Hialeah Hospital *and* United Brotherhood of Carpenters and Joiners of America, Local No. 1554, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL–CIO *and* Guillermo Manresa. Cases 12–CA–20339, 12–CA–20943, and 12–RC–8398

October 29, 2004

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On April 25, 2001, Administrative Law Judge Jane Vandeventer issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief. The General Counsel filed limited cross-exceptions, a supporting brief, and an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified, and to adopt the recommended Order as modified below.[2]

The judge found, and we agree, that the Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act. Unlike the judge, however, we find that the coercive effects of the Respondent's unlawful conduct can be erased, and a fair rerun election ensured, by the use of the Board's traditional remedies. Thus, we reverse the judge's recommendation that a *Gissel*[3] bargaining order be issued and instead direct that a second election be held.[4] Consequently, we also reverse the judge's conclusion that the Respondent violated Section 8(a)(5) of the Act by failing and refusing to recognize and bargain with the Union.

I. BACKGROUND

The Respondent operates an acute care hospital in Hialeah, Florida. The Union's efforts to organize the Respondent's engineering department employees commenced in August 1999.[5] After obtaining signed authorization cards from a majority of the unit employees, the Union requested, and was denied, recognition by the Respondent on August 31. That same day, the Union filed a representation petition.

The representation election was held on November 12. The Union lost by a ballot count of 7 to 4, with one nondeterminative challenged ballot. The Union filed timely objections to the election, many of which mirror its unfair labor practice charges alleging pre- and postelection violations of Section 8(a)(1) and (3) of the Act.[6]

II. THE UNFAIR LABOR PRACTICES

A. August 31 Meeting

We agree with the judge that Manuel Linares, the Respondent's vice president, committed several 8(a)(1) violations during a mandatory meeting held with the Respondent's engineering department employees on August 31, just hours after receiving the Union's demand for recognition and the representation petition.[7] Thus, as the judge found, Linares violated Section 8(a)(1) by telling the employees that he felt "betrayed" and "stabbed in the back" because they had contacted the Union. Those statements conveyed to the employees the message that engaging in union activity, a protected statutory right, was tantamount to employee disloyalty, and implicitly threatened them with unspecified reprisals.[8] Linares also threatened the employees with discharge and other unspecified reprisals in violation of Section 8(a)(1) when he warned them that he would find out the identities of, and get rid of, those employees who had contacted the Union.[9] Linares further violated Section 8(a)(1) by inform-

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

[2] We shall modify the judge's recommended Order in accordance with *Ferguson Electric Co.*, 335 NLRB 142 (2001), and we shall substitute a new notice in accordance with *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004).

[3] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

[4] For the reasons set forth in her separate partial dissent, Member Liebman would find that a *Gissel* bargaining order is warranted here.

[5] All dates are in 1999 unless otherwise indicated.

[6] The Union alleged that the outcome of the election was affected by the Respondent's threatening employees with loss of employment and adverse working conditions if they supported the Union; engaging in adverse treatment of employees who supported the Union; engaging in surveillance of employees who supported the Union; and promising transfers and promotions to employees as an inducement to refrain from supporting the Union.

[7] In addition to Linares and Supervisor Carlos Cuesta, 11 out of the 12 unit employees attended the meeting.

[8] See *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 492–493 (1995), enfd. in pertinent part 97 F.3d 65 (4th Cir. 1996); *HarperCollins Publishers, Inc.*, 317 NLRB 168, 180 (1995), enfd. in pertinent part 79 F.3d 1324, 1329–1331 (2d Cir. 1996). In finding that these statements violated Sec. 8(a)(1), Member Schaumber relies on the fact that they were made in the context of the other unlawful statements also made by Linares during the August 31 meeting.

[9] In adopting this finding, we do not rely on Linares' statement to employees that he knew someone in the room had contacted the Union. Because 11 out of the 12 unit employees were present at the meeting, it is highly likely that one of the employees present had contacted, or had been contacted by, the Union. In these circumstances, Linares' specu-

ing the employees that, from then on, the Respondent would know everything that was going on. Such statements tend to create, in the minds of employees, the impression that the employer is engaging in surveillance of their union activities and therefore violate Section 8(a)(1).[10] Finally, in violation of Section 8(a)(1), Linares implied that it was futile to support the Union, by telling the employees that he would "fight" to keep the Union out and that the Respondent would "not allow the Union."[11] Like the judge, we find that the foregoing statements were unlawful, given the swiftness with which Linares called the meeting, the pervasiveness of the statements, the angry manner in which they were delivered, and the fact that they were made by Linares, a high-level official.

B. Solicitation and Promise of Benefits

The judge found that Linares solicited employee Armando Chamorro to persuade three engineering department employees to withdraw their support for the Union, promising that if Chamorro did so, he would receive a promotion or job security should the engineering department jobs be out-sourced at a future date. As the judge found, soliciting employees to dissuade fellow employees from supporting a labor organization violates Section 8(a)(1). See *Sun Country Citrus, Inc*., 268 NLRB 700 fn. 2, 707 (1984). Promising benefits to Chamorro to dissuade him from supporting the Union also violated Section 8(a)(1). See *API Industries*, 314 NLRB 706, 707 (1994).[12]

C. Stricter Enforcement of Departmental Regulations

We agree with the judge's finding that Linares violated Section 8(a)(1) by prohibiting employees Oscar Romero, Guillermo Manresa and Rodriguez from remaining in the employee lounge after going off-duty, as they did prior to the start of the Union's organizing campaign, in retaliation for their union support.[13] Unlike the judge, however, we do not rely on *Materials Processing*.[14] In that case, the employer unlawfully precluded off-duty employees from engaging in protected activity—union handbilling—on its property.

Where, as here, the allegation is that the employer discriminated against employees because of their union support, the employer's motivation is an essential element of the violation. *Budrovich Contracting Co.,* 331 NLRB 1333, 1334 (2000), enfd. 20 Fed. Appx. 596 (8th Cir. 2001). In these circumstances, a *Wright Line*[15] analysis is appropriate. Thus, the General Counsel has the initial burden to demonstrate that the employees' protected concerted activity was a motivating factor in the Respondent's decision to revoke a privilege. If the General Counsel makes that showing, the Respondent may avoid the finding of a violation by establishing that it would have taken the same action even in the absence of the employees' protected conduct.[16]

Although the judge did not specifically analyze the Respondent's action under *Wright Line*, we nevertheless find that the violation has been established. Thus, the judge implicitly found that the employees' protected union activity was a motivating factor in the Respondent's sudden decision to strictly enforce a previously unenforced departmental regulation requiring employees to leave the hospital's premises immediately after clocking out. The Respondent defends its action only by referring to the regulation, which, as the judge found, was not enforced before the advent of the union organizing campaign. We therefore find that the Respondent failed to demonstrate that it would have taken this action absent the employees' protected union activity.

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lation to that effect would not reasonably cause the employees to believe that their union activities were under surveillance.

[10] See *Tres Estrellas de Oro*, 329 NLRB 50, 51 (1999); *Mountaineer Steel, Inc.*, 326 NLRB 787, 787 (1998), enfd. 8 Fed.Appx. 180 (4th Cir. 2001).

[11] See, e.g., *Wellstream Corp.*, 313 NLRB 698, 706 (1994) (statement that no "son of a bitch" would bring a union into the company and employer would see to it that company was never unionized conveyed futility of unionization); *Basic Metal & Salvage Co.*, 322 NLRB 462, 464 (1996) (employer stating it would fight to the end and did not need a "f" union unlawfully conveyed futility of organizing).

Member Schaumber agrees that Linares violated Sec. 8(a)(1) by telling employees that the Respondent would not allow the Union. In these circumstances, he finds that it is not necessary to pass on the allegation that Linares also violated Sec. 8(a)(1) by telling employees that he would "fight" to keep the Union out.

[12] Contrary to the judge's finding, however, the record does not reflect that Linares instructed Chamorro to promise employees similar benefits if they rejected the Union.

[13] See, e.g., *Nursing Center at Vineland*, 314 NLRB 947, 950 (1994), enfd. 79 F.3d 354 (3d Cir. 1996) (crackdown on no-smoking or no-eating rules motivated by employees' union activities in violation of Sec. 8(a)(1)); *Treanor Moving & Storage Co.*, 311 NLRB 371 fn. 2, 374–375 (1993) (attendance policy crackdown because of the employees' protected union activities violated Sec. 8(a)(1)); accord: *Joe & Dodie's Tavern*, 254 NLRB 401, 404, 410–411 (1981), enfd. 666 F.2d 383 (9th Cir. 1982) (changing prior practice by forbidding employees from remaining on the premises longer than 15 minutes after work in order to retaliate for engaging in protected conduct and in order to discourage employee support violates Sec. 8(a)(1)).

[14] 324 NLRB 719, 722 (1997) (finding that, under *Tri-County Medical Center*, 222 NLRB 1089 (1976), the employer violated Sec. 8(a)(1) by denying access to off-duty employees who were engaging in protected activity).

[15] 251 NLRB 1083,1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983).

[16] 251 NLRB at 1089.

