Shore Health Care Center, Inc. t/a Fountainview Care Center *and* District 1199J, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO and Local 999, an affiliate of the International Brotherhood of Teamsters, AFL–CIO, Party to the Contract. Case 4–CA–22543

July 27, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On April 27, 1995, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent and Intervenor filed exceptions and supporting briefs. The General Counsel filed a brief supporting the judge.

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

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

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Shore Health Care Center, Inc. t/a Fountainview Care Center, Lakewood, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent and the Intervenor have 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 a 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.

Carmen P. Cialino, Jr., Esq., for the General Counsel.
Morris Tuchman, Esq., of New York, New York, for the Respondent.
Jonathan Walters, Esq. (Markowitz & Richman), of Philadelphia, Pennsylvania, for the Party to the Contract.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Toms River, New Jersey, on December 14, 1994. Upon a charge filed on March 10, 1994, by District 1199J, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO (Local 1199), and an amended charge, which Local 1199 filed on May 27, 1994, a complaint was issued on May 27, 1994, and amended on December 7, 1994.[1] The complaint, as amended, alleges that the Respondent, Shore Health Care Center, Inc. t/a Fountainview Care Center, violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act (the Act) by telling employees that as a condition of employment by Respondent they were required to sign an authorization card designating Local 999, an affiliate of the International Brotherhood of Teamsters, AFL–CIO, as their exclusive collective-bargaining representative, and by recognizing and entering into a collective-bargaining agreement with Local 999 as the exclusive bargaining representative of a unit of Respondent's employees, which agreement contains a union-security clause, at a time when Local 999 did not represent an uncoerced majority of the employees in that unit. Respondent has denied all of these allegations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and Local 999, the Party the Contract, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New Jersey corporation, operates a nursing home at its facility in Lakewood, New Jersey, where it annually receives from its business operations gross revenues exceeding $100,000 and purchases and receives goods valued in excess of $2000 directly from point outside the State of New Jersey. The Respondent 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 Union and Local 999, respectively, are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

I find from the testimony of Respondent President Benzion Schachter, that Respondent began operating as a nursing home at its Lakewood facility in August 1993. During June and July, the facility's builder through its security guards handed out employment application forms to, and received completed applications from, those seeking employment at the new nursing home. I also find from President Schacter's testimony that the builder's guards were handing out the employment forms and receiving the completed applications on Respondent's behalf. Respondent began operating the nursing home on August 1 and executed a lease of the premises on September 10. At least three of Respondent's employees received their job application forms from the builder's security guards.

In June, Anna Lee, a certified nurse's assistant, visited the nursing home's site, where she obtained an application for employment and an attached union authorization card from a security guard. The card contained the following declaration:

> I hereby apply for membership in Local No. 999, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

[1] All dates are in 1993 unless otherwise indicated.

and authorize and designate this Unon to represent me for collective bargaining with my employer.

Lee filled out the employment applicaton and signed the card on June 22. A few days later, she returned the application and the authorization card to the security guard at the nursing home's site. Anna asked the guard if she should have filled the card out. He replied, yes, she should have.

Respondent's director of nursing, Mary Strack, an admitted supervisor, interviewed Lee in July. At this interview, Strack had the same application and signed authorization card which Lee had delivered to the guard in June. When Lee asked about the card, Strack said it would be discussed at an orientation. Lee had no contact with any representative of Local 999 prior to signing the card on June 22. Nor did any employee, engaged in organizing on behalf of Local 999, approach her about signing the card.

Prior to his interview with Strack in August, Nicholas Spinelli had obtained an employment application and an authorization card for Local 999 from a guard at the nursing home's site. In the interview, Strack told Spinelli that Local 999 was a good union. Spinelli had no contact with any representative of Local 999 prior to signing his authorization card. Respondent hired Spinelli on September 7 as a restorative aide, a position he held until November 1994, when he was promoted to restorative nursing supervisor.

