St. Clair Memorial Hospital *and* United Steelworkers of America, AFL–CIO–CLC *and* Local 95–95A, International Union of Operating Engineers, AFL–CIO. Cases 6–CA–23098, 6–CA–23244, and 6–CA–23286

December 7, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On March 25, 1992, Administrative Law Judge Hubert E. Lott issued the attached decision. Charging Party Local 95-95A, International Union of Operating Engineers, AFL–CIO, filed exceptions, and the Respondent filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, St. Clair Memorial Hospital, Mount Lebanon, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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

We note that the judge misspelled employee Snak's name.

Dalia E. Belinkoff, Esq., for the General Counsel.
E. Donald Ladov, Esq. (Cohen & Grigsby), of Pittsburgh, Pennsylvania, for the Respondent.
Timothy P. O'Reilley, Esq., of Pittsburgh, Pennsylvania, for Operating Engineers.

DECISION

STATEMENT OF THE CASE

HUBERT E. LOTT, Administrative Law Judge. This case was tried in Pittsburgh, Pennsylvania, on June 6 and July 23, 24, and 25, 1991. The charges and amended charges were filed by the Steelworkers on October 25 and December 31, 1990, January 14 and 24, and April 2, 1991. The charges and amended charges were filed by the Operating Engineers on January 16 and April 1, 1991. The last consolidated, amended complaint issued April 5, 1991.

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

FINDINGS OF FACT

I. JURISDICTION

The Company is a Pennsylvania corporation with an office and hospital located in Mt. Lebanon, Pennsylvania, where it is engaged as a health care institution providing medical and professional care services. During the 12-month period ending December 31, 1990, Respondent, in the course and conduct of its operations described above, derived gross revenues in excess of $250,000. During the same period, Respondent purchased and received at its Mt. Lebanon hospital, goods, and materials valued in excess of $5000 directly from points outside the Commonwealth of Pennsylvania.

The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

A. *Background*

Respondent is an acute care hospital employing 1650 employees.

In the summer of 1988, the Operating Engineers Union (Local 95) began an organizing campaign among the hospital's maintenance employees. Meetings were held in October 1988 at which most of the maintenance employees signed union authorization cards. This campaign was suspended pending the outcome of litigation over the Board's rulings on collective-bargaining units in the health care industry.

In early 1989, the Teamsters Union began to organize the hospital's nonprofessional employees. During this campaign several employees meetings were held and an in-house organizing committee was formed. A petition was filed for all nonprofessional employees but the organizing drive was abandoned and the petition was withdrawn.

In May 1990, after the Teamsters withdrew its petition, the Steelworkers Union began an organizing drive among the hospital's nonprofessional employees. The Steelworkers held six employee meetings and handbilled the hospital nine times from May 1990. On September 4, 1990, the Steelworkers Union submitted a list of 18 names of employees who were on the in-house organizing committee. They added two names to the list on January 15, 1991, and one name on March 14, 1991. The petition was filed on March 7, 1991, but it was held in abeyance pending the outcome of the above litigation.

In the summer of 1990 Local 95 renewed its campaign to organize the plant operations employees and employees were encouraged to sign new authorization cards. In September 1990, Local 95 filed a petition which is still pending.

B. *Alleged Interference with Distribution of Leaflets and Surveillance*

1. October 25, 1990

On this date employees Barbara Catanzaro and Mary McCullum were engaged in the distribution of union literature at the entrance to the employee parking area. McCullum testified that as she was handbilling, security guard Jim Delehenty approached her. At the same time Catanzaro also approached McCullum and they stood together handbilling. Although Delehenty talked into his radio as he approached, he did not say anything to either employee and watched them for 1 minute. Both employees decided to stop handbilling and proceeded to parking lot 3. As they attempted to leave the lot, Delehenty temporarily detained them by putting his hand over the token slot. He asked McCullum in which department she worked. She gave him the information which he wrote on a pad and allowed her to leave. Catanzaro was asked the same questions and when she refused to answer, he went to the rear of her car and wrote something on his pad. She also did not inform him that she was an off-duty hospital employee. When Catanzaro refused to give her name, Delehenty informed her it was illegal to solicit on hospital property. Delehenty then allowed her to leave the property.