D. Removal of Benefits

We also adopt the judge's finding that, prior to the election, the Respondent violated Section 8(a)(3) by removing the shower head and ping pong table used by the engineering department employees. The judge found, and we agree, that those actions, coming only days after Linares first learned of the Union's organizing campaign, were undertaken in retaliation for the employees' union activities. We further find, for the reasons stated by the judge, that the Respondent's proffered reasons for taking those actions were pretextual.[17] The Respondent therefore failed to establish that it would have changed those terms and conditions of employment even absent the employees' union activities.[18]

E. Violations Concerning Rodolfo Rodriguez

1. Linares' threats

The judge found that Linares violated Section 8(a)(1) by telling employee Rodolfo Rodriguez, only days after the Union demanded recognition on August 31, that he knew Rodriguez had contacted the Union and that the Respondent had "money to destroy" him. Given that Linares on August 31 unlawfully threatened to "get" the person who had contacted the Union, we agree with the judge that Linares' statements to Rodriguez amounted to unlawful threats of unspecified reprisals. See *Golden State Foods Corp.*, 340 NLRB 382 1 fn. 3 (2003) (in context of unlawful threats of job loss, supervisor's statement that "employee better watch his step," because the employer "really got its eye on" him, and was out to "get him," violated Section 8(a)(1)).

2. Surveillance

We agree with the judge that the Respondent engaged in unlawful surveillance of Rodriguez, in violation of Section 8(a)(1), first by monitoring his movements more closely after it discovered that he had contacted the Union,[19] and later by secretly videotaping him in his workroom with a hidden camera. The judge found that the Respondent engaged in the surveillance because of Rodriguez' union activities. Thus, she found that the General Counsel established that Rodriguez was a leading and open union adherent, that the Respondent was aware of Rodriguez' union activities, that the Respondent was hostile to his activity and that of his coworkers, and that the surveillance was motivated solely by that activity. The judge further found, in effect, that the Respondent's asserted reasons for the videotaping—that Rodriguez' productivity had decreased and that it suspected that he was sleeping on the job—were pretextual and that the Respondent lacked a nondiscriminatory reason for videotaping Rodriguez. She concluded that the hidden camera surveillance was simply a continuation of the earlier unlawful monitoring of his activities, explainable only by the Respondent's strong union animus.[20] We find that the judge implicitly followed *Wright Line* in finding these violations, and we agree that she reached the appropriate conclusions.[21]

In its exceptions, the Respondent contends that it did not videotape Rodriguez in retaliation for his union activities.

The Respondent claims that in May, prior to the Union's organizing campaign, it installed a hidden camera in Rodriguez' workroom because it was concerned with his low productivity and suspected that he might be sleeping on the job. It further contends that no disciplinary action was taken against Rodriguez at that time because the surveillance videotapes proved inconclusive.[22] Asserting (again, contrary to the credited testimony) that it was unaware of Rodriguez' union activities when it installed the second hidden camera in his workroom in late September, the Respondent contends that it secretly

[17] If the reasons given by the employer for its action are pretextual—that is, either false (as here) or not in fact relied upon—the employer fails by definition to show that it would have taken the same action, for those reasons, absent the protected conduct. *Limestone Apparel Corp.*, 255 NLRB 722, 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982).

[18] See, e.g., *Dai-Ichi Hotel Saipan Beach*, 337 NLRB 469, 479 (2002) (employer retaliated against employees' union activities by curtailing practice of allowing them to take used flowers from the hotel in violation of Sec. 8(a)(3)); *L.S.F. Transportation, Inc.*, 330 NLRB 1054 fn. 2, 1068 (2000), enfd. 282 F.3d 972 (7th Cir. 2002) (employer unlawfully discontinued its practice of allowing drivers to use cash cards for cash advances because of their union activities in violation of Sec. 8(a)(3)).

[19] In this regard, we rely on the judge's crediting Rodriguez over Linares and on the fact that neither Supervisor Carlos Cuesta nor any security guards were called to rebut Rodriguez' testimony.

[20] We reject the Respondent's contention that the judge erred in drawing the inference that Cuesta's testimony would have been adverse to the Respondent if he had been called to testify. As Cuesta was employed by the Respondent as a supervisor at the time of the hearing, he "may reasonably be assumed to be favorably disposed to that party." See *Made 4 Film, Inc.*, 337 NLRB 1152, 1159 (2002), quoting *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d 720 (6th Cir. 1988). Therefore, it was proper for the judge to draw an adverse inference.

[21] The Respondent clearly failed to carry its *Wright Line* rebuttal burden concerning its earlier monitoring of Rodriguez, although the judge made no such specific finding. The Respondent contends only—contrary to the credited testimony—that it did not engage in such monitoring, not that it would have done so in the absence of Rodriguez' union activities.

In affirming the videotaping violation we disavow the judge's reliance on *National Steel & Shipbuilding Co*., 324 NLRB 499 (1997), enfd. 156 F.3d 1268 (D.C. Cir. 1998). That case involved employer surveillance of employees' protected activity. The Respondent did not videotape Rodriguez' protected activities.

[22] The judge did not address this evidence.

videotaped Rodriguez for essentially the same reasons as before.

We find no merit in this argument. It is clear that the Respondent engaged in hidden camera surveillance of Rodriguez in order to find a pretext for discharging him, when the real reason it wanted to discharge him was his protected union activity. If anything, the retaliatory nature of the Respondent's actions is underscored by its previous experience with videotaping Rodriguez, in May. Then, the videotapes proved inconclusive, and the Respondent did not take any additional action to verify its concerns at that time. But the Respondent's approach changed significantly once the union organizing campaign commenced and Rodriguez was identified as a prominent union supporter. Suddenly, just weeks after learning of Rodriguez' union activities and threatening "to destroy" him, the Respondent found it necessary to secretly videotape Rodriguez again, assertedly for the same reasons as before. We find, however, that the Respondent's real objective was to find any lawful excuse to rid itself of a leader in the Union's organizing campaign, and therefore that the hidden camera surveillance violated Section 8(a)(1).[23]

4. Retaliatory discharge

We adopt the judge's finding that the Respondent violated Section 8(a)(3) by discharging Rodriguez in retaliation for his union activities. As the judge found, Rodriguez was a 16-year employee with no prior disciplinary problems. On being identified as a leader of the union campaign, Rodriguez was threatened with unspecified reprisals, subjected to unlawful surveillance, and finally discharged. Evidence of the Respondent's unlawful motivation is plain from Linares' unlawful statements and threats, as well as from Linares' failure to afford Rodriguez an opportunity to explain or respond to the allegations of misconduct before he was discharged.[24] We find that the General Counsel established that the Respondent's animus toward Rodriguez' union activities was a motivating factor in his discharge.

We also affirm the judge's finding that the Respondent's stated reasons for discharging Rodriguez were pretextual. Thus, she found that the Respondent failed to establish that Rodriguez did not complete his work assignments, that he worked unusually slowly, or that he slept on the job.[25] Accordingly, the Respondent failed to demonstrate that it would have discharged Rodriguez for those reasons even absent his union activities. *Limestone Apparel*, supra, 255 NLRB at 722.[26]

Finally, the judge found that, in any event, the Respondent had failed to show that it had ever disciplined, let alone discharged, any employee for those reasons; in fact, under Linares, no engineering employee had ever been discharged. We therefore agree with the judge that, even assuming that Rodriguez was asleep on the job or doing his job unusually slowly, the Respondent has not shown that it would have discharged Rodriguez, whose previous disciplinary record was unblemished, regardless of his union activities. Accordingly, we conclude that Rodriguez was discharged in violation of Section 8(a)(3).

F. July 2000 Meeting

Finally, we agree with the judge that, during a meeting in July 2000, Linares implicitly threatened the engineering department employees with discharge if they engaged in further union activities, by reminding them of the departure of Rodriguez and Chamorro, by referring to the two as "rotten apples," and by intimating that their departure was related to their union activities. See *Aldworth Co.*, 338 NLRB 137, 151 (2002), enfd. sub nom. *Dunkin' Donuts Mid-Atlantic Distribution Center, Inc. v. NLRB*, 363 F.3d 437 (D.C. Cir. 2004) (supervisor talking to group of assembled employees about fate of union supporters sent clear message that engaging in union activity may result in similar fate). Likewise, we agree that Linares implicitly threatened the employees by suggesting that if the employees were "not happy" they should quit. See *Paper Mart*, 319 NLRB 9, 9 (1995) (statement that employee should seek work elsewhere if he was not happy working for the employer, in context of discussion about union activity, implies that employee's union activities were incompatible with continued employment).

[23] See *International Carolina Glass Corp*., 319 NLRB 171, 174 (1995) ("focused" surveillance using video cameras designed to find excuse for employee's discharge).

[24] See *Fansteel VR/Wesson,* 332 NLRB 428, 441 (2000); *Government Employees (IBPO)*, 327 NLRB 676, 701 (1999), enfd. 205 F.3d 1324 (2d Cir. 1999). Chairman Battista does not rely on this failure as evidence of unlawful motivation.

[25] The discriminatory nature of the Respondent's hidden camera surveillance further supports a finding that the Respondent's reasons for discharging Rodriguez are pretextual. See *Government Employees (IBPO)*, supra, 327 NLRB at 676 fn. 4.