Spinelli filled out a card for Local 999 on September 23. In a discussion, after Respondent had hired him, Spinelli asked Strack why he had to sign the card for Local 999.[2] Strack answered, in substance, that it was necessary to sign if one wanted employment at Respondent's facility.

In August, Robert Nicholson visited the nursing home site and obtained an employment application from a guard. He filled it out immediately. He began work for Respondent on August 9, as a nurse's aide.

Nicholson signed an authorization card for Local 999, in Respondent's dining room, during an orientation for new employees.[3] Nicholson received the card from Dolores Karsko, a licensed practical nurse, who was conducting the orientation, on August 9. Nicholson signed the union card after Karsko told him he had to sign it if he wanted to work for the Respondent.[4]

Respondent admitted that Karsko was a supervisor from December 1993 until the present. However, Respondent denies that she was either a supervisor or its agent, prior to December 1993.

Since August 9, Karsko has been an in-service coordinator and an infection control coordinator. As an in-service coordinator, Karsko is in charge of training at Respondent's facility. As infection control coordinator, Karsko is charged with responsibility to ''plan, develop, organize, coordinate and direct [Respondent's] Infection Control Program.'' On August 10, Karsko conducted orientation sessions on blood-borne pathogens and body mechanics.

During the period from August 9 until August 13, Karsko spent ''[q]uite a bit of the time'' either conducting orientation classes for new employees or assisting others in conducting such classes. According to Karsko, she expected the employees who attended her orientation sessions to follow her instructions. Employees Anna Lee, Robert Nicholson, and Michael Torres attended orientations which Karsko conducted, as did Supervisor Nicholas Spinelli, when he was an aide. All four testified that they followed her instructions.

During the period from August 24 until September 27, Karsko was the instructor at 11 orientation sessions for Respondent's employees. She follow a prescribed orientation outline which Respondent provided. The orientation outline instructed her to familiarize new employees with the nursing home's building, safety alarms, doors, and exits. Karsko also intructed the new employees on Respondent's telephone answering procedure: taking messages, paging, and limitations on personal calls; dress code; and good attendance. Other topics included fire drills, the facility's disaster plan, safety, and completion of W-4's, I-9's, and insurance forms, and personnel policies. At the orientations, Karsko distributed copies of Respondent's employee handbook and instructed the employees to adhere to its content.

On August 5, Respondent's director of nursing, Strack, telephoned certified nursing assistant Jeri Keane and instructed her to come to Strack's office on the following day to fill out some papers. In the course of the conversation, Strack said she was happy to let Keane know that Respondent would have ''a great union,'' Local 1199. When Keane reported to Strack's office on the following day, she received payroll forms and an attached authorization card for Local 999. Strack instructed her to fill out the forms and the attached card in a nearby office. Keane immediately followed those instructions. She completed the forms, filled out the card, and submitted them to a receptionist. Keane executed the union authorization card feeling that if she did not do so, she would not have a job. She noticed that the card was for Local 999, instead of Local 1199 and mentioned that fact to Strack. Prior to signing the card, Keane had no contact with either a representative of Local 999 or an employee attempting to organize Respondent's employees on behalf of Local 999.

Keane began work at Respondent's nursing home on August 9. Her first week was spent in orientation meetings conducted by Strack. Karsko also provided some training at these meetings. During one of the meetings, Keane asked Strack where the union representative was. Strack answered

[2] Spinelli testified on direct examination that he had executed an authorization card for Local 999, prior to September 7. On cross-examination he was confronted with the card showing that he had signed it on September 23. He also changed his testimony regarding the timing of Strack's remark about the necessity of signing a card for Local 999. On direct examination, he had attributed her remark to a prehire interview. As he seemed to be carefully reviewing his recollection on cross-examination, I have credited his changes.

[3] Nicholson's card is dated September 1. However, he credibly denied writing that date on the card. Instead, I find from his testimony that he did not date the card when he signed it on August 9.