2. November 1, 1990

Employees Judy Faith, and Barbara Catanzaro testified that they were handbilling at 5:30 a.m. on the above date at the entrance to employee parking lot 3. While they were engaged in handbilling, a security officer and Nursing Supervisor Peggy Sembrandt were seen at the entrance to the physicians office building observing their handbilling for 5 or 10 minutes. Sembrandt then approached both employees and told them they would have to leave the premises. Both employees complied with the request. Both never saw guards or supervisors observe handbilling before.

Employment Manager Teresa Lame testified that she received a telephone call at 5:50 a.m. at her home from Sembrandt who informed her that off-duty employees were handbilling on hospital property. She instructed Sembrandt to move the employees to public property until she got to the hospital. When Lame arrived at the hospital at 8:30 a.m., she consulted with her supervisor, Human Relations Director William Powell, and acknowledged that she may have made a mistake. After further research, she informed Powell that she had definitely made a mistake in ordering the removal of the employees.

Steelworkers handbilling took place nine times at the hospital. The first three instances of handbilling were conducted off hospital property by employees and nonemployees, while the remaining instances of handbilling, beginning on October 25, were done on hospital property, by employees. Following the November 1 incident, off-duty employees were permitted to handbill and solicit on hospital property and did so without incident.

Analysis and Conclusions

The evidence indicates that nonemployees were also handbilling at the hospital during the time in question although they were not on hospital property. The evidence also indicates that employees who were handbilling were not in hospital uniform because they were off duty. Under these circumstances, and considering the large number of hospital employees, I find nothing unlawful in the security guard's attempt to ascertain the employees' identity on October 25, nor was there any attempt to prevent handbilling on this date. Furthermore, I find no unlawful surveillance on November 1, because the employees were openly engaged in distribution and were observed for so short a period of time. The comment by security guard Delehenty to Catanzaro was only made after she refused to identify herself. It seems obvious that Delehenty suspected her of being a nonemployee because he didn't make the same statement to McCullum when she identified herself as an employee.

With respect to the November 1 removal of handbilling employees from hospital property, I find the hospital solicitation/distribution rule was never alleged or found to be unlawful. I further find that its application on November 1, was a de minimis interference with employees' union activities that was not repeated in the future.

Accordingly, I will recommend dismissal of the allegations contained in paragraphs 8, 9, and 10 of the complaint.

C. *Alleged Harassment of Mary McCullum*

On January 17, 1991, McCullum brought a roll of yellow ribbon to the hospital and gave pieces of it to employees to wear on their uniforms in support of the Gulf War. Dietary Director Mary Pfaffenschmidt was informed by Dietary Supervisors Tom Ranken and Cathy Woltz that McCullum was distributing ribbons on worktime in work areas.

Since McCullum had been disciplined before for violating the hospital's no-solicitation/distribution rule, Pfaffenschmidt called Teresa Lame (human resources) and asked her advice. She was advised to call McCullum into her office and explain the hospital's no-solicitation/distribution rule to her, which she did. McCullum said she was just being patriotic and she only gave out one ribbon in the kitchen. McCullum testified she told Pfaffenschmidt that she only distributed ribbons in the employee lounge on her own time. She also admitted telling Pfaffenschmidt that the kitchen was not a patient care area and she didn't understand why the no-solicitation rule precluded her from distributing ribbons in that area. According to Pfaffenschmidt, McCullum admitted distributing a ribbon in the kitchen.

Sometime later, Supervisor Rankin informed Pfaffenschmidt that McCullum was telling employees that the hospital would not allow them to wear ribbons. McCullum was called back into Pfaffenschmidt's office where she was told in the presence of Woltz that at no time was she told she couldn't wear a yellow ribbon. According to Pfaffenschmidt, McCullum appeared without a ribbon on her uniform and told Pfaffenschmidt that she did not know that she couldn't wear a ribbon. She was also told that she could distribute yellow ribbons in nonwork areas as long as both parties were on nonwork time (off duty).

The next day McCullum was taken to Lame's office where she was asked about the no-solicitation rule. According to Lame, McCullum said she was a little confused so Lame read the entire rule to her out of the hospital handbook. Lame told her she was not being disciplined for the incident, that she (Lame) would make a note of it for her file, which was never done.

The next day, McCullum appeared on television station KDKA and told the interviewer that she had been disciplined for distributing yellow ribbons.

There was evidence that during this time a box of yellow ribbons was sitting on the nurses counter on floor 5A with a sign reading, ''Take One.'' Apparently, Sister Mary Paul Wheeler brought them in.