[26] In so finding, we stress that employers are free under the Act to discharge employees for cause and that poor work performance and sleeping on the job are legitimate reasons for termination. Indeed, the seriousness of being asleep on the job has been addressed by the Board in numerous cases where an employer has relied upon "sleeping on the job" as a defense to a discharge alleged to constitute an unfair labor practice. See, e.g., *Fresno Bee*, 337 NLRB 1161, 1161–1162 (2002); *Brooklyn Hospital*, 302 NLRB 785, 785 fn. 2 (1991). We simply find, in agreement with the judge, that the Respondent has not demonstrated that such were its actual reasons for discharging Rodriguez.

III. REMEDY

The judge found, and we agree, that the Respondent's unlawful conduct interfered with the November 1999 election and that the election results should be set aside. The judge further found, relying on *Gissel*, supra, 395 U.S. at 575, that the Respondent's unfair labor practices so tainted the atmosphere that the possibility of assuring a fair rerun election was slight, and therefore that a bargaining order was warranted. Contrary to the judge, we find that a bargaining order is unnecessary in the circumstances presented here and that the Respondent's objectionable conduct can be adequately remedied through a second election.

Under *Gissel*, the Board will issue a remedial bargaining order, absent an election, in two categories of cases. The first category is "exceptional" cases, those marked by unfair labor practices so "outrageous" and "pervasive" that traditional remedies cannot erase their coercive effects, thus rendering a fair election impossible. 395 U.S. at 613–614. The second category involves "less extraordinary cases marked by less pervasive practices which nonetheless still have a tendency to undermine majority strength and impede election processes." Id. at 614. In the latter category of cases, the "possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and that employee sentiment once expressed [by authorization] cards would, on balance, be better protected by a bargaining order." Id. A *Gissel* bargaining order, however, is an extraordinary remedy. The preferred route is to provide traditional remedies for the unfair labor practices and to hold an election, once the atmosphere has been cleansed by those remedies. *Aqua Cool*, 332 NLRB 95, 97 (2000).

We find that this case falls into the second category. Thus, we must consider both the extensiveness of the employer's unfair labor practices and their likelihood of recurrence in determining whether a bargaining order is appropriate. 395 U.S. at 614. We note that, in *Desert Aggregates*, 340 NLRB 289, 294–295 (2003), the Board found that traditional remedies were adequate to redress the employer's discriminatory layoff of two union supporters and its solicitation and promise to remedy employee grievances in spite of the unit's small size of 11 employees. Similarly, in *Aqua Cool*, supra, 332 NLRB at 97, the Board found that a bargaining order was not warranted in a unit of eight employees where the unfair labor practices committed by the employer included only a single hallmark violation. Likewise in *Burlington Times, Inc.*, 328 NLRB 750, 752 (1999), the Board declined to issue a bargaining order where an employer threatened to close the plant, made noneconomic grants of benefits, promised to improve wages and other benefits, and solicited grievances in a unit of 11 employees.

In support of her recommended bargaining order, the judge relied on *Adam Wholesalers, Inc*., 322 NLRB 313 (1996); *Flexsteel Industries,* 316 NLRB 745 (1995), *Electro-Voice, Inc*., 320 NLRB 1094 (1996); and *America's Best Quality Coatings Corp.,* 313 NLRB 470 (1993). Each of these cases involved more discharges than in the instant case. Indeed, in *Electro-Voice*, the employer's misconduct included the discharge of about one-third of the bargaining unit, while in *America's Best Quality Coatings* there was a mass layoff. These cases also involved worse and/or more extensive misconduct than that engaged in by the Respondent. Thus, in *Adam Wholesalers*, the highest-ranking authority in the facility committed most of the violations. The respondent in that case engaged in wholesale interrogation of the 32-employee unit. Wage increases and a new incentive bonus plan were both promised and granted in *Adam Wholesalers*, and the manager threatened to put everyone on the street because there would be a strike. In *Electro-Voice*, the employer's director of manufacturing and the acting plant manager made threats of plant closure and unlawfully interrogated employees, and the human resources manager also engaged in unlawful interrogations. Similarly, in *America' Best Quality Coatings*, the company president committed numerous violations (he announced the unlawful transfer of the company's employees to a different entity's payroll on the day after the union demanded recognition and filed a representation petition; he made personal visits to employees' workstation; he unlawfully interrogated an employee about the union at the employee's workstation; he directed an employee to remove a prounion sign from his work area even though an antiunion sign remained posted at the nearby workstation of another employee). In *Flexsteel*, the senior manager at the employer's facility engaged in many unlawful interrogations and made numerous threats of plant closure. Many of these violations took place in one-on-one talks between the facility's senior manager and employees.

The Respondent's misconduct was less serious and pervasive than the misconduct of those employers. Bearing in mind that a *Gissel* bargaining order is an extraordinary remedy and should be reserved for those exceptional cases where the possibility of erasing the effects of the unfair labor practices is slight, we are persuaded that our traditional remedies—including reinstatement of

Rodriguez—are sufficient here and that the issuance of a *Gissel* bargaining order is unnecessary.[27]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Hialeah Hospital, Hialeah, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified.

1. Delete paragraphs 1(k) and 2(f) and reletter the subsequent paragraphs.

2. Substitute the following for paragraph 2(e).

"(e) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

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

IT IS FURTHER ORDERED that the election conducted in Case 12–RC–8398 is set aside and Case 12–RC–8398 is severed from Cases 12–CA–20339 et al. and remanded to the Regional Director for Region 12 for the purpose of conducting a new election.

[Direction of Second Election omitted from publication.]

CHAIRMAN BATTISTA, dissenting in part.

Unlike my colleagues, I would dismiss the Section 8(a)(3) allegation concerning the ping-pong table. The ping-pong table was originally put in place, with Linares's approval, solely for the use of employees in the engineering department. However, it soon became a gathering place for many others, including even Cliff Bauer, who was then the Respondent's chief executive officer. A new CEO replaced Bauer. Linares, who by then had concluded that the table should be removed, asked the new CEO about it. Linares was told, essentially, to do whatever he wanted about it and not to bother the new CEO about so trivial a matter. In these circumstances, I find that the removal of the table, which had become a problem before the initiation of Union activity, and which an employee and a supervisor had said was disrupting the employee's work area, was lawful.

MEMBER LIEBMAN, dissenting in part.

Within hours of learning of the Union's organizational campaign, the Respondent embarked on a course of unlawful conduct—extending beyond the date of the election—designed to deter the Respondent's engineering department employees from unionizing. After receiving the Union's demand for recognition and the representation petition, the Respondent not only threatened the entire unit with job loss for engaging in union activities, but it then made good on that threat by discharging Rodolfo Rodriguez, a leading union adherent. Considering the extensiveness of the Respondent's unfair labor practices and the likelihood of their recurrence, I find, unlike my colleagues, that a *Gissel*[1] bargaining order is warranted.

The Board has held, with court approval, that threats of job loss are among the most flagrant interferences with Section 7 rights and are more likely to destroy election conditions for a lengthier period of time than other unfair labor practices.[2] The discharge of union adherent Rodriguez "goes to the very heart of the Act" and is not likely to be forgotten soon. *NLRB v. Entwistle Mfg. Co.,* 120 F.2d 532, 536 (4th Cir. 1941); *Michael's Painting, Inc.,* 337 NLRB 860, 861 (2002), enfd. 85 Fed.Appx. 614 (9th Cir. 2004). Given the small size of this bargaining unit, the coercive effects of those hallmark violations is unlikely to be dissipated or diluted.[3] The Respondent's

[27] Consistent with our decision not to issue a *Gissel* bargaining order, we reverse the judge's findings that the Respondent violated Sec. 8(a)(5) by failing and refusing to recognize and bargain with the Union. Also, we need not pass on the Respondent's contention that the Union did not enjoy the support of a majority of the unit employees or on the General Counsel's contention that the Respondent made unilateral changes in the employees' terms and conditions of employment in violation of Sec. 8(a)(5).

The General Counsel and Charging Party sought a *Gissel* bargaining order. They did not argue for extraordinary remedies in the event (as here) the Board denied a *Gissel* order. Accordingly, the issue has not been litigated or briefed. In these circumstances, and given the age of the case, we will not prolong the case by seeking party views about possible additional remedies.

[1] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

[2] *Garvey Marine, Inc.*, 328 NLRB 991, 994 (1999), enfd. 245 F.3d 819 (D.C. 2001); *America's Best Quality Coatings Corp.*, 313 NLRB 470, 472 (1993), enfd. 44 F.3d 516 (7th Cir. 1995), cert. denied 515 U.S. 1158 (1995); *NLRB v. Jamaica Towing*, 632 F.2d 208, 213 (2d Cir. 1980).

[3] See, e.g., *Debbie Reynolds Hotel*, 332 NLRB 466, 467 (2000) (bargaining order warranted in view of the severity and scope of the employer's unlawful actions, as well as the small size of the unit, comprising 13 employees who worked in close proximity to one another); *Traction Wholesale Center Co.*, 328 NLRB 1058, 1076–1078 (1999), enfd. 216 F.3d 92, 107–108 (D.C. Cir. 2000) (court enforced bargaining order in light of magnitude of employer's unlawful conduct, small unit size of 20 employees, and involvement of employer's owners); *Bonham Heating & Air Conditioning*, 328 NLRB 432, 432–433 (1999) (bargaining order warranted in a unit of seven employees where employer's hallmark violations included the discharge of three unit employees); *Airtex*, 308 NLRB 1135, 1144 (1992) (bargaining order warranted in unit of six employees where employer committed hallmark violations); and *Indiana Cal-Pro,* 287 NLRB 796, 803–804 (1987), enfd. 863 F.2d

unlawful conduct is further compounded by the involvement of a high-level official, Manuel Linares, its vice president, who unlawfully threatened unit employees, engaged in unlawful surveillance of Rodriguez and subsequently discharged him. *Consec Security*, 325 NLRB 453, 455 (1998).