[4] Karsko could not recall telling Nicholson or any employee anything concerning the signing of union cards prior to the execution of a collective-bargaining agreement between Respondent and Local 999. She also testified that she would not have said anything about having to sign a union card to obtain employment when there was no union in Respondent's facility. However, on cross-examination, Karsko admitted that she could not remember any of the conversations she had with employees at orientation during August or September. In contrast, Nicholson seemed to be providing a firm, candid recollection of her remarks, as if he were reliving the incident. Accordingly, I have credited Nicholson here.

that she would talk to Keane about it later. After the meeting, Strack told Keane: ''No more outbursts about the union.'' Keane said, ''Mary, I thought it was 1199.'' Strack conceded that she had made a mistake, but insisted: ''No more outbursts during orientation.''

Michael Torres signed an authorization card for Local 999 on July 20. Torres had no contact with any representative of Local 999 before he signed the card. He received it attached to an employment application for employment at Respondent's facility. Torres' girlfriend gave the application with attached authorization card to him. He filled out the application. He also filled in as much of the card as he could, signed it, and returned both to his girlfriend. I find from Torres' testimony that someone else completed the union card by writing ''Fountainview Care Center'' next to ''employed by,'' and ''utility person'' next to ''class of work.'' I also find from Torres' uncontradicted testimony that his girlfriend received the application and union card at the site of Respondent's facility and returned them to that source after he had completed the application and had signed and partially filled the union card out. Torres began working as a dishwasher at Respondent's facility on August 9.

Torres saw authorization cards for Local 999 and other papers distributed at his orientation. Dolores Karsko, who was giving instructions at the orientation, told the employees to sign them.

Local 999 President Wayne Sokalski testified that he handed out authorization cards at Respondent's prospective site, beginning in June. He also testified that he handed cards to electricians, guards, carpenters, maintenance men, and ''people coming in and out with white uniforms.'' He testified that from June until September, he went to the facility: ''several, a number, six, seven, eight times.'' As he gave this answer, I received the impression that in fact he did not have any memory of the number and that he was groping for a reasonable number.

Sokalski did not provide the usual information one would expect to receive from a union representative engaged in an organizing campaign. He could not recite the names of any of the employees to whom he gave cards. Nor could he provide the names of any of Respondent's employees who signed and returned a union card to him. Absent from his testimony was any showing that any of the employees to whom he handed Local 999's cards asked him anything about his union, or volunteered to help Local 999. I have also noted that none of the five employees, discussed above, received a card from Sokalski. In short, Sokalski's demeanor, his sketchy account of an asserted organizing effort, and the experience of the five employees suggest that he did not hand out any union cards to Respondent's employees.

On September 15, after a card count by an arbitrator, Respondent recognized Local 999 as the exclusive bargaining representative of the following unit of its employees:

> All employees including nurses aides, orderlies, maintenance and dietary employees employed by Respondent at the facility, excluding all cooks, registered nurses, licensed practical nurses, clerical and administrative employees and supervisors and guards as defined in the Act.

The arbitrator's report, dated September 15, recited that President Sokalski of Local 999 had ''requested a determination of recognition of Local 999 under the National Labor Relations Act.'' The arbitrator went on to report that he had received 25 authorization cards from Respondent's employees, together with corresponding W-4 forms for each employee. He also stated that Local 999 had asserted, based on the Respondent's agreement, that there were 45 employees who would be appropriate members of the bargaining unit. The arbitrator determined that 25 of those employees had applied for membership in, and had selected, Local 999 as their collective-bargaining representative.

The arbitrator's report did not describe the bargaining unit. Respondent's president, Schachter, who discussed recognition with Sokalski on September 13, testified that Local 999's president asked how many employees worked at Respondent's facility, but Schachter could not recall whether the unit description came up for discussion. It was Shachter, who supplied the number 45 to the arbitrator. At the hearing before me, Schachter conceded that that number was almost double the actual number in the bargaining unit, as it eventuated, but that he did not know who was included and who was excluded from the bargaining unit, when he supplied 45 as the number in it. Sokalski did not describe the appropriate unit to the arbitrator and presented cards from registered nurses, licensed practical nurses, all of whom were excluded from the contract unit. The contract unit included only 23 employees. Of that number, 15 had signed cards for Local 999, as of September 15.