Analysis and Conclusion

It should be noted that there is no 8(a)(3) allegation relating to this incident and based on the corroborated testimony of Respondent's witnesses, which is largely undisputed, I find no threat and no harassment directed at McCullum. I find that the hospital's conduct was caused by McCullum, whose motives are questionable.

Accordingly, I recommend dismissing this allegation.

D. *Interrogation*

In September 1990, employees Rick Jordan and Edward Halferty testified that Plant Operations Supervisor Charles Froetschel came to the employees' Trane room (locker room) and asked them and employee Ken Tilger why they thought the employees wanted a union. Halferty said the hospital didn't have an adequate grievance procedure. Jordan said he thought the housekeeping and dietary employees needed a union because they were treated poorly. Froetschel admits this conversation. Employee Joseph Snack testified that in October 1990 when he and Froetschel were discussing work assignments, Froetschel asked him if he had signed a union card. Snack said no, and Froetschel dropped the subject. Snack further testified that on November 27, while they were performing tool inventory, Froetschel asked him whether he had signed a union card. When Snack stated that he hadn't, Froetschel said he heard through the grapevine that he had. Snack then told Froetschel that it was illegal for him to ask such questions. Froetschel said it didn't matter whether he did or not. Charles Froetschel admitted asking Snack whether he signed a union card one time on November 27.

Analysis and Conclusions

I can not find that the conversation in September in the Trane room constituted interrogation. It appears to have been a general conversation, nonthreatening in tone and location. No specifics were requested by Froetschel judging from the totality of the conversation. However, I find that Froetschel did interrogate Snack about his union activities in October and November 1990.

Accordingly I find that Respondent violated Section 8(a)(1) of the Act by interrogating Joseph Snack.

E. *Sanitary Period*

By late September, the maintenance department had lost four employees. Edward Halferty and Joseph Snack, who worked in that department, testified that several times in November 1990, whenever they asked Charles Froetschel when the hospital was going to start hiring replacements, Froetschel would respond by stating that since Local 95 filed a petition for an election, the hospital was in a ''sanitary period'' which prevented it from hiring new employees because it might be construed as padding the payroll with nonunion employees.

Froetschel admitted telling employees that the hospital could not replace employees as described above because he was under the mistaken impression, after talking with the human resources department that what he told employees was correct.

Several witnesses from the human relations department testified that they never gave Froetschel that information and further testified that one position was filled in November 1990 and the other three positions were filled in February 1991.

Analysis and Conclusions

In effect, what Froetschel told employees was that protected activity was the reason for not hiring employees. This can be construed as harmless error as Respondent's counsel suggests. However, when Froetschel combined this statement with his contemporaneous attempt to have employees revoke their union authorization cards, the statements are not so harmless. In fact, the logical conclusion one could draw, and which was drawn, from Froetchel's statements and conduct was that if employees want relief from increased workloads, they should consider withdrawing their authorization cards. Then the Union would go away, the hospital could hire replacements, and everybody would be happy.

Accordingly, I find that the statements of Froetschel constitute 8(a)(1) violations.

F. *Soliciting Withdrawal of Authorization Cards*

Sometime in November 1990, Froetschel told Halferty that employees were asking supervisors how to revoke their authorization cards. He gave Halferty a letter from Hospital President Ben Snead which set forth the method employees might use in revoking their union cards. It also gave the address of the Board and of Bill Hey, the Local 95 organizer. Froetschel told Halferty that if he had a card he wanted revoked, he could come up and ask either Froetschel or one of the other supervisors for assistance in writing the letter. The next day Halferty went to Froetschel's office and asked for a form to revoke his union card. Froetschel said there was no form but he would help him draft a letter, if he wished. Halferty agreed and Froetschel dictated some language to Halferty. Halferty left and mailed the letter in January 1991. Halferty later signed a Steelworkers Union card but changed his mind and signed a Local 95 Union card in June 1991.

Froetschel admits the above incident with Halferty; however, he testified that Halferty did not write down the words that Froetschel gave him at that time. Froetschel also admits that he told Halferty at the conclusion of their meeting that if anyone else wants to revoke their union cards, they should see him.

Analysis and Conclusion

I did not consider other testimony by Halferty relating to the above incident because it was not corroborated and it did not appear in either of his affidavits dated February and March 1991. Furthermore, Halferty appeared confused as to exactly how he felt about unions.