The Respondent has also failed to offer any evidence that it attempted to mitigate the effects of its unlawful conduct.[4] The Respondent, in fact, has presented no evidence showing a new willingness to allow the engineering department employees to freely exercise their Section 7 rights. To the contrary: 9 months after the election, Linares still persisted in threatening these employees with discharge for engaging in union activities by referring to union adherents like Rodriguez as "rotten apples" and by suggesting to them that they should quit if they were "not happy."[5] The message to these employees could not be clearer: if you support the Union, be prepared to face a fate similar to Rodriguez.[6]

We have recently acknowledged these well-settled principles. In *Cardinal Home Products, Inc.*, 338 NLRB 1004, 1010 (2003), the Board recognized that "serious employer misconduct that is widespread and directly reaches all or a significant portion of unit employees supports a bargaining order." The Board further observed that "threats of plant closure and other types of job loss are among the most flagrant of unfair labor practices and are likely to affect the election conditions negatively for an extended period of time." Id. at 1011. The Board denied a bargaining order in that case only because of the absence of threats of job loss and pervasive dissemination of the employer's other serious unfair labor practices: "Absent such threats as well as pervasive impact or dissemination of the Respondent's unlawful conduct, we conclude that the violations here do not render slight the possibility of a fair rerun election[.]" Id. Threats and pervasive impact are not absent here and so this case should, under *Cardinal Home*, support a *Gissel* order.

Accordingly, I would adopt the judge's recommendation to issue a remedial bargaining order. I would similarly adopt the judge's findings that the Respondent violated Section 8(a)(5) by failing and refusing to bargain with the Union.[7]

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten our employees with discharge and other unspecified reprisals because of their union activities.

WE WILL NOT accuse our employees of disloyalty because of their union activities.

WE WILL NOT imply to our employees that selection of the Union would be futile.

WE WILL NOT imply to our employees that employees' union activities will be under surveillance.

WE WILL NOT forbid our employees to be in our facility during nonduty hours because of their union activities.

WE WILL NOT engage in surveillance of our employees because of their union activities.

WE WILL NOT promise benefits such as promotion and job retention to our employees for withdrawing their support from the Union.

1292, 1301 (6th Cir. 1988) (bargaining order enforced where the Board "relied on the relatively small size of the bargaining unit, the level of management involved, and the extensive and egregious unfair labor practices committed by the company").

[4] Compare *M.J. Metal Products*, 328 NLRB 1184, 1186 (1999), enfd. 267 F.3d 1051, 1066–1068 (10th Cir. 2001) (issuing bargaining order and noting the absence of evidence that the employer had attempted to reinstate the discriminatorily discharged employees) with *Desert Aggregates*, 340 NLRB 289, 294 (finding bargaining order unnecessary where the effect on employees of two discriminatory layoffs was mitigated by the employer's attempt to recall those employees as soon as its business improved).

[5] See *General Fabrications Corp.*, 328 NLRB 1114, 1115 (1999), enfd. 222 F.3d 218 (6th Cir. 2000) ("An employer's continuing hostility toward employee rights in its postelection conduct 'evidences a strong likelihood of a recurrence of unlawful conduct in the event of another organizing effort.' *Garney Morris, Inc.*, 313 NLRB 101, 103 (1993), enfd. mem. 47 F.3d 1161 (3d Cir. 1995)."

[6] See, e.g., *Aldworth Co.*, 338 NLRB 153, 167 (2002), enfd. sub nom. *Dunkin' Donuts Mid-Atlantic Distribution Center, Inc. v. NLRB*, 363 F.3d 437 (D.C. Cir. 2004) (supervisor engaged in what might be likened to a "public execution" by focusing attention on the fate of union adherents).

[7] Because I find that the Respondent was obligated to bargain with the Union, I agree with the General Counsel that the Respondent violated Sec. 8(a)(5) by unilaterally implementing changes in certain employee benefits.

WE WILL NOT solicit our employees to persuade our other employees to withdraw their support from the Union.

WE WILL NOT remove the benefits of a shower and a ping-pong table from our employees.

WE WILL NOT discharge employees in order to discourage our employees from engaging in union activities.

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

WE WILL, within 14 days from the date of the Board's Order, offer Rodolfo Rodriguez full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Rodolfo Rodriguez whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

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

WE WILL restore the shower and ping-pong table for our employees' use.

HIALEAH HOSPITAL

Shelley Plass, Marcia Valenzuela, and *Hector Nava, Esqs*., for the General Counsel.

Howard S. Linzy and *Bart Sisk (The Kullman Firm*), for the Respondent.

Osnat Rind, for the Petitioner.

DECISION

STATEMENT OF THE CASE

JANE VANDEVENTER, Administrative Law Judge. This case was tried on 10 days between June and November 2000, in Miami, Florida.[1] The complaint in Case 12–CA–20339 alleges Respondent violated Section 8(a)(1) of the Act by threatening employees with discharge and other unspecified reprisals because of their union activities, giving the impression it was conducting surveillance of employees' union activities, stating that selection of the Union would be futile, promising jobs to employees if they abandoned support of the Union and other statements. The complaint also alleges Respondent violated Section 8(a)(1) and (3) of the Act by discharging employee Rodolfo Rodriguez and by removing a shower and a ping-pong table previously available to employees because of the employees' union activity. The complaint further alleges that, based on employee designations of the United Brotherhood of Carpenters and Joiners of America, Local No. 1554, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL–CIO (the Union) as their bargaining representative and the Union's request for recognition, Respondent was obliged to recognize the Union, and Respondent's changes noted above, along with the refusal to recognize the Union, constitute violations of Section 8(a)(5) of the Act. The Respondent filed an answer denying the essential allegations in the complaint.

A representation election was directed pursuant to the petition filed by the Union in Case 12–RC–8398 among employees in the following unit:

> All full-time and part time skilled maintenance employees, including painters, air conditioning mechanics, mechanics I, mechanics II, communications technicians, electricians, plumbers, carpenters, and the biomedical supervisor employed by the Employer at its Hialeah, Florida facility; but excluding the secretary in the plant operations department, all other employees, guards and supervisors as defined in the Act.

The election was conducted on November 12, 1999, and the tally of ballots shows that four votes were cast for representation by the Union, seven votes were cast against representation, and one vote was challenged. The Union filed objections to the election, which parallel some of the allegations of the complaint. Those objections were consolidated for hearing with the complaint.

During the trial, the General Counsel moved to amend the complaint to include allegations of 8(a)(1) violations which were alleged to have occurred in July 2000, and were based on allegations in a charge filed in Case 12–CA–20943. I denied the General Counsel's motion, and the Board subsequently, on September 29, 2000, granted the General Counsel's special appeal and motion. The Board's Order directed that evidence on the additional allegation be heard, which was done on November 8, 2000. While the Board did not explicitly consolidate the new charge into the existing proceeding, by granting the General Counsel's motion to amend the complaint, it effectively consolidated the second charge with the earlier charge and petition. I view the Board's Order as tantamount to a consolidation of Case 12–CA–20943 with Cases 12–CA–20339 and 12–RC–8398, and have amended the case caption so to reflect. After the conclusion of the hearing, the parties filed briefs which I have read.

Based on the testimony of the witnesses, including particularly my observation of their demeanor while testifying, the documentary evidence, and the entire record, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation with an office and place of business in Hialeah, Florida, where it is engaged in the operation of an acute care hospital. During a representative 1-year period, Respondent derived gross revenues in excess of $250,000 and during the same period of time purchased and received at its Hialeah, Florida facility goods and materials valued in excess of $50,000 directly from points outside Florida. Accordingly, I find, as Respondent admits, that it is an employer engaged in

[1] The dates of trial were June 20–23, July 19–21, August 21–22, and November 8, 2000.

commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

II. UNFAIR LABOR PRACTICES

A. Background and Card Authorizations

The engineering department employees of Respondent perform maintenance and repair work on the hospital's physical plant. There are 12 employees in the unit ultimately found appropriate. During the summer of 1999, some of these employees met with Angel Dominguez, a representative of the Union. During the latter part of August, Dominguez met with many of the unit employees. Between August 22 and 24, 1999, he secured "single purpose" authorization cards signed by 9 of the 12 unit employees. Dominguez testified without contradiction, and four of the employee card signers corroborated his testimony and identified their cards. The signatures on the remaining cards were further authenticated by a comparison with examples of their signatures from Respondent's records. On August 31, 1999,[2] Dominguez filed the petition. On the same day, about noon, he delivered a letter to Respondent's president reciting that a majority of the engineering department employees had designated the Union as their bargaining agent, and requesting that Respondent recognize the Union and bargain with it concerning these employees.