President Schachter described the brief negotiations leading to the execution of the collective-bargaining agreement on September 20, which was effective as of September 15. He and Local 999 President Sokalski negotiated in a phone conversation of possibly 20 minutes. The 10-page agreement contains 23 articles, including a union-security clause requiring unit employees to join Local 999 on the 31st day of employment. According to Schachter, he and Sokalski only discussed economic issues. The remainder of the contract provisions were the same as those covering a unit of employees which Local 999 represents at another nursing home owned by Schachter. At one time, Schachter owned two such facilities covered by contracts with Local 999. Sokalski and Schachter have known each other for 7 years.

Employee Juan Ayala began working for Respondent, as a certified nurses aide, on December 21, following an interview with Dolores Karsko. On his first day of employment, Ayala attended an orientation which Karsko conducted. She distributed employment forms and an authorization card for Local 999. Ayala asked Karsko why he had to fill the union card out. Karsko replied, in substance, that to obtain employment at Respondent's facility, one had to join Local 999.[5]

Certified nurses aide Evelyn Rodriguez attended an orientation on January 11, 1994, the first day of her employment by Respondent. On that occasion, Karsko distributed papers and authorization cards for Local 999 to Rodriguez and other employees. Karsko told her audience that they had to sign the union cards.

[5] I based my findings regarding Karsko's remarks on Ayala's unchallenged testimony.

B. *Analysis and Conclusions*

The General Counsel contends that Respondent violated Section 8(a)(2) and (1) of the Act by recognizing Local 999 and entering into a collective-bargaining agreement with the same labor organization, when Local 999 did not represent an uncoerced majority of the bargaining unit employees. The Respondent and Local 999 urge dismissal on the ground that the General Counsel has not shown coercion of the unit employees. I find merit in the General Counsel's contention.

The Board has long recognized that an employer violates Section 8(a)(2) and (1) of the Act by granting exclusive recognition to, and bargaining with, a union, which does not represent an uncoerced majority in the bargaining unit of its employees. E.g., *Famous Castings Corp*., 301 NLRB 404, 408 (1991). In *Siro Security Service*, 247 NLRB 1266, 1271 (1980), the General Counsel's burden of proof in showing such violations was expressed as follows:

> The burden is on the General Counsel to establish that the union does not represent a majority of the employees at the time of recognition. Circumstantial evidence amounting to nothing more than conjecture, is not a substitute for proof of lack of majority. . . . On the other hand, the General Counsel need not prove with mathematical certainty that the union lacked majority support at the time of recognition where there is evidence that the employer unlawfully assisted a union's organizational campaign. [citations omitted.]

The Board has found a sufficient showing, where the General Counsel has demonstrated a pattern of employer assistance. *Famous Castings*, supra.

The General Counsel may also succeed in showing the absence of an uncoerced majority from the ''totality of the circumstances.'' *Siro Security Service*, above at 1271–1272. According to *Siro Security Service*, at 1272: ''These circumstances include improper conduct of the employer both before and after recognition and execution of a collective-bargaining agreement.'' The haste with which an employer recognizes a union without an adequate card check is a circumstance suggesting that the union does not represent an uncoerced majority. Id. at 1273.

In the instant case, the Respondent's began assisting Local 999 in June and July, before it took possession of its facility from the builder. Applicants Lee, Nicholson, and Spinelli received authorization cards for Local 999 from the builder's guards along with applications for employment with Respondent. Lee submitted the completed forms and the signed union card to the guards. Based on this application, Respondent hired her. Lee saw her application in July, when Director of Nursing Strack interviewed her. Further, Lee's signed authorization card wound up with Local 999 as part of its 15 card showing.

President Schachter admitted that the builder's guards were taking applications from prospective employees on Respondent's behalf. Lee asked one of the guards if she should have filled out the union card. He told her that she should have filled it out. The issuance of job applications along with authorization cards for Local 999 tainted the signatures on those cards. For, the joining of the two forms was likely to give Respondent's job applicants the impression that there was a link between his or her signature on Local 999's card and the hiring process. *Rainey Security Agency*, 274 NLRB 269, 281 (1985).

