

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

FLAGSTAFF MEDICAL CENTER, INC.

and

Case Nos. 28-CA-21509
28-CA-21637
28-CA-21664

COMMUNICATION WORKERS OF
AMERICA, LOCAL UNION 7019, AFL-CIO

and

Case No. 28-CA-21548

NATIONAL NURSES ORGANIZING
COMMITTEE/CALIFORNIA NURSES
ASSOCIATION (NNOC/CNA)

FLAGSTAFF MEDICAL CENTER, INC.,
and SODEXHO AMERICA, LLC, as Joint
Employers

and

Case Nos. 28-CA-21704
28-CA-21728

COMMUNICATION WORKERS OF
AMERICA, LOCAL UNION 7019, AFL-CIO

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DECISION

Statement of the Case

Gerald A. Wacknov, Administrative Law Judge: Pursuant to notice a hearing in this matter was held before me in Flagstaff, Arizona on 16 days between the dates of May 6, 2008 and September 25, 2008. The captioned charges filed by Communication Workers of America, Local Union 7019, AFL-CIO (CWA), were filed between the dates of August 7, 2007 and January 14, 2008. The charge filed by National Nurses Organizing Committee/California Nurses Association (CNA) was filed on September 4, 2007. On February 29, 2008, the Regional Director for Region 28 of the National Labor Relations Board (Board) issued a final complaint and notice of hearing, entitled Third Consolidated Complaint and Notice of Hearing, alleging violations by Flagstaff Medical Center, Inc. (Respondent or FMC), and Sodexho America, LLC (Respondent or Sodexho) of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (Act). The Respondents, in their answers to the complaint, duly filed, deny that they have violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from Counsel for the General Counsel (General Counsel), and counsel for the Respondents. Upon the entire record,¹ and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

Findings of Fact

I. Jurisdiction

The Respondent FMC, an Arizona corporation with an office and place of business located in Flagstaff, Arizona, is a hospital engaged in the business of providing acute medical care and medical services. In the course and conduct of its business operations the Respondent FMC annually derives gross revenues in excess of \$250,000, and annually purchases and receives good valued in excess of \$50,000 directly from points outside the State of Arizona. It is admitted and I find that FMC is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

The Respondent Sodexho, a Delaware limited liability company, with an office and place of business in Flagstaff, Arizona, is engaged in the business of providing hospital facility management services for hospitals in various locations throughout the United States. In the course and conduct of its Arizona business operations Sodexho annually derives gross revenues in excess of \$250,000 and annually purchases and receives goods valued in excess of \$50,000 directly from points outside the State of Arizona. It is admitted and I find that the Respondent Sodexho is, and at all times material has been, and employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act .

¹ The General Counsel's unopposed motion to correct the transcript is hereby granted.

II. The Labor Organizations Involved

It is admitted, and I find, that the CWA and the CNA are, and at all times material herein have been, labor organizations within the meaning of Section 2(5) of the Act,

III. Alleged Unfair Labor Practices

A. Issues

The principal issues in this proceeding are whether Respondent FMC and Respondent Sodexo are joint employers, and whether Respondent FMC and/or Respondent Sodexo, have violated and are violating Section 8(a)(1) and (3) of the Act.

B. Facts

1. Background

FMC is a hospital located in Flagstaff, Arizona. It employs approximately 2000 employees and is one of three hospitals in a health care system organized under a corporate parent, Northern Arizona Healthcare.

Sodexo provides hospital management services and other types of services for hospitals throughout the United States. FMC has contracted with Sodexo to provide two types of services. Sodexo managers oversee day-to-day operations in one department, Environmental Services, commonly referred to as the housekeeping department; however the housekeeping employees are hired and employed directly by FMC. Further, during the CWA organizing campaign involved herein, FMC began contracting with Sodexo to provide both the manager and the employees for another hospital function, known as transport services. Transport service employees provide transport services for patients while they are in the hospital, transporting them to and from various departments for tests and other procedures, and to their vehicles upon being released from the hospital.²

Prior to the matters involved herein, the CNA conducted an organizing campaign among the nurses employed by FMC. An election was held in which the CNA did not prevail. The CNA filed election objections, and a second election has been directed. The CNA has taken the position that the re-run election should be postponed pending the resolution of the instant matter which concerns a separate organizing campaign by a different union, the CWA, among ancillary service employees.

While there are approximately 400 ancillary service employees in seven departments, the employees involved in this proceeding primarily consist of employees in two of those departments: Employees in the Environmental Services (EVS) or housekeeping department provide cleaning and linen services throughout the hospital;

² It is alleged that this subcontracting to Sodexo of patient transport work, formerly provided directly by FMC, was not motivated by lawful business considerations, but rather was designed to chill union activity among the ancillary services employees in violation of the Act, causing them to fear that their jobs, too, might be contracted out if they continued to seek union representation.

there are approximately 64 employees in this department. Employees in the Dietary Department, also known as the Nutrition Services Department, provide food services, including the operation of the kitchen and cafeteria; nutrition assistants and dieticians who provide patient food services are also dietary department employees. There are approximately 30 employees in this department.

At all times material herein, Janine Drake has been the director of the Dietary Department. Drake and all supervisors under her authority are FMC employees

At times material herein,³ Vivian Kasey was the director of EVS until her departure, at which time she was succeeded by Joe Brown. Two supervisors or managers also assisted Kasey and Brown in EVS, namely, Linda Keeler and Rosemary Yazzi. These four named individuals have been employed directly by Sodexho; however the housekeeping employees under their supervision are directly employed by FMC.

2. Joint Employer Allegation

It is alleged that Respondent FMC and Respondent Sodexho are joint employers. The Respondents rely upon *Lee Hospital*, 300 NLRB 947 (1990), in which case the Board found, under circumstances analogous to the facts herein, that AAI, an entity hired to run a hospital's anesthesiology department, was not a joint employer with the hospital. The Board, after reviewing the relationship between the hospital and AAI, finding that the hospital independently determines labor relations policy and sets the wages, salary and fringe benefits for the anesthesiology nurses, concluded "we do not find that AAI shares or codetermines those matters governing the essential terms and conditions of employment to an extent that it may be found to be a joint employer."

The agreement between FMC and Sodexho requires FMC to "hire, discharge or discipline Supervised Employees upon Sodexho's reasonable request if such action is in accordance with FMC's employment policies and procedures."

Roger Schuler is FMC's vice-president for ancillary services, which includes EVS. Schuler testified that FMC has contracted with Sodexho to provide leased managers and supervisors for the EVS department. These managers and supervisors, according to Schuler, play no role in formulating policy as it relates to hiring criteria, terms and conditions of employment, rates of pay, performance appraisal criteria and raises, and discharge and disciplinary criteria. All these matters are dictated to Sodexho's managers and supervisors through FMC's policy manual which Sodexho has no input in formulating. Further, upon the recommended discharge of an EVS employee by a Sodexho manager, Schuler has final authority to determine whether the employee should be discharged, and exercises the same authority over Sodexho managers that he exercises over FMC managers. In summary, FMC requires strict conformity by Sodexho with all FMC policies and guidelines pertaining to the employer-employee relationship, and Sodexho has no independent authority to modify or deviate from the parameters established by FMC. There is no contrary record evidence that is inconsistent with Schuler's testimony.

³ All dates or time periods hereinafter are within 2007 unless otherwise indicated.

Accordingly, on the authority of *Lee Hospital*, I find that FMC and Sodexo are not joint employers as alleged, and I shall dismiss this allegation of the complaint.⁴ See also *Richmond Convalescent Hospital, Inc.*, 313 NLRB 1247, 1260-61 (1994).