Having said that, I find that Froetschel violated Section 8(a)(1) of the Act by soliciting and assisting Halferty in revoking his union authorization card. The clear implication

from Froetschel's actions was that if Halferty revoked his union card, he would actually be helping himself by allowing Froetschel to hire additional workers to relieve Halferty's workload. I find sufficient evidence under the circumstances to support the allegation of assistance and solicitation which went beyond the bounds of merely informing employees of their right to revoke.

G. *Suspension and Discharge of Carl Madden*

Carl Madden was employed as a cook in the dietary department from June 1986 to December 1990. He was active for the Steelworkers Union. He was on the organizing committee, distributed union literature, attended union meetings, wore union insignia to work, signed an authorization card on June 2, 1990, and solicited signatures on union cards from other employees. Respondent admits knowledge.

Sometime in the afternoon of December 4, Madden noticed that the beef noodle soup, which had been served for lunch, needed more meat before being served for the evening meal. He brought this to the attention of Cafeteria Supervisor Cathy Wolz who in turn referred the matter to dietary supervisor Linda Svidro. She examined the soup and agreed with Madden. Svidro told Madden to get the meat, cut it up, weigh it, and add it to the soup. Madden refused stating that it was the morning cook Bob Ashton's job. According to Madden, Svidro then told him to use his professional opinion.

When Svidro returned to the kitchen at 3:30 p.m. to find out about the soup, Madden admitted sending the soup to the cafeteria without adding the meat. Svidro sent him home.

Svidro testified she never mentioned anything to Madden about ''professional opinion.'' She also denied that Madden told her it was Ashton's responsibility.

When Pfaffenschmidt and Lame interviewed Madden, they testified that he never mentioned ''professional opinion'' or that it was Ashton's responsibility. According to them, Madden admitted refusing Svidro's direction. When asked why he refused to do as Svidro had directed, Madden merely said that he used poor judgement and that it wouldn't happen again. Lame asked Madden whether he thought Svidro's request was unreasonable or whether he thought it was someone else's job and Madden answered ''no'' to both questions.

He was asked if he had enough time to finish the job and he said yes. When asked again why he refused a direct order, Madden replied that he used poor judgment and he has a tendency to make a mountain out of a molehill.

Madden admitted that it would have taken him 2 to 3 minutes to complete the task ordered by Svidro.

Lame conducted a review of the hospital's disciplinary records to determine what discipline was taken in a case of insubordination. She found only one example and that involved a dietary supervisor by the name of Mary Lou Dempsey who had been terminated. This was confirmed by Pfaffenschmidt. Lame's review also disclosed several cases of employees who had threatened insubordination but who had complied with the orders of their supervisors. Lame testified that she considered those acts far different from Madden's misconduct. Based on the recommendations of Svidro and Pfaffenschmidt and her own investigation, she decided to terminate Madden.

Analysis and Conclusion

It should be stated at the outset that the dietary department had disciplinary guidelines which include progressive discipline. These guidelines also state that the hospital has the right to discharge, for just cause, and progressive discipline will not apply when the cumulative discipline record or the seriousness of the offense warrants more serious measures including immediate discharge. The hospital employee handbook lists 25 infractions which could result in discharge, one of which is insubordination.

I discredit Madden's testimony that he was left a choice of doing the job based on his professional opinion. I also discredit his testimony that another cook was present at the time and he told Svidro that it was the other cook's responsibility. In any event, the former contradicts his admitted opinion and the latter is irrelevant.

I further credit the corroborated testimony of the three Respondent witnesses and I find Madden was insubordinate for no reason other than his poor attitude which he had been warned about several times in the past, beginning with a warning on October 20, 1989. General Counsel attempted to show disparate treatment by offering the testimony of Judith Faith. She argues that Faith had not been a union supporter and instead of being discharged for insubordination, she was merely issued warnings and suspended. I find this argument faulty because the evidence does not support it. Faith was a known union supporter during the Teamsters campaign and talked to her supervisor many times about her union sympathies. Moreover, she had never been insubordinate. In one case she eventually complied with an order and in another case the order was withdrawn. Finally, I find that the hospital is not bound to carry out progressive discipline.

Accordingly, I find that Respondent met its *Wright Line*[1] burden by establishing, through credible evidence, that Madden would have been discharged notwithstanding his union activities, and I recommend dismissal of this allegation.