Employee Michael Torres' girlfriend gave him an application for employment at Respondent's facility, to which was attached an authorization card for Local 999. He signed the card on July 20 and completed the application. Torres' girlfriend had received the forms from one of the builder's guards at Respondent's site. She returned the signed card and the completed application to a guard at the same location. Respondent hired Torres on August 9.

Respondent reinforced the suggestion that there was a linkage between employment at its facility and the signing of a card for Local 999. On August 5, Respondent's director of nursing, Strack, telephoned certified nursing assistant Keane and asked her to come to Strack's office on the following day to fill out some papers. Strack encouraged Keane to support ''a great union,'' Local 1199.

On the following day, unit employee Keane went to Respondent's facility, where she received payroll forms and an attached authorization card for Local 999. Director of Nursing Strack instructed Keane to fill out the forms and the union card in a nearby office. Keane followed these instructions lest she lose the job opportunity. She did not hesitate to fill out the union authorization card after noticing that it was for Local 999.

Later in August, at an orientation meeting, Keane asked Strack where the union representative was. Strack refused to answer in front of the assembled employees, saying that she would talk to Keane about it later. Following the orientation, Strack admitted that she had erred in saying that the union was Local 1199. However, she tried to stop Keane from making any further open inquiry about the identity of the ''great union.'' Strack told Keane not to make anymore ''outbursts'' about the Union during orientation. Strack's pressure on Keane to sign a card for Local 999 was coercive and thus tainted Keane's authorization card.

Nicholas Spinelli visited Respondent's site and obtained an employment application from one of the builder's guards. When Strack interviewed Spinelli in August, he had not signed a card for Local 999. She told him that Local 999 was a good union. Respondent hired Spinelli on September 7. He signed a card for Local 999 on September 23. In a later discussion, Strack told Spinelli that signing a card for Local 999 was required to obtain employment at Respondent's facility. I find that Strack's advice that Local 999 ''was a good union,'' coming in the context of a job interview, impaired the integrity of Spinelli's signature card. Such a comment, by a member of a prospective employer's management, in that context, suggests that once hired, the job applicant would please his new employer by signing up with Local 999 and thus improve his chances of remaining on the job.

In August, Robert Nicholson also received his job application from a guard employed by the builder of Respondent's facility. On August 9, after Respondent took over the facility, LPN Karsko handed an authorization card to employee Nicholson during an orientation. Karsko told him to sign it if he wanted to work for the Respondent. Nicholson signed the card.

Employee Torres also attended an orientation on August 9, at which Karsko issued instructions to the assembled employees. Karsko issued authorization cards for Local 999 at

this orientation and told the employees to sign them. Respondent claims that Karsko was not a supervisor until December and that prior to her promotion she was not its agent. Her participation, however, in orientations and her infection control responsibilities in August and September made Karsko a spokesperson for the dissemination of Respondent's policies and directives to its rank-and-file employees. Employees followed her instructions and Respondent expected them to do so.

When Karsko distributed employment forms, such as W-4's and I-9's, and instructed employees to fill them out, she was the voice of Respondent's management. When she told Nicholson or any other of Respondent's employees to sign a card for Local 999, the listening employee was likely to comply, upon hearing that same voice. In short, during August and September, when she was the instructor at 11 orientations, and when she was infection control coordinator, she ''was unquestionably identified with management in the eyes of the employees.'' *J. P. Stevens & Co*., 243 NLRB 996, 1001 (1979). I find that Karsko's recommendation coerced Nicholson into signing a card for Local 999 on August 9.

The testimony of Local 999's President Sokalski did not rebut the General Counsel's showing that Karsko, Strack, and the builder's guards provided a flow of authorization cards which wound up in the Local's hands. Indeed, none of the card signers who testified before me had any contact with an agent of Local 999 before he or she signed an authorization card for that local.