3. Contracting Out the Patient Transport Function to Sodexo

The complaint alleges that on or about August 3, FMC subcontracted its patient transport work to Sodexo in violation of Section 8(a)(3) and (1) of the Act

Prior to August, FMC had a decentralized and departmentalized system for handling inpatient transporting services. It employed four ancillary services employees who were assigned to the Radiology department; these employees, who ultimately transitioned over to Sodexo (infra), performed patient transport services exclusively for radiology patients, transporting them to and from their hospital rooms for various radiology tests and procedures. Other inpatients requiring similar transporting services, including assistance from their rooms to their vehicles upon dismissal from the hospital, were transported within the hospital by a variety of hospital personnel, particularly nurses. Because there was no centralized and dedicated patient transport department and because of the lack of a computerized tele-tracking transport system, nursing employees would be utilized on an ad-hoc basis for often time-consuming transport functions and would thereby be under-utilized for their primary nursing functions. This was inefficient, costly to the hospital, inconvenient for the patients who would have to wait for transport assistance, and added to the work of the nurses who thereby had less time to devote to their patients.⁵

FMC had been exploring a solution to this problem since 2004, as extensively detailed in the record. In February, FMC's executive board made the final decision to contract with Sodexo to perform the patient transport functions with Sodexo employees rather than FMC employees; in May, the contract was entered into with Sodexo; and in August, Sodexo assumed the patient transport function, and installed and fine-tuned an automated computer system, including remote pager devices to summon and keep track of transport employees throughout the hospital so that they could be utilized in the most efficient manner. The four FMC transport employees became Sodexo employees and, in addition, Sodexo began directly hiring additional transport employees. All the employees were trained by Sodexo and began wearing Sodexo uniforms.⁶ It was anticipated that transport employees who exclusively

⁴ The cases cited by the General Counsel are inapposite, generally, in they do not deal with employers who contract with management companies to manage all or a portion of the employer's business operations and supervise the work of the employer's employees: See *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117 (3rd Cir. 1982); *Paramus Ford, Inc.*, 351 NLRB No. 53 (Oct. 31, 2007); *Riverdale Nursing Home*, 317 NLRB 881, 882 (1995);

⁵ Record evidence shows that the nurses, who were involved in an organizing campaign by the CNA, were very much in favor of a centralized patient transport system as this would relieve them of additional work responsibilities.

⁶ As originally planned, Sodexo would be hiring 20 such transport employees, but because of budgetary problems this number was reduced to 10, and the remainder of the transport work continued to be done by FMC nurses or other staff.

performed this type of work would acquire expertise in handling a variety of transport situations that would enhance patient safety.

The General Counsel does not maintain that the new transport system was unnecessary or not a marked improvement over the prior method of transporting patients, but maintains that FMC should have itself set up the system in-house, furnishing its own managers and hiring the necessary employees; or, at the least, contracting out to Sodexho only the managerial and computerized functions of the new department, while retaining and hiring FMC employees to transport patients. Contracting out the entire project, so that transport employees are Sodexho employees and no longer employees of FMC, it is argued, has a “chilling effect” upon the union activity of the dietary and housekeeping employees⁷ because such contracting out would reasonably cause them to be fearful that their jobs, too, might be subcontracted to Sodexho or some other entity if they continued to engage in union activity.

Since 2004, Douglas Umlah has been executive director of strategic projects for Northern Arizona Healthcare, the parent corporation of FMC. Umlah testified that since the fall of 2004, he has been directly involved with the ongoing process that culminated in the subcontracting of FMC’s patient transport function to Sodexho. The decision to do so was made on February 13, at FMC’s weekly Senior Management Team meeting, and the contract with Sodexho was signed on May 7. Umlah testified extensively regarding the evolution of this program, and the entirety of his testimony need not be recounted here. He visited two hospitals in Phoenix with Ruth Eckert, FMC’s director of nursing services, and was impressed with their patient transport systems, operated by Sodexho. He then contacted Sodexho for pricing on Sodexho’s tele-tracking products: basically an automated dispatch system to facilitate the dispatching of patient transporters. He realized from his on-site visits, “that FMC really...didn’t have the expertise to set up and run a program like this.”

Umlah recommended that FMC contract with Sodexho for similar services. Thus, as set forth above, FMC already had an ongoing relationship with Sodexho; further, Sodexho offered a complete program, including software it utilized for implementing the automated system, that was successfully in operation at other hospitals; and in addition, because of the ongoing relationship with Sodexho, FMC was offered a discount on the necessary software. While there was continuing discussion regarding whether FMC or Sodexho should be the employer of the patient transport employees, Umlah testified that it was generally understood that Sodexho would, at the least, be contracted to install and manage the system.

William Bradel became FMC’s president in April, 2006. Bradel testified that Umlah brought him up to date regarding the patient transport project. Bradel endorsed the idea because he understood that FMC’s “homegrown” departmentalized model was inefficient. As a result, in the late Summer of 2006, Bradel contacted colleagues at three different hospitals. He inquired about their models of patient transport, and, in particular, regarding the efficacy of contracting out the entire operation, so that the contractor would

⁷ There is no record evidence that the Union was attempting to organize the transport employees, and the General Counsel does not appear to contend that FMC contracted out the work to Sodexho in order to preclude the Union from organizing the four transport employees.

be the employer of the transport employees, as contrasted with outsourcing only the management component. Bradel testified:

[T]hese hospital administrators that I talked with said that it has to be a complete—for maximum performance and patient safety that they felt that their experience with having the management and the employees all under one umbrella was the most successful...this is a very important decision. It's a costly decision. It's –for FMC it's over a half a million dollars [apparently annually] of straight overhead to the hospital and we wanted to make sure that we did this right.

According to Bradel, beginning in September 2006, (prior to the commencement of the Union's organizing campaign), he decided to proceed with the project and to implement the full patient transport model by contracting out the entire operation, including the employee component. He directed Umlah to continue working on the project.

Joseph Fitzhenry is a Sodexho employee. He began working at FMC on July 23, as the manager of patient transportation, and worked in that position until June 23, 2008. He was hired to develop and conduct oversight of the program. He was mentored by another Sodexho manager who was an interim startup person at FMC prior to Fitzhenry's arrival. Sodexho began transporting patients on August 3, with five transport employees, the four former FMC transporters⁸ and one additional employee who had been hired by Sodexho from the outside. Thereafter Sodexho hired additional employees. By the first week of September there were 10 transport employees. One of the transporters at any given time was assigned as a dispatcher to dispatch the other employees throughout the hospital. Fitzhenry testified that:

Sodexho was hired in as kind of a one-stop shop in order to be able to provide all of the training and oversight of its employees, taking care of all of its own HR issues, and then to provide safe and reliable patient transportation for the patients throughout the medical center.

Asked whether there was any advantage to this method of operation, Fitzhenry testified:

Well, when you buy the whole package, what you're getting is you're getting a complete program. You're having something where that particular outfit is coming in. They're providing all of their recruiting, hiring, firing, disciplining, payroll, compensation, benefits, all of those sorts of factors. And it also increases the accountability of the staff to that manager.

⁸ Fitzhenry testified that these four employees were given a one-day orientation and it was made clear to them that their terms and conditions of employment were not subject to FMC any longer; rather, they were employees of Sodexho and subject to a whole new set of rules. According to Fitzhenry, Sodexho employees are instructed to relate to FMC supervisors, "Only in the sense that, you know, we're going to all be, I guess, a team player. We're going to work together for the common benefit of the patient." In the event of a problem, FMC supervisors would contact Fitzhenry directly. This happened from time to time. In the event of an immediate patient safety issue, one of the FMC nurses could so advise and/or correct the Sodexho transport employee, depending upon the circumstances.

The General Counsel argues that the timing of FMC's decision to implement the system is suspicious in that it coincides with and overlaps the Union's organizational campaign. Thus, although the record evidence shows that the decision was made on February 13, 2006 at the weekly Senior Management Team meeting, there is a later reference to the matter in the April 24 minutes of the Senior Management Team. The General Counsel points out that at the April 24 meeting, "Doug [Umlah] presented proposal in putting time line, service scope, financial information, pros and cons of outsourcing."⁹ And the minutes also state, "Senior management team supports outsourcing."

The General Counsel asked Patricia Crofford about the meaning and significance of this language. Crofford, as director of human resources, regularly attended the Senior Management Team meetings but was not a member of the Senior Management Team. Crofford testified that the outsourcing decision had been made in February, prior to the time FMC had knowledge of any union activity, but there were "additional discussions ongoing between February and April, regarding the specifics of the decision," and Umlah "continued his reinforcement of his belief that ...the patient transport subcontracting was best for Flagstaff Medical Center." General Counsel did not ask Umlah about this even though Umlah testified after Crofford. Thus the only testimony regarding this matter is that of Crofford.