B. Facts Relating to 8(a)(1) Allegations

Shortly thereafter, about 1 o'clock, Manuel Linares, the head of Respondent's engineering department, as well as vice president in charge of support services, called a meeting of all the engineering department employees. Eleven of the twelve unit employees were working that day, and were present at the meeting held in the engineering department office, along with Department Supervisor Carlos Cuesta. According to the testimony of numerous witnesses, Linares was visibly angry, and spoke in a raised voice as he held the petition in his hand and addressed the employees. Several employees testified and Linares admitted that he told the assembled employees that he felt "betrayed," and "stabbed in the back" because the employees had contacted the Union. Linares further admitted that he called the Union a "piece of shit," and also called employees who supported it "pieces of shit." He also admitted that he mentioned that "someone in this room" had contacted the Union, and that he and the Respondent would "fight" to keep the Union out and would not accept it.

According to current employee witnesses Oscar Romero and Guillermo Manresa, when Linares stated that someone in the room had contacted the Union, he added that he would find out who it was, and would make that person pay, would make sure that person didn't work at Respondent any more. Rodriguez testified that Linares stated he would "destroy" that person. Manresa testified that Linares also stated that the employees belong to Tenet (Respondent's parent company) and that Linares and Tenet would "not allow" the Union at Respondent. Linares and employees Angela McDowell and Jose Garcia denied these statements testified to by Romero and Manresa. Both Romero and Manresa were employees at the time of their testimony. Their testimony is credited based on their demeanor, the fact that they are employees, and for the additional reasons stated below.

According to Armando Chamorro, an employee at the time, but since retired, Linares also implied that from that time, Linares would know everything the employees did, and he forbade employees from talking about the Union "anywhere" in Respondent's facility.

Rodriguez testified that beginning on the following day, September 1, he began to wear a union button on his work clothes, and wore it for about 4 days. He testified that he was the only employee who wore such a button. He also testified that his car, which was parked in Respondent's parking lot, had union literature in it, which would have been visible to anyone looking through its windows. Rodriguez testified that on about September 3, Linares accosted him at the timeclock, pointed to him, and said that he now knew who had contacted the Union, and that Rodriguez should remember that Respondent has a lot of money to "destroy you" and to spend on lawyers. Linares denied the encounter.

Rodriguez also testified that beginning about a week or so after the August 31 meeting, either a security guard or Supervisor Cuesta followed him around the hospital facility as he went about his normal work on the various floors, whenever he was not in the television repair shop, and that this continued throughout the rest of September. Cuesta did not testify.

Armando Chamorro further testified that a few days after the August 31 meeting, Linares approached him in Respondent's parking lot. Only the two of them were present. Linares told Chamorro that he was a good worker, knew his job well, and was a valuable worker. Linares told Chamorro that he wanted to make Chamorro realize that the Union was not the best thing for him, because with his good record, he could have a better position in the hospital in the future, and Linares would help him achieve this. Linares also told Chamorro that his job would not be included in the work the hospital was considering contracting out to an outside vendor. Linares again complimented Chamorro's good work, and then asked him to speak to some of the employees who had doubts about the Union. Linares told Chamorro that he was influential, mentioned the names of three employees, and asked him to try to influence them to abandon their support for the Union. According to Chamorro's testimony, Linares's promises concerning a better job and being excepted from any contracting out of work, or "outsourcing," were conditioned on Chamorro's influencing of other employees as requested by Linares. Subsequently, Chamorro told the three employees what Linares had said to him.

Chamorro also testified that a few days before the election, Linares approached him and angrily accused him of lying about what he would do, and of working in favor of the Union after all. Chamorro replied that he had not lied, and offered to refrain from voting. Linares said that he needed Chamorro to vote against the Union. A few months after the representation election, Linares offered Chamorro a retirement package which included severance pay, among other things. Chamorro ac-

[2] All dates hereafter are in 1999, unless otherwise indicated.

cepted the retirement package, and retired in January 2000.[3] As a retired employee, and as one who both supported the Union for a period of time, and withdrew his support for a period of time, I find that Chamorro is a relatively unbiased witness. Chamorro appeared to be making every effort to testify accurately, to listen to questions carefully, and to recall what he was asked to recall. He was an impressive witness and I credit his testimony over that of Linares.

Subsequently, about 2 weeks after the August 31 meeting, Linares came upon three employees, Romero, Manresa, and Rodriguez, waiting after work in a small employee lounge near the timeclock which was habitually used by employees both before and after their normally scheduled shifts. He questioned each of them about their reasons for being in the room. Two of the employees were waiting for a ride from someone else, and one was waiting for another employee to finish his shift. Linares ordered Manresa and Rodriguez to leave the premises, instructing a security guard to escort them out of the parking lot. He permitted Romero to remain, but instructed a security guard to remain with him. All three employees testified that they had never been required to leave the lounge or Respondent's premises prior to the filing of the petition.

On July 12, 2000, Linares called a meeting of the engineering department employees in order to report to them that the hospital's generators had been discovered to have oil in them, a condition which would damage them and prevent their proper functioning. Linares was convinced that the generators had been intentionally damaged by someone, and expressed his anger about the "sabotage" to the assembled employees. Linares told the employees that he intended to increase security measures in the hospital, such as additional locks and video cameras in certain equipment areas. He requested that employees report any unauthorized people seen near important equipment. According to employee witness Manresa, Linares then went on to tell employees that he intended to run the department his way, and that anyone who was not happy there should quit and try to get those $18-per-hour jobs the Union was promising. Linares said that work would be harder than work at Respondent. Linares continued by saying that he had taken out two rotten apples from the engineering department, but there was another one still there. He repeated that whoever is not happy should quit. Jose Garcia volunteered that he was happy, and Linares said he knew that.

Both Garcia and employee Alex Ramirez stated that Linares did not say anything about rotten apples. Linares likewise denied saying anything about rotten apples, or about the Union. Garcia demonstrated a very poor memory, and I do not credit his testimony where it conflicts with that of other employee witnesses. While Ramirez displayed a somewhat better memory, his testimony was not impressive. I credit Manresa over Ramirez and Linares. Manresa's testimony overall demonstrated excellent demeanor, good recollection of detail, and withstood lengthy cross-examination.

[3] There were no allegations that Chamorro's retirement was in any way unlawful.

C. Discussion and Analysis

Almost the instant it learned of the employees' union organizing effort, Respondent began a campaign of hostility, threats, and harassment of suspected union activists combined with a campaign to undermine the prounion sentiments of the less active employees. In the first place, on August 31 in front of 11 out of 12 bargaining unit employees, Linares angrily excoriated *any* employees who supported the Union, called them "pieces of shit" and characterized them as disloyal. He threatened to find out the identities of and get rid of employees who were primarily responsible for the organizing effort. At the same time, he promised to "fight" the Union and declared that it would not be permitted in Respondent's facility. These declarations, seen in conjunction with the threats to get rid of union activists, would naturally indicate that Respondent's "fight" against the Union would be conducted by fair means or foul—lawful or unlawful means. Given the timing, pervasiveness, and fury of the speech, as well as the facts that it was conducted by a vice president in his office, the impact of the speech was highly coercive. *HarperCollins Publishers, Inc.*, 317 NLRB 168, 180–181 (1995), enfd. 79 F.3d 1324 (2d Cir. 1996); *Basic Metal & Salvage Co.,* 322 NLRB 462, 464 (1996); *Reno Hilton*, 319 NLRB 1154, 1155 (1995); *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 493 (1995); and *Athens Disposal Co.*, 315 NLRB 87, 98 (1994). Linares' threat to Rodriguez at the timeclock a few days later was an additional violation.

Within a short time thereafter, Respondent continued with the other prong of its attack on the Section 7 rights of its employees by promising employee Armando Chamorro benefits in the form of promotion or a secure job in the event of contracting out of the engineering department jobs, with instructions to pass along the promises to three other unit employees and to try to dissuade them from supporting the Union. It is axiomatic that recruiting an employee to dissuade other employees from their union support is violative of the Act, as is promising employees benefits in order to undermine their union support. *Columbus Mills, Inc.*, 303 NLRB 223, 230 (1991).

Respondent's following of Rodriguez by either a security guard or his supervisor, Cuesta, whenever he left the television shop to go about his duties throughout the facility was clearly surveillance of him because of his union activities. Rodriguez, a 15-year employee, had never before been subjected to such monitoring. Respondent's conduct in this regard violated Section 8(a)(1) of the Act. *Parsippany Hotel Management Co.*, 319 NLRB 114, 126 (1995), enfd. 99 F.3d 413 (D.C. Cir. 1996).

Respondent's prohibition of three employees, Romero, Rodriguez, and Manresa, from remaining in the employee lounge when off-duty in order to wait for other employees, as they had frequently done before the petition was filed, was likewise coercive. This took place within a week or two of Linares' tirade against the Union and employees who supported it, and not long after he learned that at least Rodriguez was a primary union activist. I find that Respondent violated Section 8(a)(1) of the Act by this conduct. *Materials Processing*, 324 NLRB 719 (1997).