H. *Discharge of Richard Jordan and Dennis Curry*

Jordan worked as a maintenance repairer on the 3 to 11:30 p.m. shift. He had 1 year of service and his supervisor was Charles Froetschel. He signed a union authorization card for Local 95 in August 1990. He attended no union meetings and wore no union insignia. He testified that in September 1990, in a conversation with Froetschel in the Trane room, he spoke in favor of a union as did Halferty and Tilger. On the same date, when they were alone, Jordan testified that he told Froetschel that he had signed a union card for Local 95 because someday there would be a union at the hospital and he wanted it to be Local 95. According to Jordan, Froetschel said he shouldn't have done it.

Dennis Curry worked as a stationary engineer on the 11 p.m. to 7 a.m. shift. He had 2 years' service and his supervisor was Froetschel. He signed a union authorization card for Local 95 in October 1988. He testified that he signed the card at a union meeting in the presence of Bill Moore who later became engineering supervisor. Six months before his discharge, he told Moore that they needed Local 95 to represent them because of the treatment, and not the money. Moore said he couldn't talk about it. Curry claims he told

[1] 251 NLRB 1083 (1980).

Froetschel in early 1989 that everyone had signed a union card including him, and he didn't want to be singled out as the ringleader just because he hadn't signed the petition to get rid of the Union. His sworn affidavit states, ''I didn't discuss the Union with him after that, however, since I wanted to keep my continued interest in the Union quiet.'' He then testified that in the summer of 1990 he told Froetschel that he supported Local 95. This statement is not in either of his affidavits.

Froetschel denied that Curry ever told him about his union activities during his annual performance reviews (early 1989 and summer of 1990) but admitted that Curry had told him in the fall of 1988 that he had signed a card for Local 95.

Bill Moore testified that he did not discuss the Union with Curry after December 1989 because Curry worked nights and Moore worked day shift. He further testified that he had no conversations with Jordan about Local 95.

Two weeks prior to the night of September 25, 1990, electrician William Kreiger was assigned to install additional lighting in the hospital parking garage. Krieger's supervisors Stephen Novicki and Daniel Squire noticed that the job was not progressing as scheduled because it was over the budgeted time and still not completed. On the night of September 25, Novicki, who is assistant director of plant operations, came to the hospital to check up on Krieger who was scheduled to work from 11 p.m. to 7 a.m., September 26.

On arriving at 11 p.m. Novicki noticed that Krieger was not yet working. Krieger arrived at the jobsite at approximately 12:25 a.m. carrying a toolbox and materials. He assembled his tools and materials until 12:40 a.m. when he left the jobsite. He returned at 3:30 a.m. and began to work. At approximately 4:15 a.m. employees Jordan and Curry arrived at the jobsite to help Krieger. All three worked until 5:55 a.m. when they left the jobsite.

Novicki left the area at 5:55 a.m. and was returning to his office when he ran into security officer Michael McGrogan who worked the 11 p.m. to 7 a.m. shift.

McGrogan related the following information to Novicki. At approximately 11:55 p.m., he received a radio call from Krieger to meet him in the Trane room. When he arrived Krieger said he was going to Primanti's (a sandwich bar in Pittsburgh) and asked him if he wanted anything. McGrogan said no. At 1:05 or 1:10 a.m., while escorting two employees to their cars, McGrogan noticed that Krieger's truck had been moved to a different space. At 1:20 a.m., McGrogan heard Krieger state over the portable radio, ''ETA-5 minutes.'' He also heard Jordan acknowledge the message. Five minutes later he heard Krieger make another report stating, ''ETA-30 seconds.'' McGrogan looked out the window and noticed Krieger's truck back in its original space and Krieger walking away from the truck carrying white bags.

After hearing McGrogan's report, Novicki reported the entire evening's events to Plant Operations Director Squire who, in turn, reported the events to the human relations department and asked them to conduct an investigation.

Teresa Lame testified that the first thing she did was ask for the timecards of the three employees involved in the report from plant operations. She reviewed all the timecards, reconciling each segment of time they had spent on that shift. She noticed that Curry's and Jordan's timecards showed they were working in the 5C penthouse from midnight until 3:15 a.m.. Krieger's timecard showed that he worked there from 12:30 a.m. to 2:24 a.m. and none of the timecards indicated a lunch period or lunchbreak. She then checked with Nursing Supervisor Lois Christ and Housekeeping Supervisor Tim Thomas who were present on 5C during the emergency water leak that caused water to overflow into a small kitchen area on 5C. According to them the overflow started at midnight and was cleaned up by 1:30 a.m.. By that time everyone had left the area.