Sokalski did not depict the usual union organizing campaign. He did not testify about employee activists. Nor could he remember the name of a single card signer among Respondent's employees. He had difficulty coming up with the number of times he had visited Respondent's site to distribute authorization cards. Indeed, his testimony suggested that Local 999 had no organizing campaign among Respondent's employees.

Respondent's hasty recognition of Local 999, on September 15, when the arbitrator had determined that there were 25 authorization cards for a unit of 45 employees provides further support for the General Counsel's contention. For, by this conduct, Respondent evidenced an intent to complete the formalities and lock its employees in with the union of its choice. Respondent's employees were not to have an opportunity to select a collective-bargaining agent as envisioned by Section 7 of the Act.[6]

The arbitrator's determination arose from the parties' careless effort to conclude the matter quickly. President Schachter and Local 999's President Sokalski had discussed recognition on September 13. All that was settled in that exchange was that Respondent's facility had 45 employees and Local 999 had 25 cards. The parties did not trouble themselves about inclusions or exclusions from a bargaining unit. Sokalski presented his 25 cards to the arbitrator and reported his agreement with the Respondent that there were 45 employees in the bargaining unit. The arbitrator counted the 25 cards and found that they represented a majority in the appropriate unit of 45 employees. The parties treated this determination only as a formality designed to provide apparent legitimacy for their tainted relationship.

The parties consummated their relationship 5 days later with a contract. However, before executing a contract on September 20, they engaged in a 20-minute telephone bargaining session out of which came a collective-bargaining agreement covering 23 employees, of whom 15 had signed cards for Local 999. According to Schachter, he and Local 999 discussed only economic issues. The remainder of the contract provisions were similar to those covering a unit of employees at another of Schachter's nursing homes, which Local 999 also represented. Respondent had accomplished its objective.

Respondent continued to assist Local 999 unlawfully, after September 15, by pressuring new employees to sign authorization cards. Thus, I find that Respondent violated Section 8(a)(1) of the Act on December 21, when Karsko told employee Juan Ayala that to obtain a job at Respondent's facility, he had to fill out an authorization card for Local 999. *Lanco*, 277 NLRB 85, 96 (1985). I find that Respondent again violated Section 8(a)(1) of the Act on January 11, 1994, when Karsko told Evelyn Rodriguez, a new employee, and other employees, that they had to sign authorization cards for Local 999. Ibid. In both instances, Karsko was attempting to enforce an unlawful union-security clause.

The record shows convincingly that Respondent's pattern of assistance before and after September 15, resulted in Local 999 obtaining a coerced majority in a bargaining unit of its employees. I find that by recognizing and bargaining collectively with Local 999 on and after September 15, as the exclusive representative of that bargaining unit, Respondent has violated Section 8(a)(2) and (1) of the Act. *Farmers Energy Corp*., 266 NLRB 722 (1983). I also find that by being party to the unlawful collective-bargaining agreement with Local 999, which contains a union-security agreement, Respondent violated Section 8(a)(3) and (1) of the Act. *Famous Castings Corp*., 301 NLRB 404, 408 (1991).

CONCLUSIONS OF LAW

1. By telling employees that they are required to sign an authorization card designating Local 999, an affiliate of the International Brotherhood of Teamsters, AFL–CIO as the employees' collective-bargaining representative as a condition of obtaining and retaining employment by Respondent, Shore Health Care Center, Inc. t/a Fountainview Care Center, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By granting recognition to Local 999 on September 15, 1993, and by on and since September 20, 1993, entering into, maintaining and enforcing a collective-bargaining agreement, which includes a union-security clause, with Local 999 as the exclusive collective-bargaining representative of the following employees at its Lakewood, New Jersey facility, at a time when Local 999 did not represent an uncoerced majority of those employees, Respondent has violated Section 8(a)(3), (2), and (1) of the Act:

> All employees including nurses aides, orderlies, maintenance and dietary employees, but excluding all cooks,

[6] Sec. 7 of the Act provides in pertinent part:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, 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.