The contract with Sodexho was signed on May 7, two weeks after the aforementioned April 24 meeting. Umlah had been negotiating that contract with Sodexho for quite some time. It is reasonable to assume, absent any contrary evidence, that up until the date the contract with Sodexho was executed, FMC could have changed its mind; and that the discussion at the April 24 meeting and the references in the minutes simply served as reinforcement and validation that FMC's earlier February decision was the correct one. Accordingly, I find without merit the General Counsel's argument that the decision to contract with Sodexho was not made until April 24, at a time when the Union's organizing campaign was well under way. Further, even assuming *arguendo* the decision to contract with Sodexho was not finalized until April 24, there is no evidence the decision was motivated by unlawful considerations.

General Counsel, maintaining that FMC could have simply contracted out the management component to Sodexho, retaining the employee component to itself, goes on to argue that FMC must have decided to outsource the employee component for discriminatory reasons, namely, to cause its dietary and housekeeping employees to fear that their jobs, too, might be contracted out because of, or in retaliation for, their union activity.¹⁰ While it is possible that FMC could have contracted out only the management component, or conceivably could have developed and implemented its own in-house patient transport system without contracting out any component, this is not what it decided to do. The Respondent's witnesses, whom I credit, are experienced

⁹ The transcript, at page 1472, line 16, is hereby amended as follows: "frozen kinds of outsourcing" is changed to "pros and cons of outsourcing."

¹⁰ This theory is somewhat problematical. Thus, employees' fears that their jobs will be contracted out is customarily cause for concern because they fear they will lose their jobs. However, in the instant situation, the FMC employees who performed patient transport work did not lose their jobs, but rather continued to perform patient transport work at the same location for Sodexho rather than FMC.

hospital professionals with expertise in hospital administration, and Sodexho's patient transport system is a sophisticated system that had been tried and tested at other hospitals. After exhaustive consideration, they decided that contracting out the entire operation to Sodexho was in the best legitimate business interest of FMC. There is no contrary evidence.

The contention by the General Counsel that FMC had an ulterior, unlawful motive in contracting out the patient transport work and would not have done so in the absence of the Union's organizing drive, is contradicted by persuasive, substantial and uncontroverted record evidence. Accordingly, I shall dismiss this allegation of the complaint.

4. The June 29 and July 6 Meetings Conducted by Bradel and/or Schuler

It is alleged that FMC's president, Bill Bradel, and FMC's vice-president for ancillary services Roger Schuler, during the course of a dietary department employee meeting held on June 29, unlawfully solicited grievances and made statements violative of the Act to a group of about 25 or 30 dietary employees; further, it is alleged that a follow-up meeting on July 6, FMC further violated the Act by favorably resolving some of the employees' concerns raised at the July 29 meeting.

At the outset of the July 29 meeting, Schuler stated that he and Bradel were there to find out any issues, concerns or problems that employees had. Several employees raised concerns. Schuler advised them that he would look into the matters they raised and would get back in touch with them, hopefully within ten days.

Bradel, according to the testimony of employees Shawn White, Paula Souers, and Lydia Sandoval, all outspoken union advocates, told the assembled employees that he knew there was some union activity in their department, mentioned that he was aware of their union organizer "friend" who conspicuously spent time at a table in the cafeteria attempting to speak with employees, stated that he wanted them to think about unionizing because if they went union there would be no further meetings like this one, and further stated that they could solve the issues among themselves and did not need a third party brought in. During the meeting the union advocates disputed some of Bradel's remarks and defended the Union. White took issue with Bradel's "third party" remark, saying that there would not be a third party because an employee committee would represent the employees during contract negotiations. According to White, this cause Bradel to remark, "if you think you're going to sit down across the table from me and negotiate a contract, you're wrong."¹¹

Bradel testified that this was the first opportunity he had had to meet with this particular group of employees. He and Schuler opened the meeting by soliciting feedback from the employees to learn what was working well and what improvements could be made. Initially, no employees spoke up and Bradel, in an effort to solicit their input, said:

¹¹ Dale Mackey, another witness called by the General Counsel, testified that Bradel said, "he wouldn't be there if there was anybody coming in and representing the union. He would not attend it. He made that very specific...He would not attend the meeting."

We really want to hear what you have to say. We've been conducting these meetings in other departments and we've got some really good feedback, so please speak up...

Then employees began expressing their concerns. Some of their concerns were addressed by Schuler on the spot, and some were deferred until later. After this segment of the meeting, Bradel again said that he appreciated the direct contact with the employees and it was valuable to build that relationship. He said he knew there was some union activity in that department, and "that we appreciate the direct activity and that if we had a union that it would be difficult to have that same direct communication and I didn't think that, that would be necessary for FMC." An employee then spoke up and said he felt the employees needed representation. This prompted Bradel, who believed that he would not be one of FMC's representatives at the negotiating table, to say something to the effect that if there was a union, "I would not be negotiating with the union," or, "you won't be negotiating with me." Bradel denies referring to the union organizer in the cafeteria as their union organizer "friend" or "little friend," as this simply is not a remark he would have made.¹²

According to Schuler, Bradel said "that he appreciated the interchanges with staff...expressed his view that direct interchange like this might not be possible if a third party was involved." Further, before the employees left the meeting, Schuler told them he would look into their issues and get back to them at a follow-up meeting. The follow-up meeting was held on July 6. Bradel was not present. Schuler addressed the issues that had been raised by the employees at the June 29 meeting.

Schuler testified that the June 29 meeting was a department staff meeting with dietary employees,¹³ that in the four and a half years he has been vice president of ancillary services he has attended and participated in approximately 10 such meetings with dietary employees, and has attended and participated in approximately 50 to 70 similar meetings among ancillary services employees. Department staff meetings are conducted monthly, and Schuler attempts to attend as many meetings as he can. The meetings follow essentially the same format: the director asks the employees whether there are any issues or concerns they want to raise, and Schuler invites similar inquiries. The same format was followed at the June 29 meeting, although the director of the department was not present. Schuler testified that these meetings provide management with an opportunity to find out from employees "what's on their mind, what are their relevant issues, concerns, opportunities we might have to follow up on those issues and concerns." Schuler testified, "If it's a question that can be answered, the question is answered at that time. If not, the response is that we'll follow up and get back to them." The process of following up on employee concerns, as was done at the July 6 follow-up meeting was no different than the process that was customarily followed.

About a month prior to the June 29 meeting, Schuler introduced Bradel to ancillary services employees at four other meetings: security and PBX employees, plant operations and facilities employees, therapy services employees, and housekeeping

¹² According to Schuler, Bradel did not specifically refer to any union organizer in the cafeteria. Whether or not Bradel made such a remark is irrelevant, and therefore a credibility determination is unnecessary.

¹³ Customarily the director of the department conducts the meeting; however Drake did not attend this particular meeting.

department employees. The housekeeping employees' meeting, similar to the aforementioned dietary department meeting, was held in McGee Auditorium.

Bradel, according to Schuler, has attended some 20 other open forum meetings, as distinguished from departmental meetings, where Bradel was introduced by someone other than Schuler; all employees are invited to these open forum meetings. Further, according to Schuler, Bradel has held some 12 departmental staff meetings with nurses.

Schuler testified:

Bill [Bradel] was a very big advocate of rounding.¹⁴ He spends a lot of time out in the department meeting with employees. He has, as I mentioned yesterday, meetings that he calls Bagels with Bill where he would invite certain departments to meet with him in the cafeteria in small groups. He has departmental meetings that he goes to meet the staff. He has open forums that are open to anybody in the hospital for—for them to get to know him better and for him to describe hospital issues.

In addition to the foregoing, Schuler promotes his own open door policy and receives visits from about ten employees each week who come to his office with personal or departmental problems or concerns.

Schuler's testimony stands unrebutted, and there is no contrary evidence.