Finally, Linares' July 2000 speech to employees, although it began with an announcement of contemplated security meas-

ures designed to prevent suspected sabotage to equipment, went on to refer to the two employees who had most recently left the engineering department, Rodriguez and Chamorro. Whether Linares, by raising the subject, meant to imply that he suspected union supporters of being responsible for sabotaging equipment is immaterial. What is clear is that he meant to remind employees of the departure of these two employees, one of whom, Rodriguez, had been discharged. By referring to them as "rotten apples," and continuing in unmistakable terms to intimate that their departure had been related to the Union, Linares implicitly threatened employees with discharge if they continued to engage in union activities. Linares' reference to the Union's "promises" of $18-an-hour jobs, and his advice to employees who were "not happy here" to quit Respondent's employ, was clearly meant to threaten employees who continued to support the Union. *Paper Mart*, 319 NLRB 9 (1995); *Fieldcrest Cannon, Inc.,* above at 488 (1995).

D. Facts Relating to 8(a)(3) Allegations

1. Removal of the employees' shower and ping-pong table

Employees Romero and Manresa testified that a shower had existed in the bathroom closest to their engineering department work areas which they had used at will, such as when their work involved dirty materials or when they needed to clean up after work. A few days after Linares' August 31 meeting with employees, Linares instructed an employee to remove the shower head. It is undisputed that the shower head had functioned in that location and been used for many years. Linares was one of the people who regularly used the bathroom in which the shower head was located. No explanation was given to the employees for the removal of the shower head. While Linares claimed that he told employees that they were permitted to use a shower in a vacant patient room, no employee who testified corroborated this testimony, and I discredit it.

In early summer 1999, several engineering department employees had constructed a ping-pong table, using their own time and materials. They had received permission from Linares to place it in the basement of the hospital and use it during hours when they were not working. According to Linares, Engineering Department Supervisor Cuesta was opposed to the ping-pong table from the beginning, but was apparently overruled by Linares. Throughout the summer, engineering department employees used the ping-pong table, as did off-duty employees from other parts of the hospital, including even the chief executive officer (CEO) of the hospital at that time, Cliff Bauer. A few days after Linares' August 31 meeting with employees, Linares suddenly ordered the ping-pong table broken up and removed. No explanation was offered to the employees for this removal by Linares, only 3 or 4 months after he had initially given his permission for the table.

At the trial, Linares testified that his reason for removing the shower was that it was dirty, and he claimed that he had never before been aware that the shower was used by employees. Linares testified that his reason for removing the ping-pong table was Cuesta's opposition to it. He stated that he said nothing about the ping-pong table during Cliff Bauer's term of office because the CEO used the table himself. When a new CEO came in mid- to late July, Linares took no action on the ping-pong table for the first 6 weeks of his reign, and it was not early in September that he asked the new CEO if he could have the ping-pong table removed.

2. Discharge of Rodolfo Rodriguez

Rodolfo Rodriguez had worked at Respondent for 15 or 16 years at the time of his discharge on September 29. His primary job was repair of televisions and related cables, as well as repair of patients' "pillow" speakers and nurse call buttons. These intercoms allow the patient to call the nurse's station and the nurse to reply. Respondent used hundreds of televisions and speakers in its facility. Rodriguez performed much of his repair work in a windowless repair shop in the basement of the facility, but he also was called to nearly all parts of the hospital in order to perform repairs on cables and other equipment, as well as to pick up items in need of repair. Rodriguez was supervised by and received his work assignments from Carlos Cuesta, the engineering department supervisor.

Angel Dominguez, the union organizer, testified that Rodriguez was the main employee union activist in the unit. He accompanied Dominguez on a number of house calls Dominguez made in order to talk about the Union and get authorization cards signed. Rodriguez testified that he wore a union button at work for about the first 4 days in September. Respondent learned of Rodriguez' union activism about a week or so after August 31, as shown by Linares' threats to Rodriguez at the timeclock. I credit Dominguez' and Rodriguez' testimony concerning Rodriguez' union activities and Respondent's knowledge thereof.

Respondent, as described above, demonstrated a great deal of animus towards the Union and to employees who supported the Union. In addition to the threats, disparagement, and other unlawful statements made to employees on August 31 and thereafter, Linares also berated Chamorro shortly before the election. Respondent's animus was directed particularly towards the employee or employees who had contacted the Union. Linares told Rodriguez that he had discovered that it was Rodriguez who had contacted the Union. Rodriguez was also followed in the workplace for several weeks after Linares learned of his union activism. Finally, Rodriguez was discharged within a few weeks of Respondent's learning that he was the primary union activist.

Respondent has advanced as the reason for its discharge of Rodriguez that his work performance was poor and that he was not doing his work. During the last 2 or 3 weeks of Rodriguez' employment, the air-conditioning system which normally cooled the engineering department, including the television shop, was completely out of commission. Steam pipes ran through the shop, heating it even more. According to the uncontradicted testimony of Manresa and Rodriguez, the temperature in the television shop was in the low 90's during this period. Linares testified that he suspected Rodriguez of sleeping on the job because his eyes were sometimes red, and because Cuesta had told him that Rodriguez sometimes started with surprise when someone walked into the television shop. Because of this, Linares testified, he had an outside security firm set up a hidden video surveillance camera in the air-conditioning vent of the television shop. The camera was in-

stalled on the last weekend in September, and was turned on during Rodriguez' work hours for the first 4 days of the week, September 27–30. On the fourth day, September 30, Linares discharged Rodriguez without further investigation and without affording Rodriguez an opportunity to explain any of the conduct with which Linares found fault.

According to Linares, the video image shows that Rodriguez was often idle, was "milking his job," and appeared to be dozing for a few minutes several different times. Portions of the videotapes were shown at the trial, introduced into evidence, and witnesses Linares and Rodriguez were questioned about what they could see on the videotape segments.[4] Linares testified that he watched the videotapes during the last week in September, and that he relied on the videotapes in deciding to discharge Rodriguez for "gross misconduct" and "dishonesty," i.e., for appearing to be asleep and for not working.

Linares' asserted reason for placing the hidden video camera in the television shop was that Cuesta had complained to him that Rodriguez' work was slow and that he appeared to have bloodshot eyes at times. As noted above, Cuesta was not called to testify, and thus did not corroborate Linares on this point.

In his testimony, Linares illustrated from the video recordings the behaviors he believed reflected the misconduct for which he discharged Rodriguez. At certain points on the videotape, Rodriguez appears to be examining and studying a piece of equipment. Linares called this "milking his job." At other points, Rodriguez appears to be sitting in his chair in the television shop for periods of time varying from a few seconds long to several minutes long. Linares called this behavior sleeping or appearing to be sleeping. At still other points, Linares testified generally that Rodriguez was "not working."

With regard to the piece of equipment Rodriguez was studying and apparently working on, Rodriguez explained that he was studying a nurse call station which he had been asked by someone on the floor to fix, as it would cut off the television completely when the nurse was called on it. Rodriguez did not have a circuit diagram for this equipment, so he was attempting to follow the circuit and figure it out for himself, to see if he could deal with the problem which had been brought to his attention. He explained that when he did not have other work assigned, and while waiting for Cuesta to assign him work, he worked on this problem. While the videotapes are not particularly clear or distinct, they are clear enough so that it is obvious that Rodriguez was working on a piece of hospital equipment which he normally worked on in the course of his job, i.e., a nurse call station. Linares said that Rodriguez should not have been working on this piece of equipment and that it was not part of his job. Linares stated that the television's sound was supposed to cease temporarily when a nurse called to a patient's room. However, Linares did nothing to ascertain why Rodriguez was working on the nurse call station, whether it was in fact malfunctioning or not, and did not learn until the trial what Rodriguez was attempting to repair on it. Despite the fact that he observed Rodriguez working on the equipment for 4 days, without knowing what Rodriguez was doing with the equipment, he admittedly never told Rodriguez that it was "not part of his job" to work on the particular piece of equipment.

With regard to the time spent sitting in his chair, Rodriguez testified that he was waiting for work, which he spent too much time doing that week. Rodriguez testified that Carlos Cuesta, his supervisor, had instructed him to stay in the television shop and wait for assignments. It should be remembered that the shop's temperature was in the low 90's for the entire week. According to Rodriguez, however, Cuesta had instructed him to remain in the workshop, and yet was not assigning him enough work to keep him busy during the week in question. The evidence shows that Rodriguez installed an amplifier on Monday, repaired all the televisions for which he had parts available, repaired pillow speakers when they were given to him to repair, ordered some parts from the parts catalogues he kept in the shop, and tried to work on the nurse call station when he did not have any other assignments. Linares stated that an employee should ask for work when idle. Cuesta did not testify, although he was still employed by Respondent as a supervisor at the time of the trial. In the absence of his testimony, I find that had he testified, his testimony would have supported that of Rodriguez. In this regard, I find that Respondent, through Cuesta, had control over the amount of work being assigned to Rodriguez. I further find that Rodriguez was obeying the instructions of his supervisor, Cuesta, by remaining in his workshop and waiting for assignments.

