	$156,350	$153,354	$133,049	$153,111	$150,875	$140,456	$149,320	$1,471,179
OPERATING EXPENSES											
Nursing Service	$63,680	$72,604	$70,898	$72,632	$71,149	$62,055	$69,727	$64,457	$63,630	$69,801	$680,633
Prof. Fees	2,094	882	4,361	2,354	3,957	2,251	2,929	2,328	1,977	1,502	24,635
General Serv.	37,440	45,940	47,290	47,693	50,660	43,523	47,564	41,998	43,448	41,841	447,397
Fiscal & Admin.	36,857	37,193	33,537	32,314	33,066	27,304	33,457	33,985	27,433	27,912	323,058
Interest	6,292	5,693	6,447	5,660	5,832	6,389	5,225	5,774	5,574	6,111	58,997
Depreciation	5,593	5,585	5,615	5,615	5,638	5,639	5,610	5,610	5,610	5,610	56,125
Total Oper. Exp.	$151,956	$167,897	$168,148	$166,268	$170,302	$147,161	$164,512	$154,152	$147,672	$152,777	$1,590,845
Excess of Rev. over Exp. (Oper. Fund)	($5,958)	($14,620)	($32,759)	($9,918)	($16,948)	($14,112)	($11,401)	($3,277)	($7,216)	($3,457)	($119,666)
NET OPERATING REVENUE											
Interest											
Unrestricted Income											
Net Rental Income											
Gain/Loss Disposal Assets											
Total Other Income											
Excess of Rev. over Expenses	($5,958)	($14,620)	($32,759)	($9,918)	($16,948)	($14,112)	($11,401)	($3,277)	($7,216)	($3,457)	($119,666)

APPENDIX B

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 inform you that previously scheduled raises are being withheld and that Respondent will rescind its prior commitment to approve and pay for employees to attend nursing school because of employees' union activities.

WE WILL NOT interrogate you about your attendance at a union meeting.

WE WILL NOT interrogate you about employees' union activities.

WE WILL NOT tell you that you can not vote in a union election.

WE WILL NOT tell you that you can not participate in union activities and you would be subject to dismissal for engaging in union activities.

WE WILL NOT tell you to be loyal to Respondent and threaten to discharge you if you engaged in union activities.

WE WILL NOT inform you that you have been removed from the work schedule because you engaged in union and protected activities.

WE WILL NOT order you to remove union patches from your clothing.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist Teamsters, Chauffeurs, Warehousemen and Helpers Union No. 279, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL offer Michele Yvette Sands, Brenda Toothman, and Deanna Bly immediate and full reinstatement to positions they held or would have held but for our unlawful conduct or to substantially equivalent positions, without prejudice to their seniority or other rights or privileges and make them whole for any loss of pay they may have suffered by reason of our discrimination against them and they will be made whole for any loss of earnings they may have suffered by reason of our unlawful actions by making payments to them of a sum of money equal to that which they normally would have earned had Respondent not engaged in unlawful action, with backpay plus interest.

WE WILL remove and expunge from Brenda Toothman's personnel file all documents related to those of Respondent's action which were determined to be unlawful labor practices, and make whatever record changes are necessary to negate the effect of these documents and Respondent's unlawful actions.

WE WILL make whole Stewart A. Edersheim, and any other employee denied a timely raise, for the retaliatory denial of wage increases by making payments of a sum of money equal to that which they would have earned had Respondent not engaged in unlawful action, with backpay plus interest.

WE WILL reimburse Karen J. Endsley for the cost of attending nursing school, to the extent Respondent reimbursed other employees for their nursing school costs, plus interest.

SHELBY MEMORIAL HOSPITAL ASSOCIATION,
D/B/A SHELBY MEMORIAL HOME