The General Counsel points out that the dietary department head, Janine Drake, was not at the June 29 meeting, but that Bradel was at the meeting. Drake's absence seems irrelevant, and the presence of Bradel and Schuler is consistent with their presence at many similar employee meetings. Accordingly, I find that the format of the June 29 meeting was no different than the format of the numerous meetings with staff, including ancillary services employees, which occurred well prior to the instant union activity. I shall dismiss this allegation of the complaint.

I further find that the follow-up process during the July 6 meeting was similarly consistent with FMC's practice of providing answers and resolutions to employees' concerns that could not be immediately addressed at the June 29 meeting. Therefore, as there is no evidence that the Respondent initiated the practice of soliciting and attempting to resolve employee concerns in response to its employees' union activity, the fact that it continued this past practice during the course of the union activity is not violative of the Act.¹⁵ I shall also dismiss this allegation of the complaint. Cf. *Southern Maryland Hospital*, 276 NLRB 1349 (1985), cited by the General Counsel.

¹⁴ "Rounding," according to Schuler, is a formal, pro-active, systematic, ongoing process whereby management team members circulate throughout the various departments, and engage the employees in dialogue "to determine what's going well, what needs improvement...what issues and concerns do they have in their department...an opportunity to get feedback from the staff and respond to those issues."

¹⁵ Moreover, under the circumstances, it appears unnecessary to discuss particular matters that were resolved.

I credit the testimony of Bradel. However, even assuming *arguendo* the accuracy of the employees' recollection of Bradel's remarks at the meeting,¹⁶ it is not unlawful to advise employees that if they went union there would be no further meetings during which employee concerns were solicited and/or resolved, or to suggest that FMC and the employees could resolve their own issues without the intervention of a third party. See, *Sunrise Health Care Corp.*, 334 NLRB 903, 906-07 (2001); *Tri-Cast, Inc.*, 274 NLRB 377, 377 (1985); *Ben Venue Laboratories, Inc.*, 317 NLRB 900, 900 (1995).¹⁷

Regarding the remark by Bradel that "he" would not be negotiating with the Union, the employees could have reasonably understood Bradel to mean what he intended, namely, that although he was personally available to meet with employees at such departmental meetings, he would not be one of FMC's representatives at the negotiating table. Bradel did not state at that meeting, nor insofar as the record shows did any representative of FMC ever state, that FMC would not negotiate with the CWA or the CNA if either union was selected as the employees' collective bargaining representative. I shall dismiss this allegation of the complaint.

5. Additional Alleged Violations by FMC

A. Section 8(a)(1) Allegations

Alleged interrogation of Paula Souers: The CWA union campaign started in October 2006. Paula Souers was at that time a nutrition assistant in the dietary department. Souers, as an "organizer" for the Union, testified that she "gave information to people, handed out flyers, and answered questions...and went to meetings." Further, she sometimes wore a CNA (California Nurses Association) button at work, as she also supported the CNA in its efforts to organize the Respondent's nurses. She is "sure" management was aware of her support for the Union, as she "was open about it" from the beginning; and in October 2006, on the day she found out about the first [CWA] union meeting, she invited her immediate supervisor, Lisa Dominguez, to attend the meeting with her.

The next time she discussed the union with a supervisor was some four months later, on February 23, during a periodic evaluation with Sarah Klein-Mark, nutrition services coordinator. Souers testified she believed Kline-Mark knew she was an open union supporter as of that date as she didn't hide the fact and readily promoted the Union to her co-workers.

¹⁶ Both Bradel and Schuler gave a more nuanced account of Bradel's remarks regarding this matter: Bradel testified he stated that "if we had a union it would be difficult to have that same direct communication," and Schuler similarly testified Bradel said, "that he appreciated the interchanges with staff...expressed his view that direct interchange like this might not be possible if a third party was involved."

¹⁷ The General Counsel relies upon other cases: *Tipton Elec. Co.*, 242 NLRB 202, 205-06 (1979), *enfd.* 621 F.2d 890 (8th Cir. 1980); *Reidbord Bros. Co.*, 189 NLRB 158, 162 (1971); *Graber Manufacturing Company, Inc.*, 158 NLRB 244 (1966), *enfd.* 382 F.2d 990 (7th Cir. 1967). To the extent these cases are inconsistent with the foregoing cases, it appears they do not reflect current Board law. See discussion in Member Brown's dissenting opinion in *Ben Venue Laboratories*, *supra*.

The discussion took place in Klein-Mark's office. Kline-Mark, who was at this period in time having similar meetings with other nutritional assistants, described the purpose of the meeting with Souers as follows: "The purpose was to recognize her as a high level employee and to continue to provide her with encouragement and let her know how good of a job she was doing in her current position." It was a fifteen-minute conversation and each spoke about 50 per cent of the time. Klein-Mark complemented Souers for being a "high performer" (the highest ranking), said that she was a good nutrition assistant, cared for her patients, and took her job seriously. She then asked Souers if she had any issues or concerns.

Kline-Mark testified there was general discussion about the work of the department, and Souers expressed some work-related concerns: that she wished there were more nutritional assistants so she would have more time to spend taking food orders from her patients; that she felt some of the kitchen dietary employees were not being trained properly; and that she thought Bill Bradel, the Respondent's president, didn't think very highly of the nutrition department or the environmental services department.¹⁸ Regarding this latter comment, Souers elaborated by referring to some negative remarks she understood Bradel had made about certain employees being "from the wrong side of the tracks." Klein-Mark testified that she then, "in context," asked Souers, "what she thought a union could do as far as relationships between the nutrition staff and the nursing staff."¹⁹ Souers replied she didn't feel comfortable talking about the union. Klein-Mark said it was "okay to have an open dialogue about it."²⁰ Souers again said she didn't want to talk about it. After this response, Klein-Mark "let it go."

Souers testimony regarding this part of the conversations differs markedly from that of Kline-Mark. According to Souers,²¹ after expressing her concerns, she "thinks" Klein-Mark asked, "how do you feel about the union." Souers said, "I don't think you can ask me that." Klein-Mark said, "it was okay, that it was just my opinion." Souers "thinks" she said, "I don't feel comfortable talking about it." Then Klein-Mark said, "It's okay. It's just your opinion." Then Souers finally said, "I'm for it." Kline-Mark asked, "Okay, why?" Then Souers explained that she had worked with a union before years ago and liked it, that she thought it would be a good

¹⁸ On page 22 of her brief the General Counsel seeks to amend the complaint by adding an additional allegation as a result of Souers' being cautioned to avoid spreading "malicious gossip" about Bradel. As this amendment was not proposed during the course of the hearing, and FMC has thereby been denied the opportunity to present evidence, the General Counsel's request to amend the complaint is denied.

¹⁹ Klein-Mark felt that Souers was expressing her concerns and, knowing that Souers supported the nurses' efforts because she had worn a CNA button, was curious and "wanted to see what her opinion was about what the union could do to help with relationships between nutrition services and nursing staff and Bill Bradel."

²⁰ Klein-Mark testified that she had undergone labor relations training on about four occasions by a firm that had been hired by the Respondent to handle the union campaign, and understood that "it was okay to talk about facts about the union, people's experiences that they may have had and also opinion that they may have had."

²¹ Souers testified that only one part of the interview "stuck out in her mind," namely the part about the union, and that she did not "remember clearly" the other parts of the conversation.

thing for Flagstaff Medical Center, and good for the patients, that the people in the kitchen and housekeeping departments have no voice or way they can contribute, and that the hospital hired individuals that they could exploit and take advantage of. Klein-Mark said she didn't agree.