Linares stated that before the last week in September began, on Sunday evening, there were several television sets in the hallway outside the television shop, but he offered no testimony concerning how long they remained there. Rodriguez testified that during the week, he repaired all the television sets that were given to him to repair, and there were no sets in the hallway outside. I find that if the televisions were in the hallway on Monday morning, that Rodriguez repaired them. Although Linares testified that an outside contractor repaired some television sets within the weeks following Rodriguez' discharge, there was no showing that these were anything other than the normal work that Rodriguez would have done had he still been there, in other words, sets which broke after Rodriguez' discharge. Rodriguez also testified that he installed an amplifier on Monday, repaired as many pillow speakers as were given to him to repair, and did all other work he was assigned. Rodriguez' work assignments came primarily from Cuesta, and sometimes directly from nurses or other personnel in various parts of the hospital. I credit Rodriguez concerning the work he did during the week he was being videotaped, and concerning

[4] The General Counsel argues that the admission of the videotapes was error because they were not properly authenticated. In support thereof, the General Counsel called a technical expert to testify about the quality of the videotapes. He confirmed the testimony of nonexperts and the observation of all parties to the trial that the videotapes had been made using fewer images per second than normal speed videotapes, and that they were overall of poor quality. Objects on the videotape were often not able to be seen clearly, either because of the poor quality of the tapes or because the video image reflected only a portion of the television shop. The expert further testified that there were several anomalies on the videotapes which would indicate that the blank tapes used to record the images were not new or "virgin," as Linares had claimed. While the poor quality of the tapes affects the weight of the evidence and the analysis below, it does not affect their admissibility.

the instructions his supervisor gave him about remaining in the shop to wait for work whenever he was not required to be elsewhere in the hospital.

With regard to the "not working" assertions of Linares, on many of the instances Linares referred to, Rodriguez was not clearly visible in the videotape. A television set on one of the tables blocks a portion of the table, and Rodriguez can be seen using a tool and doing something which is out of the video picture. The position of the camera was such that a substantial part of the television shop was either not visible or not clearly visible in the videotape. On many occasions, Rodriguez can be seen in the videotape to be doing something just out of range of the camera, or reading something, possibly a parts catalogue or papers posted on the shop bulletin board. What exactly he was doing cannot be determined from the videotape, but on many of these occasions Rodriguez wore the magnifying glasses he used to see the small parts and circuits on which he worked. Linares often stated, nevertheless, that Rodriguez was "not working" on those occasions. I discredit Linares' testimony regarding the videotapes. Not only was it conclusionary, it also made assumptions based on things which could not be seen at all or seen clearly on the videotapes, and at other times was clearly in conflict with the content of the videotapes. An example of this latter tendency is his invariable denomination of Rodriguez' conscientiously working on the nurse call station during his waiting time as "milking his job." I generally credit Rodriguez' testimony concerning attempts to repair the nurse call station and the fact that he was following Cuesta's orders by staying in the shop, often simply waiting for Cuesta to assign him work.

D. Discussion and Analysis

1. The shower head and the ping-pong table

With respect to the removal of the shower head which employees had used for many years, I find that Linares ordered the shower head removed in retaliation for employees' union activities. I discredit entirely his assertion that he was unaware for all his years at the hospital that employees used the shower, especially since Linares himself regularly used the bathroom containing the shower, as it was the closest one to his office. The practice had been going on for some 16 years, and it is inconceivable that Linares could have been unaware of it. The timing of this action, coming within days of Linares' hostile outburst in response to his first knowledge of the employees' union activities, is a strong indication that it was done in order to punish the employees for their union activities. The fact that no contradictory explanation was offered to the employees is another indication that Linares fully intended that the employees understand this removal of a privilege as an indication of his displeasure at their union activities.

The ping-pong table, likewise, was removed shortly after August 31 in response to the employees' union activities. Again, no explanation of any reason for this action, other than their union activities, was given to the employees. Linares' explanation in testimony for his action with respect to the ping-pong table is completely incredible. Linares testified that Carlos Cuesta had opposed the ping-pong table from the beginning of its use in late spring or early summer. If Linares had been at all concerned about Cuesta's purported opposition, he would not have given permission to the employees to construct the table in the first place. Linares gave no reason whatsoever for his alleged change of heart, and supposed agreement with Cuesta. It is clear that Cuesta's disapproval of the table was *not* the reason for Linares' decision to remove it. Likewise, Linares did not raise the issue of the ping-pong table with Respondent's new CEO until after the filing of the Union's petition. This timing, along with the lack of any explanation to the employees, indicates that the removal of the ping-pong table was undertaken in retaliation for employees' union activities.

It is well settled that changes in working conditions which are undertaken in consequence of employees' union activities are violations of Section 8(a)(3) of the Act. The removal of the convenience of a shower for employees whose work was sometimes dirty is certainly a detrimental change. Likewise, the removal of the ping-pong table was the removal of a previously enjoyed benefit, done in retaliation for employees' union activities. Both of these actions violate Section 8(a)(3) of the Act. *88 Transit Lines*, 300 NLRB 177, 183 (1990); *Weather Shield of Connecticut*, 300 NLRB 93, 95 (1990).

2. The discharge of Rodriguez

In order to prove that a respondent has discharged an employee in violation of Section 8(a)(3), the General Counsel must show that the employee was engaged in protected activities, that the respondent was aware of those activities, harbored some animus towards those activities, and has discharged the employee in retaliation for those activities. These elements constitute a prima facie case. Respondent may rebut the prima facie case by showing that it would have discharged the employee in any event, even in the absence of any protected activities. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *Transportation Management Corp.*, 462 U.S. 393 (1983).

The General Counsel has successfully shown that Rodriguez was indeed one of the primary union activists in Respondent's small twelve person engineering department. Likewise, Linares' knowledge of Rodriguez' active part in the union campaign was achieved within a short time after the filing of the petition on August 31, as is shown by his threats to Rodriguez and the surveillance of Rodriguez which began soon afterwards. Respondent's animus has been shown dramatically, first by Linares' admitted statements to employees on August 31, and additionally by the other statements and threats found to have been made by him on that day and thereafter. Finally, Rodriguez was singled out for videotape surveillance and was discharged only a few weeks after Linares learned of his union activism. Rodriguez, a longtime employee who had no discipline of any kind on his record, was discharged, without investigation, for alleged infractions of which he was given no warning, nor was he asked for any explanation or for his side of the story.

Respondent has defended by presenting Linares' testimony as to the asserted reasons for his decision to discharge Rodriguez, along with the videotapes upon which he based this decision. Respondent's decision to place a hidden camera in Rodriguez' workshop and to engage in full-time video surveillance of him was a continuation of its unlawful surveillance of Rod-

riguez. It is well settled that in order to justify videotaping employees, a respondent must show that it had a reasonable basis for anticipating misconduct by employees, and not a mere belief that something might happen. Cf. *National Steel & Shipbuilding Co.*, 324 NLRB 499 (1997). Linares' justification of his decision to videotape Rodriguez is that he suspected Rodriguez of sleeping because his eyes sometimes appeared red, or Cuesta told him that they sometimes appeared red. Rather than simply asking Rodriguez why his eyes appeared red, which could have been due to allergies, or any number of other causes, Linares went to the trouble of hiring an outside technical company to set up a secret video camera. Cuesta did not testify, and Linares' testimony about this decision is therefore uncorroborated. Linares' asserted reason for deciding to videotape Rodriguez is not only an extreme overreaction, but is explainable only if his strong antiunion hostility is taken into account. Noting also that Rodriguez had been subjected to surveillance when outside the workshop ever since early September, it becomes clear that Linares did not have a nondiscriminatory reason for setting up the hidden video camera. Linares' asserted reason does not meet the standard set forth in *National Steel & Shipbuilding*, above. I find that Linares' real reason for videotaping Rodriguez was because of Rodriguez' leading role in the union organizing campaign.

Respondent has failed to show that Rodriguez did not complete any work which was assigned to him. It has failed to show that Rodriguez was performing anything other than hospital-related work, or that he was performing his work unusually slowly ("milking his job"). Finally, the videotape evidence fails to support Respondent's contention that Rodriguez was sleeping or "appeared to be sleeping."

Even if any of these three reasons were supported by the videotape evidence, none of the three reasons would satisfy Respondent's *Wright Line* burden. Respondent has not shown that it has ever warned or disciplined an employee for any of these three asserted reasons, much less discharged any employee for similar conduct. In fact, Respondent has not discharged any employee from the engineering department during Linares' ascendancy over it.

D. The Bargaining Order Remedy Requested

The General Counsel has requested a bargaining order as a remedy for Respondent's unfair labor practices, contending that a fair rerun election would be impossible.

The Decision and Direction of Election found that the following employees constitute a unit appropriate for collective bargaining:

> All full-time and part time skilled maintenance employees, including painters, air conditioning mechanics, mechanics I, mechanics II, communications technicians, electricians, plumbers, carpenters, and the biomedical supervisor employed by the Employer at its Hialeah, Florida facility; but excluding the secretary in the plant operations department, all other employees, guards and supervisors as defined in the Act.

Respondent, which had originally requested review of the Decision and Direction of Election, withdrew its request on November 12. Respondent, however, denied in its answer that the Union has been the exclusive collective-bargaining representative for the above-described unit employees since August 31, 1999. Angel Dominguez witnessed and authenticated nine union authorization cards signed by employees in the unit. Dominguez got these cards signed during the last 2 weeks of August 1999, either at the employees' homes or at the union hall. These nine cards were signed by Rodolfo Rodriguez, Guillermo Manresa, Angel Tamame, Oscar Romero, Omar Martinez, Armando Chamorro, Michael Hutson, Jose Garcia, and David Valdez. In addition, employees Romero, Rodriguez, Manresa, and Chamorro all identified their own cards. All the above-listed employees that signed union authorization cards were members of the bargaining unit found appropriate in the Decision and Direction of Election. According to the Decision and Direction of Election, there were 12 employees in the unit.