registered nurses, licensed practical nurses, clerical and administrative employees and supervisors and guards as defined in the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall also recommend that Respondent be ordered to cease giving effect to its collective-bargaining agreement with Local 999, withdraw and withhold recognition from Local 999 as the exclusive-bargaining representative of the unit set forth above, unless and until the National Labor Relations Board has certified Local 999 as the exclusive collective-bargaining representative of that unit, and reimburse its past and present employees for all dues and fees they may have paid to Local 999 pursuant to the union-security provision in the collective-bargaining agreement. Interest on the dues and fees shall be as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Shore Health Care Center, Inc. t/a Fountainview Care Center, Lakewood, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and bargaining with Local 999, an affiliate of the International Brotherhood of Teamsters, AFL–CIO as the exclusive representative of the following employees at its Lakewood, New Jersey facility, unless and until Local 999 has been certified by the National Labor Relations Board as their exclusive collective-bargaining representative:

> All employees including nurses aides, orderlies, maintenance and dietary employees, but excluding all cooks, registered nurses, licensed practical nurses, clerical and administrative employees and supervisors and guards as defined in the Act.

(b) Giving effect to the collective-bargaining agreement which it executed with Local 999 on September 20, 1993, covering the employees in the unit described above, and any modifications or current extensions of that agreement.

(c) Recognizing and bargaining with Local 999 or any other labor organization at a time when such labor organization does not represent an uncoerced majority of the unit for which such recognition is extended.

(d) Telling employees that they must sign an authorization card designating Local 999 as their exclusive collective-bargaining representative as a condition of obtaining or retaining employment at its Lakewood, New Jersey facility.

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

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

(a) Withdraw and withhold all recognition from Local 999 as the representative of the following employees employed at our Lakewood, New Jersey facility, unless and until that labor organization has been certified by the National Labor Relations Board as their exclusive representative:

> All employees including nurses aides, orderlies, maintenance and dietary employees, but excluding all cooks, registered nurses, licensed practical nurses, clerical and administrative employees and supervisors and guards as defined in the Act.

(b) Reimburse its past and present employees for all dues and fees withheld from their pay pursuant to the collective-bargaining agreement which it executed with Local 999 on September 30, 1993, plus interest in the manner set forth in the remedy section of the decision.

(c) Post at its facility, in Lakewood, New Jersey, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 4, 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.

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

[7] 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.

[8] 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.

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 recognize and bargain with Local 999, an affiliate of the International Brotherhood of Teamsters, AFL–CIO as the exclusive representative of the following employees at our Lakewood, New Jersey facility, unless and until Local 999 has been certified by the National Labor Relations Board as their exclusive collective-bargaining representative:

> All employees including nurses aides, orderlies, maintenance and dietary employees, but excluding all cooks, registered nurses, licensed practical nurses, clerical and administrative employees and supervisors and guards as defined in the Act.

WE WILL NOT give effect to the collective-bargaining agreement which we executed with Local 999 on September 20, 1993, covering our employees in the unit described above, and any modifications or current extensions of that agreement.

WE WILL NOT recognize and bargain with Local 999 or any other labor organization at a time when such labor organization does not represent an uncoerced majority of the unit of our employees for which such recognition is extended.

WE WILL NOT tell employees that they must sign an authorization card designating Local 999 as their exclusive collective-bargaining representative as a condition of obtaining or retaining employment at out Lakewood, New Jersey facility.

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

WE WILL withdraw and withhold all recognition from Local 999 as the representative of the following employees employed at our Lakewood, New Jersey facility, unless and until that labor organization has been certified by the National Labor Relations Board as their exclusive representative:

> All employees including nurses aides, orderlies, maintenance and dietary employees, but excluding all cooks, registered nurses, licensed practical nurses, clerical and administrative employees and supervisors and guards as defined in the Act.

WE WILL reimburse our past and present employees for all dues and fees withheld from their pay pursuant to the collective-bargaining agreement which we executed with Local 999 on September 30, 1993, plus interest.

SHORE HEALTH CARE CENTER, INC. T/A
FOUNTAINVIEW CARE CENTER