Klein-Mark concluded the meeting by again telling Souers what a good employee she was, and how good of a job she was doing; and Souers, in turn, said she thought Kline-Mark was doing a good job as a supervisor as well. Then the two hugged, and the meeting ended. Asked about the hug, Kline-Mark explained that although she had five to seven similar meetings with other employees, none of the other meetings ended in a hug; that she had hired Souers a year earlier and felt close to Souers; and that Souers was "more than just an employee" as the two had considerable daily communications, and had talked about Souer's family and other non-work related matters, and had "connected." Thus, to Kline-Mark it was more than simply a compulsory work-related interview, and the hug was an expression of this relationship.²²

As noted, the only discrepancy of significance concerns Klein-Mark's alleged interrogation of Souers about union matters. On this point I credit the testimony of Kline-Mark who appeared to be a forthright witness with a complete recollection of the entire conversation. This is in contrast to Souer's less comprehensive account of the meeting. It seems unlikely that Kline-Mark would point-blank ask Souers, "how do you feel about the union," because Kline-Mark already knew the answer to that question as Souers was a staunch union advocate. Accordingly, the ensuing scenario described by Kline-Mark is the more probable. Asking Souers, a known union advocate, in the context of discussing work-related matters, what she believed a union could accomplish, does not constitute coercive interrogation; this is particularly true given Kline-Mark's simultaneous excellent evaluation of Souers and her expression of affection for Souers. I shall dismiss this allegation of the complaint. See *Aladdin Gaming, LLC*, 345 NLRB 585, 611 (2005); *Enloe Medical Center*, 345 NLRB 874, 876-77 (2005).

Alleged interrogation of Lydia Sandoval: Lydia Sandoval works in the dietary department. Sandoval testified that in early March, as she was cashiering in the café, she was also carrying on a running conversation, between customers, with Dietary Director Drake. At this point she had not worn any union button, nor had she otherwise indicated that she was a union advocate. During the intermittent, ongoing conversation, lasting off and on some 20 to 25 minutes, Drake, according to Sandoval, said the nurses' union (CNA) was "foolish" and "asked my opinion on what I thought the union [the CWA] could do for us that FMC couldn't or wasn't already doing." It is unclear whether Drake made the statement and asked the question at the same time or at different times during the running conversation. Sandoval replied that she would support the Union and the Union would be better for everybody. Sandoval testified she had a good working relationship with Drake and the two have always been cordial and friendly.

Drake, who acknowledged that in March she had no reason to believe Sandoval might be a union supporter, denies that this conversation occurred.

²² Souers characterized the hug differently: "I hugged her because I felt that she was trying to do her best in a tough situation."

I credit Sandoval's testimony. In March, Drake had no reason to suppose that Sandoval was a union advocate, and it is reasonable for Sandoval to have presumed that Drake's inquiry was calculated to discern whether Sandoval supported the Union. In this regard, it is significant that FMC managers and supervisors, including Drake, were asked by FMC's management consulting firm to report whether or not employees under their supervision appeared to favor the Union. I find that Drake coercively interrogated Sandoval regarding her union activity. By such conduct, FMC has violated Section 8(a)(1) of the Act.

Lydia Sandoval also testified that in March or April, apparently following her conversation with Drake, *supra*, Sandoval went to Supervisor Auggie Robledo's office to ask him about a work-related matter. Sandoval testified that after discussing the work-related matter, Robledo said he wanted to ask her something. He said the conversation was just between the two of them. He said that he'd never worked with a union before and wanted to know what it was like to work with a union. He asked what the union did for us.²³ Sandoval told him that the telephone company union represented the employees, and pointed out a particular difficulty that she had had with a co-worker at FMC, suggesting that if there had been a union at FMC it would have been there to support her. Then she and Robledo just talked "about the pros and cons of the union." Robledo asked, "if I felt it was necessary to bring in a union to the hospital, if we had that many problems or whatever." Sandoval said, "Yes, definitely." The conversation lasted ten or fifteen minutes.

Sandoval has known Robledo for the six years she has worked at the hospital, and they worked together as co-workers prior to the time Robledo became a supervisor. They have a warm and friendly relationship and talk about non-work-related matters. Sandoval sometimes refers to him affectionately in Spanish as "mi hijo," meaning my son. Robledo did not testify regarding this conversation, but did testify about his close relationship with Sandoval.

I find that Robledo's initial interrogation of Sandoval about her prior experiences with a union while working for a former employer was not coercive; obviously Robledo knew about Sandoval's prior employment, and Robledo's inquiry was innocuous and clearly was not designed to elicit a response that would cause Sandoval to declare whether she was for or against union representation in general, or at FMC in particular. However, I find that Robledo coercively interrogated Sandoval later on during the same conversation when he directly asked her if she felt it was necessary to bring a union into the hospital. By such conduct FMC has violated section 8(a)(1) of the Act.

Alleged interrogation of Laverne Gorney: Laverne Gorney testified that sometime during the course of the union campaign (Gorney was unsure of the month), in the kitchen, Drake spoke to her about the Union and said to her, "There will be dues to be paid. And once you join the Union you can't come back to work here." And, according to Gorney, Drake also said, "You have to file paperwork with the National Labor Relations Board to come back to work here."

²³ Sandoval, prior to her employment with FMC, worked for a CWA-unionized telephone company. Sandoval does not know how Robledo became aware of this fact..

Drake denies having a personal conversation with Gorney about the Union, and denies making the statements attributed to her by Gorney. Gorney did not at all impress me as a credible witness. Her memory was faulty and her testimony was inconsistent. She did not know when the event happened, and first testified that she was alone in the kitchen with Drake, while later testifying that Supervisor Mike Martin was present and she had to ask him to explain what Drake was talking about. Moreover, the comments Gorney attributed to Drake do not make sense standing alone, and Gorney did not provide an explanation or context for them. I credit Drake. I shall dismiss this allegation of the complaint.

Alleged interrogation of Ana Nez and Laverne Gorney: Ana Nez worked in the dishwashing department. Nez testified that in March she and co-worker Laverne Gorney had a brief conversation with Klein-Mark, a nutrition coordinator who had no supervisory authority over kitchen employees.²⁴ According to Nez, Kline-Mark approached them and said, "Why are you going to vote for the Union."²⁵ Nez replied, "I will tell you the truth. I am abused in this work environment. So I am going to vote for the Union." Then, not knowing who Klein-Mark was, Nez asked Klein-Mark whether she was going to vote for the union. Kline-Mark said no, that she could not vote because she was a manager. Kline-Mark handed them a piece of paper that apparently they did not read and threw in the trash. Gorney did not say anything.

Gorney, who also works in the dishwashing department, testified that she does not really know Kline-Mark. Gorney testified that Kline-Mark entered the kitchen, introduced herself as a nutrition coordinator, gave Gorney and Nez pieces of paper, and asked Nez, "Are you going to vote for the Union?" Nez said, "Yes." Kline-Mark replied, "Do you not appreciate your jobs? Why would you want to vote for the Union." Nez replied she had undergone abuse on the job, and then said, "I have some complaints filed on me. And I don't appreciate that." Kline-Mark said, "We should continue this conversation in private, such as my office." Nez declined, saying that she was busy at the time and wanted to leave right away after work.

Kline-Mark testified the incident occurred on February 9. She was instructed by Schuler to go to the kitchen and distribute and/or read from a letter from Hospital President Bradel regarding a re-run CNA election. She approached Nez and Gorney, who were not occupied with work at the time, and read the following sentences to them from the letter, dated February 9, in order to let them know what the letter was about:

I'd like to give you an update on the situation with the new union election ordered this week by the National Labor Relations Board. At this time, we have received no communication from the NLRB regarding a date for the new election.

²⁴ I do not credit Nez's testimony that she was wearing a union lanyard around her neck, as union buttons and lanyards were not distributed to union supporters until July 16; moreover, Gorney did not recall that Nez was wearing a union lanyard..

²⁵ Initially, Nez was testifying through a Navaho interpreter. Asked to do her best to testify in English, Nez said in English that Kline-Mark said, "What do you think about the Union. Are you going to vote for the Union."

...FMC [has] requested the election be carried out as quickly as possible so that nurses can once again express their opinion about union representation.

Kline-Mark then gave the employees copies of the letter. Nez asked Kline-Mark whether she was going to vote for the union. Kline-Mark said she could not vote because she was a supervisor. There was no further conversation.