Contrary to Respondent's contention, the authorization cards secured by Dominguez were clearly, by their explicit language, authorizations of the Union as the bargaining agent of each of the card signers. Dominguez testified convincingly and without contradiction, despite extensive cross-examination, to his securing of the authorization cards. There is no credible evidence in this record that the cards were held out to employees as *solely* for the purpose of obtaining an election and I therefore find that they are valid designations of the Union as the employees' bargaining agent.

G. Analysis and Discussion

I credit the testimony of Dominguez and the employees who testified about the signing of the authorization cards, and I find that the Union achieved a majority during the 1999 union campaign by approximately a week before August 31, 1999, the date the Union requested recognition. The record shows that 9 of 12 unit employees had designated the Union to represent them. The issue then becomes whether the evidence supports the General Counsel's contention that a bargaining order is warranted. Before turning to the issue of the propriety of a bargaining order, however, I turn to the Union's objections.

H. The Objections

The Union filed timely objections to the election in Case 12–RC–8398 alleging that Respondent threatened employees with loss of employment and adverse working conditions if they supported the Union, engaged in adverse treatment of employees who supported the Union, engaged in surveillance of prounion employees, and promised transfers and promotions to employees as an inducement to refrain from supporting the Union.

I. Analysis and Discussion

The Union relied upon the evidence introduced by the General Counsel in support of its objections. As shown by the findings above relating to allegations of Section 8(a)(1) and (3) conduct by Respondent, the full record supported the Union's objections. Unfair labor practices found all occurred during the critical period with the exception of the allegations involving conduct in July 2000. This objectionable conduct, taken as a whole, is sufficient to require setting aside the election. As found, the Union had the support of 75 percent of the unit, 9 out of 12 unit employees, as of August 31. By the date of the elec-

tion on November 12, only four votes were cast for the Union; the support for the Union had dissipated, and the Union lost the election. The challenged ballot was cast by Rodolfo Rodriguez, and the challenge to that ballot should be overruled, given the findings regarding his discharge. Respondent's pattern of unfair labor practices set forth above, by their nature and extent, had a strong tendency to undermine the Union's majority support, especially in a unit so small as the twelve-employee unit here. The unfair labor practices were not only virulent and severe, but were underlined by the discharge of the primary union supporter, conduct likely to linger in the memories of all the employees, especially as it brought to fruition Respondent's unlawful threats to discharge union supporters. There are no mitigating circumstances here which would tend to reduce the impact of Respondent's conduct. The fact that Respondent's unlawful conduct continued into the following year, manifesting its extreme hostility to employees who supported the Union and *reminding* employees of its discharge of Rodriguez some 9 months earlier, demonstrates that no fair second election could be held. Therefore, to protect the sentiment of a majority of employees in favor of the Union as of August 31, as demonstrated by their authorization cards, a bargaining order is appropriate in this case. *NLRB v. Gissel Packing Co.,* 395 U. S. 575 (1969); *Adam Wholesalers,* 322 NLRB 313, 314 (1996); and *Flexsteel Industries,* 316 NLRB 745, 746 (1995).

Threats of discharge and the discharge of union adherents have long been considered by the Board and the courts to be "hallmark" violations, that is, violations which justify the issuance of bargaining orders. Where, as here, the respondent not only threatened employees with discharge, but also carried out its threat against the leading union adherent, the action demonstrates to employees that Respondent is willing to carry out its threats. This reinforces the likelihood that employees will fear that they will lose employment if they persist in union activity. Not only the Board, but the courts as well, have recognized that threats of job loss are flagrant and enduring violations, and are more likely to destroy conditions which would permit a fair rerun election for a longer period of time than other unfair labor practices.

The fact that a high-ranking management official, Vice President Linares, was the sole actor not only in the threats and promises to employees, but also in the discharge of the leading union adherent, serves to compound the severity of Respondent's conduct, and to render it even more durable in its pernicious effects. Such compounding renders Respondent's conduct "highly coercive and unlikely to be forgotten." *Electro-Voice, Inc.,* 320 NLRB 1094, 1095 (1996); *America's Best Quality Coatings Corp.*, 313 NLRB 470, 472 (1993), enfd. 44 F.3d 516 (7th Cir. 1995), cert. denied 115 S. Ct. 2609 (1995).

It is likewise noteworthy that Respondent's coercive conduct continued long after the election, in its threats to employees in July 2000. This postelection conduct demonstrate the durability of Respondent's determined hostility to employees' union activities, and its continuing propensity to violate the Act. This further underscores the likelihood that the coercive effects will be lingering, and the great unlikelihood that a free and fair second election could be held.

Respondent's course of serious and pervasive misconduct directly affected the entire unit. In light of all the circumstances canvassed above, it is apparent that traditional Board remedies are insufficient to rectify the damage done by Respondent to the employees' Section 7 rights and will be unlikely to ensure the fairness of a second election. Because of all the foregoing, the possibility of erasing the effects of Respondent's unfair labor practices is slight, and holding of a fair election highly unlikely. For these reasons, a *Gissel* bargaining order is warranted, and I shall recommend to the Board that such an order be issued. I shall further recommend that the election held in Case 12–RC–8398 be set aside and the petition dismissed.

CONCLUSIONS OF LAW

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

2. United Brotherhood of Carpenters and Joiners of America, Local No. 1554, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening its employees with discharge and other unspecified reprisals because of their union activities, accusing employees of disloyalty because of their union activities, implying that selection of the Union would be futile, implying that employees' union activities would be under surveillance, forbidding employees from being in Respondent's facility during nonduty hours, engaging in surveillance of employees because of their union activities, promising benefits such as promotion and job retention to employees for withdrawing their support from the Union, and soliciting employees to persuade other employees to withdraw their support from the Union, Respondent has violated Section 8(a)(1) of the Act.

4. By discharging Rodolfo Rodriguez, removing employee benefits such as use of a shower and a ping-pong table in an effort to discourage its employees' union activities, Respondent has violated Section 8(a)(3) and (1) of the Act.

5. The Union is and has been since August 31, 1999, the exclusive collective-bargaining representative of Respondent's employees in the following appropriate bargaining unit:

> All full-time and part time skilled maintenance employees, including painters, air conditioning mechanics, mechanics I, mechanics II, communications technicians, electricians, plumbers, carpenters, and the biomedical supervisor employed by the Employer at its Hialeah, Florida facility; but excluding the secretary in the plant operations department, all other employees, guards and supervisors as defined in the Act.

6. By refusing to recognize and bargain with the Union as exclusive collective-bargaining representative of the employees in the above-described bargaining unit, Respondent has violated Section 8(a)(5) and (1) of the Act.

7. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease

and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

As I have found that Respondent has illegally discharged Rodolfo Rodriguez in violation of the Act, I shall order Respondent to offer him immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position. I shall also recommend that Respondent be ordered to remove from the employment records of Rodriguez any notations relating to the unlawful action taken against him and to make him whole for any loss of earnings or benefits he may have suffered due to the unlawful action taken against him, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I shall also recommend that Respondent be ordered to restore the working conditions as of August 31, which included a shower and ping-pong table.

Having found that Respondent has unlawfully refused to bargain with the Union, I shall recommend that it be ordered to recognize the Union and, on request, bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Hialeah Hospital, Hialeah, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with discharge and other unspecified reprisals because of their union activities.

(b) Accusing employees of disloyalty because of their union activities.

(c) Implying that selection of the Union would be futile.

(d) Implying that employees' union activities would be under surveillance.

(e) Forbidding employees from being in Respondent's facility during nonduty hours.

(f) Engaging in surveillance of employees because of their union activities.

(g) Promising benefits such as promotion and job retention to employees for withdrawing their support from the Union.

(h) Soliciting employees to persuade other employees to withdraw their support from the Union.

(i) Removing the benefits of a shower and a ping-pong table from its employees.

(j) Discharging its employee in order to discourage its employees from engaging in union activities.

(k) Refusing to recognize and bargain in good faith with United Brotherhood of Carpenters and Joiners of America, Local No. 1554, as the exclusive collective-bargaining representative of its employees in the following appropriate bargaining unit:

> All full-time and part time skilled maintenance employees, including painters, air conditioning mechanics, mechanics I, mechanics II, communications technicians, electricians, plumbers, carpenters, and the biomedical supervisor employed by the Employer at its Hialeah, Florida facility; but excluding the secretary in the plant operations department, all other employees, guards and supervisors as defined in the Act.

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

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

(a) Within 14 days from the date of this Order, offer Rodolfo Rodriguez full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Rodolfo Rodriguez whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth is the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(d) Restore the shower and ping-pong table for employees' use.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) On request, recognize and bargain with United Brotherhood of Carpenters and Joiners of America, Local No. 1554, as the exclusive collective bargaining representative of its employees in the above-described appropriate collective-bargaining unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(g) Within 14 days after service by the Region, post at its Hialeah, Florida location copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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, deface, or

[5] 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.

[6] 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."

covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 1999.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the election in Case 12–RC–8398 is set aside and the petition is dismissed.