Lame was unable to reconcile the timecards with the events of the evening, therefore, she decided to interview the three employees on September 27 starting with Krieger.

The interviews took place in Lame's office with Daniel Squire present. Lame testified that she gave Krieger a copy of his timecard and asked him to relate what he did on the night of September of 25 and September 26. Krieger initially stated that he had done the work at the times he had written on his timecard. She questioned the times he said he had worked in the garage and the time he indicated he was on floor 5C but Krieger said the times were accurate. She also interrogated him about the radio messages and Krieger said a good friend had brought him lunch that night. Finally after much questioning, Krieger admitted that he had gone to Primanti's and gotten sandwiches for himself, Jordan, and Curry and they ate them in the Trane room. He said he lied about the breaktime on the timecard and that he actually returned to the hospital at 1:30 a.m. and they ate their sandwiches in the Trane room which took at least a half hour. Lame suspended Krieger pending further investigation.

Dennis Curry was next and the procedure was the same. Curry said his timecard was accurate. Lame told him she had reason to believe he was not where he said he was. Curry said, ''Why would I lie.'' She asked him if he ate and he said yes, he got his sandwich from Krieger. She asked what time and Curry said about 3:30 a.m. and he couldn't understand what the big deal was. She asked him why lunchbreak was not on his timecard and he said he gets a paid lunch and never writes in lunch on his timecard.[2] She asked him if he ate lunch at 1:30 a.m. and he said no it was 3 a.m. She said that was when he took break and Curry said he didn't know what time it was. Curry said he ate a sandwich from Primanti's but it only took 10 minutes. She told him Krieger took over a half hour. Curry said it could have been longer but it was not 1:30 a.m. Lame accused Curry of falsifying his timecard, stealing time, and lying to her. According to Lame, Curry said the only thing he lied about was the 3 a.m. break. He also said they ate in the Trane room and it seemed later then 1:30 a.m. and he was sorry he lied.

Jordan was next and the same procedure was followed initially. Lame testified she asked him where the sandwich came from and he said he didn't know. When she told him she knew, he gave her the name. Jordan said they ate lunch between 1:30 and 2 a.m. but it only took 7 minutes. When Lame said Krieger indicated over a half hour, he said that could be right. Lame accused him of falsifying, stealing, and lying. Jordan responded by saying that you don't buck the guys. If he had written the correct times, theirs would have been wrong.

[2] Lame testified that she examined Curry's timecards for 6 months and in over 66 percent of the time, Curry wrote in lunch and a 15-minute break.

Lame testified that the next day she received a phone call from Curry who told her he was sorry he lied, but that he didn't know Krieger left the hospital until the interview. He said Krieger and he were good friends and that put him in a position where he had to lie to save him.

Dan Squire and Lame discussed the matter and decided they would terminate all three. They related the results of the investigation to Bill Powell and he concurred with their decision.

Krieger and Jordan were discharged on October 1 for theft of time, falsification of timecards, and dishonesty and breach of trust. Curry was discharged on October 3 for the same reasons. More specifically, Jordan and Krieger took a 30-minute unpaid lunch on company time and didn't write on the timecard. Krieger also left the hospital on company time. Curry received a paid working lunch but didn't work or record it on his timecard.

Dennis Curry testified that he met with Lame and Squire on September 27 and that they went over his timecard. He told them that he had eaten a sandwich but it only took 10 minutes and he was entitled to a 15-minute break. Curry told them he had received a paid half-hour lunch for 2 years and Squire said no. They argued. Lame told him she would give him another chance if he told the truth. They discussed whether he was supposed to write a lunch period on his timecard. He also testified that when he was accused of theft of time and falsifying his timecard, he protested vigorously. He stated that he never saw the hospital policy and procedure manual. He called Lame the next day and told her that there must be a misunderstanding because he didn't do anything wrong and couldn't understand her position. A week later he was called to a meeting and discharged. He protested saying it was ridiculous because he was at work 8 hours and if Krieger did something wrong, by leaving the premises, he should not be included with him. He wrote, ''I disagree'' on his discipline report.