I credit the testimony of Kline-Mark. Kline-Mark appeared to be a credible witness with a clear recollection of the incident, and the testimony of Nez and Gorney was inconsistent. Further, the letter Kline-Mark read to the employees did not deal with the CWA organizing campaign or an election among dietary employees. It is therefore unlikely that Kline-Mark would have asked these employees how they intended to vote, as no election in which they would have been eligible to vote was imminent or, insofar as the record shows, even petitioned for by the CWA. And it is also unlikely that Kline-Mark would have invited Nez to her office to discuss complaints against Nez, as testified to by Gorney but not by Nez, as Kline-Mark had no supervisory authority over Nez. I shall dismiss this allegation of the complaint.

Alleged prohibition against discussing wages: Heather Craig is a nutrition assistant. She takes patient orders and delivers food trays to patients. Craig testified that during a conversation with Kline-Mark, who at the time had stepped down from her supervisory position, Craig mentioned she had been talking with Marilyn, a co-worker, who had told Craig that she was receiving a higher base wage which reflected the fact that she had past experience in food service. Craig then wondered why she, too, had not received a commensurate wage for her similar prior experience in food service. According to Craig, Kline-Mark replied, "we weren't even supposed to be discussing what we earn."

Kline-Mark testified that Craig asked her why another nutrition assistant who had the same experience as she did was getting paid more. Kline-Mark said she would look into it with Drake. She asked Drake about the matter. Drake, in turn, said she would look into the pay discrepancy with human resources, adding, "employees shouldn't be talking about their wages with each other." Kline-Mark then related this conversation to Craig, and "let her know that she shouldn't be talking about wages with other employees." I find that by this statement Craig was indirectly advised by Drake, through Kline-Mark, that it was impermissible for employees to discuss wages with other employees.

In *Lafayette Park Hotel*, 326 NLRB 824, 826 (1998), the Board states:

...discussion of wages is part of organizational activity and employers may not prohibit employees from discussing their own wages or attempting to determine what other employees are paid. (Citations omitted.)

Accordingly, I find that by such conduct FMC has violated Section 8(a)(1) of the Act.

The complaint alleges that, similarly, Supervisor Auggie Robledo, production manager in the dietary department, instructed employees not to discuss their wages with other employees. In this regard, Robledo's affidavit states:

I usually tell employees at the beginning of each [performance evaluation] meeting that their evaluations and their raises are confidential and should be kept to themselves and I remind them not to leave the evaluation around because it is confidential.

Robledo confirmed during his testimony that this is generally what he tells employees during their performance evaluations, but emphasized that what he means to relate to the employees is that their evaluations are “confidential for me” and that he is not going to divulge confidential information to other employees. While there is certainly a significant discrepancy between what he tells employees and what he means to relate to them, I shall rely upon his affirmation both in his affidavit and his testimony, and find that employees would reasonably understand they are prohibited from discussing their wages with co-workers.²⁶ I find that by such conduct FMC has violated Section 8(a)(1) of the Act.

Alleged surveillance of Barbara Mesa: Barbara Mesa, an outspoken union advocate, would conspicuously spend her 30-minute lunch period and two 15-minute breaks every day at a table in the cafeteria, socializing and engaging in union-related business with Union Organizer Scott Barnes and other employees who also congregated at that same cafeteria table on a regular basis; other employees would sometimes just briefly stop by to talk or pick up union flyers. Mesa testified she was sitting at the union table in the cafeteria, which she occupied daily as an open and active union adherent, when she observed Bradel pointing at or towards her, getting up from his chair, circling the union’s table at which Mesa was seated, and then returning to his seat.

Bradel, who often eats in the cafeteria, recalled no such incident. Bradel testified that on occasion he will acknowledge someone at the cafeteria entrance by pointing to the person, which might make it appear he is pointing at the union’s table, and will on occasion get up and walk behind the union’s table to speak with the individual; and further, he will sometimes get up from his table, go to the food line or elsewhere, and return to his table in a roundabout fashion which would make it appear that he was circling the union’s table. Bradel denies singling out Mesa as a union proponent in the cafeteria.

I shall dismiss this allegation. I credit Bradel’s testimony. Whatever Mesa observed, it is too improbable that Bradel was attempting to single out Mesa as a union adherent and cause her discomfort in such a bizarre and immature fashion, namely, by pointing at her and then literally walking a circle around her table.

Alleged threat of loss of scheduling flexibility: The complaint alleges that Supervisor Lisa Dominguez threatened employees with loss of scheduling flexibility if the Union succeeded in its organizing campaign. Heather Craig, a nutrition assistant in the dietary department, testified that in June, she and several other nutrition assistants were working in the diet office. Their direct supervisor, Dominguez, was also present. As they were working, according to Craig, they were engaged in general non-work-related conversation, as it was customary to talk about personal or non-work subjects while working. Craig mentioned the Union, and said she thought it would be beneficial for the

²⁶ Further, this comports with Drake’s direction to Kline-Mark; as noted, Drake, as director of the dietary department, is Robledo’s superior.

Union to come in and represent the employees. Dominguez replied “that she had just gotten out of a meeting with Jeanine [Drake] and that Jeanine had told her if we got the Union in that we would no longer be able to switch shifts and that our schedules would be set.” Craig said, “ Oh, my gosh. Are you serious?” Dominguez responded, “that’s what Jeanine had told her.” The other employees in the room also indicated their surprise. According to Craig, “We couldn’t believe it.” Craig was very emphatic that Dominguez said employees *would* not be able to switch shifts, rather than “may not be able to switch shifts...”

Dominguez, contrary to the testimony of Craig, testified that during the aforementioned colloquy in the diet office Dominguez told the employees she had no problem with employees switching shifts, but that flexibility could change if the Union came in.

Craig appeared to have a very specific and comprehensive recollection of the conversation, and was emphatic that her version of the conversation was the correct one. I credit Craig. However, in agreement with FMC’s analysis of this issue in its brief, I find that the employees could have reasonably understood that the statement, “if we got the Union in that we would no longer be able to switch shifts and that our schedule would be set,” was intended to relate what the Union would do to scheduling flexibility, not what FMC would unilaterally do. The practice of employees switching shifts among themselves, which insofar as the record shows occurred on a regular basis, was obviously advantageous for both the employees, who could find a substitute when they needed time off, as well as for FMC, as the practice would minimize scheduling difficulties; clearly the employees recognized that FMC would be reluctant to unilaterally change a practice that benefited itself. I find that the employees could have reasonably understood that the statement did not imply that FMC “may or may not take action solely on [its] own initiative,”²⁷ but rather conveyed Drake’s assessment of working conditions under a union contract. Accordingly, I find the statement did not constitute a threat to retaliate against employees if they brought in the Union,²⁸ and I shall dismiss this allegation of the complaint.

Alleged banning of photo-taking: It is alleged that FMC banned the use of cameras at work for discriminatory reasons. Patsy Crofford, vice president of human resources for Northern Arizona Healthcare, FMC’s parent organization, testified that in April, three months before an updated portable electronic equipment policy was issued, NAH personnel began a review of existing policy for FMC and another NAH hospital regarding patient privacy matters. This review was precipitated by an incident in one of the critical care units: a visitor had taken photos with a cell phone camera of a patient, other visitors in the patient’s room, and some of the FMC staff. The prior policy did not address the use of cell phone cameras or certain unrelated concerns, namely, that certain other portable equipment could present safety issues if used by hospital staff during work time. Regarding the use of cameras, Crofford testified that inpatients and outpatients move throughout the hospital campus, inside and outside of campus buildings, often wearing only street clothes, and it can not be determined whether a person is a patient, family member, or visitor. The updated policy, according to Crofford, that simply prohibits photography in general anywhere on hospital premises, was

²⁷ *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969). As the Court states, at p. 619, the focus is on “what did the speaker intend and the listener understand?”

²⁸ See *Maestro Café Associates, Ltd.* 270 NLRB 106, 108 (1984).

designed to assure that “we never had a picture taken that had a patient inadvertently or consciously walking by and included in that picture.”

The updated policy, entitled “Telephone, Cell Phone and Other Portable Electronic Equipment,” is as follows:

The use of portable electronic equipment including, but not limited to CD players, iPods, MP3 players, or cameras during work time is not authorized. The use of cameras for recording images of patients and/or hospital equipment, property, or facilities is prohibited.