Richard Jordan testified that he met with Lame and Squire on September 27 and they reviewed his timecard, going over each entry from 3 p.m. Monday until 7 p.m. Tuesday because he worked a double shift. Lame asked him if he ate that evening and he said he ate a sandwich from Primanti's. She asked how long he took and he said 10 to 15 minutes. Lame asked about the radio messages and Jordan said he wasn't carrying a radio. Lame accused him of lying because he wrote in inaccurate times. He said he may have made a mistake. The following Monday he met with Lame and Squire and he was told he was discharged. He said nothing. He claimed he told Squire on the way out of the building that the reasons given were not the real reasons for his discharge.

Human Resources Director William Powell testified that he met with Curry on October 8 with Lame present. Curry told Powell that he had lied and that it was wrong to cover up for Krieger but Krieger was his friend and that put him in the difficult situation of either telling the truth or losing Krieger's friendship.

Curry testified that at the October 8 meeting he told Powell that all three were fired to break the Union because they were highly visible employees.

Plant Operations Director Daniel Squire corroborated all the testimony of Novicki and Lame. He further testified that timecards are to be accurate to within one-tenth of an hour because the hospital uses the honor system and employees are paid based on the information contained thereon. He further stated that all department employees are explained timecard policy during their orientation. He also testified that all meals are supposed to be recorded on timecards and mealtime is not paid for except meals taken by the stationary engineer who takes a working lunch because he can't leave the boiler room. He stated that employees on night shift are forbidden to leave the hospital.

Teresa Lame testified further that since she started work at the hospital in January 1989, three employees have been discharged for falsifying their timecards involving less than 30 minutes of time not worked. They were Karen Bucher in 1989, Amy Hanrahan in 1989, and Mike Oliastro in 1990. She also testified that during the interviews she took shorthand notes which were later that day transcribed from her earlier notes and her recollection of what was said. These notes are in evidence as General Counsel's exhibits. Richard Jordan testified that these notes are inaccurate on all major points. William Moore and Charles Froetschel testified that they played no part in the discharge of Curry and Jordan.

Analysis and Conclusions

The hospital has rules of conduct in its handbook which, if violated ''will result in disciplinary action up to and including discharge.'' The handbook lists 25 breaches of conduct among which are absence from job duties or work station without permission, falsifying records or reports, and failure to observe breaks and mealtimes. As I found earlier, the hospital is not bound by a progressive discipline procedure and, in fact, discharged three other employees for falsifying their timecards, for less than 30 minutes. I credit the testimony of Respondent's witnesses because they all corroborate each other whereas Jordan's and Curry's testimony is not corroborated and portions of their testimony are not in their affidavits. Based on the testimony of Respondent's witnesses, I find that a thorough investigation was conducted and Respondent was justified in concluding that Jordan, Krieger and Curry committed several breaches of conduct. I did not consider the computer record testimony because there was no evidence that it was offered to Respondent as an explanation for time spent and it did not appear on any timecard.

Significantly, Curry and Jordan where short-time employees having virtually no union activity and it is questionable whether their union activity was even known to Respondent. Moreover, Krieger was also discharged for similar breaches of conduct and he had no union activity. Therefore I find that Respondent would have discharged Curry and Jordan notwithstanding their union activity and met its *Wright Line* burden.

Accordingly, I recommend dismissal of the allegations relating to Jordan and Curry.

Conclusions of Law

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

2. The United Steelworkers of America, AFL–CIO–CLC and Local 95–95A, International Union of Operating Engineers, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) of the Act by interrogating an employee, threatening not to hire employees because of the sanitary period, and assisting and employee in the revocation of his union authorization card. All other allegations where not found to be unfair labor practices.

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

REMEDY

Having found that Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, St. Clair Memorial Hospital, Mount Lebanon, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees.

(b) Threatening not to hire employees during sanitary period (that period between the filing of a petition and an election).

(c) Assisting employees in the revocation of their union authorization cards.

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

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

(a) Post at its facility in Mt. Lebanon, Pennsylvania copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 6, 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.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by St. Clair Memorial Hospital, if willing, at all places where notices to employees are customarily posted.

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

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

[3] 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.

[4] 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

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

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

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT threaten to refuse to hire replacement employees during the sanitary period (that period between the filing of a petition for an election and the election).

WE WILL NOT assist employees in revoking their union authorization cards.

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

ST. CLAIR MEMORIAL HOSPITAL