Contrary to the contention of the General Counsel, there is no evidence the old policy was revised because of Mesa’s activities. Mesa’s testimony that she took a photo of Bradel at a group meeting, or her uncertainty regarding whether or not she showed a photo of her locker to hospital security personnel²⁹ to document that someone had been rummaging through her locker, is insufficient to show FMC was aware that Mesa used her cell phone to take photos in or around the hospital. And assuming *arguendo* the Respondent was aware of Mesa’s photo-taking activities, and further, assuming *arguendo* that such photo-taking constituted union or concerted activities,³⁰ the evidence does not show the revised policy was in response to such activities. Rather, I find, the revised policy was motivated by lawful business considerations designed to resolve the legitimate patient privacy concerns described by Crofford.

The General Counsel also maintains the policy is overly broad and limits employees’ Section 7 rights. It does not appear that the policy, on its face, would likely have a chilling effect on employees’ Section 7 rights, as the specific right to take photos in the workplace would not reasonably seem to come to mind as an inherent component of the more generalized fundamental rights of employees set forth in Section 7 of the Act. However, it is clear that FMC may not utilize this policy, specifically designed to protect patient privacy, for purposes inimical to the Act. Thus, FMC may not interpret the policy to prohibit employees from engaging in legitimate union-related activity such as, for example, taking photos of hospital bulletin boards, or unsafe working conditions, or a gathering of employees at the union table in the cafeteria, unless patient privacy is compromised. See *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646-7 (2004); *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), *enfd.* 203 F.3d 52 (D.C. Cir. 1999). I shall dismiss this allegation of the complaint.³¹

Alleged unlawful warning to Lydia Sandoval: The complaint alleges that Supervisor Frances Otero, a lead cook in the dietary department, unlawfully admonished Lydia Sandoval for engaging in union solicitation in the kitchen. Sandoval is a dietary employee. Sandoval testified that in late summer, after finishing her shift, she did not

²⁹ Mesa testified she “may” have done so.

³⁰ FMC further argues in its brief that Mesa’s foregoing use of her cell phone camera did not constitute union or protected concerted activity.

³¹ The following cases cited by the General Counsel are inapposite: *The Loft*, 277 NLRB 1444, 1461 (1986); *Automatic Screw Products, Co.*, 306 NLRB 1072 (1992). These cases deal with rules that, on their face, prohibit employees from engaging in concerted activity, namely, discussing wages with co-workers; conversely, taking photos may or may not be concerted activity, depending on the circumstances.

leave the premises but rather waited for another employee, Mary Karlovits, to come on shift in order to request that Karlovits sign a petition for the Union. Supervisor Otero, in the serving area in the kitchen, asked Sandoval why she was still there. Sandoval said that she had a gift for Karlovits, a candle that she had brought back for her from vacation. While this was true, Sandoval did not tell Otero about the petition. After Karlovits arrived, Sandoval engaged her in a conversation, and apparently took out the petition that she had hidden in a book, to present to Karlovits. While they were conversing, Otero approached and said, according to Sandoval, "I thought you were going to give her a present. If this is what you wanted, then leave...you can come back when Mary is on her break." Sandoval said she was off the clock. Otero replied that Karlovits was on the clock. Otero, according to Sandoval, said she was not going to report this incident, but that she would if it happened again. Sandoval then left the premises.

Otero testified that when Karlovits arrived at work Otero briefly spoke with her about work-related matters. Otero then began performing other duties, assuming that Sandoval would be on her way after only a brief exchange with Karlovits. About 15 minutes later she observed Sandoval and Karlovits talking in a kitchen working area. Otero did not see a candle, but she did see that Sandoval had some paperwork in her hand. Believing that the two had been talking for 15 minutes, she told Sandoval to leave, advising her she could come back and talk to Karlovits when Karlovits was on her break. Sandoval replied that she did not intend to come back, as Karlovits' break was not until much later. Then Sandoval left. Otero testified that she did not say anything about reporting Sandoval; that, although she knew Sandoval was a union supporter, there was no mention of the union; and that she has never permitted an on-duty employee to stop working and talk to a non-working employee for an extended period of time, such as 15 minutes, because employees need to be working.

I credit Otero's testimony. The restriction Otero placed on Sandoval was not imposed to discourage organizational activity. Rather, I find, by asking Sandoval to leave Otero acted for legitimate business reasons, namely, to put an end to the 15-minute disruption of Karlovit's work regardless of the nature of their discussion. I shall dismiss this allegation of the complaint. *Brigadier Indus.*, 271 NLRB 656, 657 (1984). The case cited by the General Counsel, *Cast-Matic Corporation*, 350 NLRB 1347, 1354-5 (2007) is inapposite.

Alleged unlawful warning to Paula Souers: The complaint alleges that Supervisor Frances Otero, a lead cook in the dietary department, unlawfully admonished Paula Souers for engaging in union solicitation in the kitchen. Otero testified that she observed Souers, an off-duty dietary department nutrition assistant, in the kitchen area, with papers in her hand, talking to several different employees "for a very extensive amount of time," estimated by Otero to be about 30 minutes. Otero had observed Souers in the kitchen area off and on over this period of time but, believing that the conversations would be brief, did not tell Souers to leave the kitchen because chatting for a minute or two is permitted.³² Finally, Otero told Souers she should not be disrupting the employees while they are working, and Souers left the kitchen.

³² Current off-duty dietary employees, but not other employees, were permitted to come into the kitchen area to check their mail, pick up a paycheck, and briefly exchange pleasantries with on-duty employees.

Souers admitted she was engaged in union solicitation on this occasion, and further testified on cross-examination as follows:

Q. On at least one occasion in July of 2007, you were in the kitchen proper where food is prepared and you were talking to employees while off duty for approximately 30 minutes. Is that true or false.

A. I don't remember.

Q. It could have happened?

A. It could have.

Drake testified as follows regarding the matter:

In this instance, it was an extensive amount of time, and disrupted the kitchen where Frances [Otero] was having a hard time getting everybody to get their work done that day, and both Auggie [Robledo] and Frances had reported it or discussed it with me, after the incident.

I find that Souers was disrupting the work of the kitchen employees for an extended period of time and that Otero admonished her for doing so. I shall dismiss this allegation of the complaint.

Alleged unlawful banning of Barbara Mesa from the kitchen: The complaint alleges that Otero unlawfully banned Mesa from the kitchen and from speaking to kitchen employees during their working time. Otero, encountering Mesa, a housekeeping department employee, talking in the kitchen to an on-duty kitchen employee, told Mesa she could not be there as she had no business in the kitchen, and walked Mesa out of the department. Otero testified she has never permitted any non-kitchen employee to be in the kitchen, because, "I don't think that any non-kitchen employee has any business in the kitchen because they could be a distraction or disruption to the other employees if people are just coming in and out of the kitchen at freewill." Contrary to the testimony of Mesa, Otero testified she instructed Mesa to leave the kitchen because she should not be there, and did not say, "You are not allowed in here to talk to those employees." Shawn White, a union supporter, admitted that non-kitchen employees or employees who have no business in the kitchen are not allowed in the main kitchen area.

Regardless of the words Otero may have used in requesting Mesa to leave the kitchen, it is clear that non-kitchen employees are not permitted in the kitchen area for any reason. Employees are aware of this rule. Further, there is no evidence the rule was designed to exclude employees for other than legitimate business reasons, as it makes sense that to indiscriminately permit any of FMC's several thousand employees to enter the kitchen and converse with kitchen employees would not be conducive to the efficient operation of the kitchen. The General Counsel maintains that Otero has made exceptions to this rule in certain instances, for example, permitting Mesa to be in the kitchen to solicit for the United Way campaign, or permitting Robledo's girlfriend, a nurse, to visit with Robledo in the kitchen area. Regarding visits by Robledo's girlfriend, Otero testified she was not aware of such visits. Regarding Mesa's soliciting for the United Way campaign in the kitchen or elsewhere, the employer may permit such charitable solicitations on an *ad hoc* basis without negating an otherwise legitimate exclusionary rule. See *Hammary Mfg. Corp.*, 265 NLRB 57 (1982); *Zurn/N.E.P.C.O.*, 345 NLRB 12, 14 (2005). Accordingly, I shall dismiss this allegation of the complaint.

Alleged threats, surveillance and disparagement of the Union by Supervisor Otero: The complaint alleges that during a conversation in the cafeteria, Otero threatened employees, gave the impression she was engaging in surveillance of their union activities, and disparaged the Union. The evidence shows that while Otero was sitting at a table in the cafeteria with Souers, Mesa, and Heather Boardwell, three overtly active union adherents, Souers asked Otero why she had been told that she could not enter the kitchen or the cafeteria when she was off duty.³³ Otero, according to Souers, replied that Souers could not go into the kitchen because people had been complaining that “We were pressuring them about the Union”; however Otero expressed surprise that Souers was not permitted to enter the cafeteria. Mesa’s testimony differs from that of Souers. According to Mesa, Otero responded to Souers’s question as follows: “Well, you must have done something wrong that they are not allowing you in there.” Otero denied making either statement. Otero testified that in response to Souers question, she said she did not know why Souers could not go to the cafeteria or the kitchen, and did not know who told her that. At some point, according to the testimony of both Souers and Mesa, Otero said “everybody knows that you, Shawn (White), and Heather (Boardwell) are the [union] pushers.” Otero denies making this statement. Then, later, toward the end of the conversation, Boardwell asked why management assumed everything the three employees were doing was union business, as they could in fact just be talking about the Arizona Diamondbacks. Otero testified she replied as follows to this question: “I think you are discussing things that you shouldn’t be discussing, because every time I come around the corner you scatter like cockroaches.” Then she added, “Don’t get me wrong. I am not saying that you are like cockroaches,” and she said to Heather, I am not calling you cockroaches.” Boardwell, according to Otero, acknowledged this disclaimer, saying, “I know.” Boardwell did not testify, and neither Mesa nor Souers denied that Otero said she was not calling them cockroaches. Otero, during her testimony, said that she was merely using this phrase as a descriptive figure of speech, rather than as a personal reference, and her disclaimer to the employees supports her testimony.

The testimony of Mesa and Souers differs, and I am unable to credit either account. I credit Otero and find she said she did not know why Souers could not enter either the kitchen or the cafeteria while off duty. Further, even if Mesa’s account should be credited, Otero’s response that Souers must have done something wrong to be prohibited from entering the kitchen while off duty is no more than speculation on Otero’s part; thus, Otero, by the very nature of her alleged answer to Souers’s question, made it clear that she was unaware of what Souers was talking about. Assuming *arguendo* that Otero, referring to the four named employees, said everyone knew they were “the union pushers,” I find this statement is not violative of the act. The statement was unthreatening; abundant record evidence amply demonstrates that in fact the named employees openly identified themselves as union activists, campaigned in favor of the Union, and frequented the union table in the cafeteria; and indeed the named employees must have known, by the very nature of their conspicuous efforts on behalf of the Union, that it was common knowledge they were in fact the leading union proponents. Finally, I find that Otero, realizing her utterance about cockroaches could be deemed offensive, pointedly told the employees her reference to cockroaches was not personal or intended as an insult. I shall dismiss these allegations of the complaint.

³³ I have found above that Drake did not make such statements to Souers.

Alleged threat and interrogation by Manager Drake: In August, Mattie Martinez, a recently hired employee, was going through an orientation process in the dietary department as a nutrition assistant. Martinez testified that Jeanine Drake, while showing her bulletin boards containing both union material and FMC material, told her there was information on both sides to read about, and that the Union would make a lot of claims that aren't true. Then, according to Martinez, Drake "asked me about if anyone had talked to me about the union at all there." Martinez said yes. Drake asked her who. Not wanting Drake to know she favored the Union and not wanting to reveal the name of a union supporter, Martinez instead named her friend, an employee she believed to be against the Union. According to Martinez, she did not believe this response would reflect unfavorably on her friend. Drake, according to Martinez, said she was surprised, as she knew the individual named by Martinez was anti-union. Drake continued, asking Martinez whether anyone else had talked to her about the Union. Martinez said no. Martinez further testified that either during the same conversation or the day before during lunch, Drake said, "That it is possible for a union to provide a raise to the people in the union that are also in the department, but because there's just a certain budget that they have that they were going to have to let people go if that was the case." Martinez, as the last person hired, understood Drake to be telling her she would be the first fired in this eventuality.

Drake testified that during the orientation process, as she was showing Martinez the union bulletin board, she asked Martinez whether she had heard about the Union, but did not ask her to identify anyone who may have spoken to her about the Union. Regarding the union, Drake told her, "that there was postings [from the Union]...and that the hospital had informational bulletins and that she needs to get the facts about the union and make her own decision." Drake denies saying anything to Martinez regarding the possibility of job loss due to budgetary considerations as a result of unionization.

I credit the testimony of Martinez, who appeared to have a clear recollection of her conversation(s) with Drake. It is unlikely that Martinez would have fabricated a scenario that was as detailed, specific and plausible, even to the point of causing her consternation as she attempted to evade Drake's questions. Further, it appears that Martinez, during her testimony, was attempting to formulate accurate responses; thus, on direct examination, she volunteered that she was not sure on which occasion Drake cautioned her about layoffs. I find that FMC has violated Section 8(a)(1) of the Act by coercive interrogation, and by threatening that unionization, resulting in wage increases for some employees, would cause the layoff of newly hired employees as a result of budgetary considerations.³⁴

Alleged unlawful monitoring and restricting employees from ED break room: The complaint alleges that on August 19, FMC supervisors and a security guard unlawfully prevented employees from engaging in union activity in the emergency department break room. FMC admits the underlying facts, namely that employees Ed Gorney and Shawn White, wearing FMC identification and also union buttons, were asked to leave

³⁴ I do not find Drake also created the impression of surveillance of employees' union activities by advising Martinez that Drake knew the employee named by Martinez did not favor the Union; such a statement, without more, does not necessarily imply that Drake acquired this knowledge as a result of surveillance of employees' union activities; in any event, this would not affect the remedy, as other instances of surveillance have been found herein.

the secure ED break room, where they had been admitted by emergency room employees. During shift change, emergency department employees regularly enter and exit the break room to get coffee, and pass through to adjacent locker rooms. Also, there is apparently a CNA union bulletin board in or near the break room.³⁵ I credit the testimony of White and Gorney and find that during the incident they were precluded from passing out union literature and/or a union petition to some five employees who had entered or exited the room.

FMC acknowledges that Gorney and White were mistakenly asked to leave the break room. However, that particular matter was rather quickly resolved. Several supervisors apologized to Gorney and White, and within an hour or so they were again back in the break room speaking to employees on behalf of the Union without further incident that day.

However two days later another similar incident occurred. Shawn White and Paula Souers, both wearing FMC identification and union buttons, entered the ED break room about 6:30 a.m., around shift change, to inform employees about the Union and request them to sign an organizing petition. They were admitted to this area by emergency room employees. They set some union fliers out on the sofa and were approached by Ashley Peak, a clinical coordinator and supervisor in the ED. Peak asked what they were doing there, and they said they were there to distribute union fliers and inform people about the Union. Peak said they were not allowed in a locked break room. White explained what had happened two days before, and advised Peak that non-emergency department employees were authorized to engage in union activity in any non-patient, non-work area throughout the hospital, including the ED break room. Peak replied that ED employees' personal belongings were in or adjacent to the break room, that things had been stolen, that she did not feel comfortable with them remaining there by themselves, and she did not intend to leave them alone in the room. Peak remained in the room and worked on paperwork at a table about ten feet away, and, according to White, "basically monitored Paula and I while we were in there." While Peak was sitting there, employees would come in and talk to her about things; and sometimes Peak would leave the room for a few minutes and then return. As a result, the recruitment efforts of White and Souers proved futile, as it was apparent that the presence of Peak made the employees uncomfortable.

After a while another clinical coordinator, Lindy Turley, also a supervisor, came by and, prior to observing White and Souers, removed a union notice from a hallway bulletin board, placing it on an adjacent union bulletin board that happened to be behind an open door, Turley said, "That's where it goes." This notice, worded "Sign a Petition Today," had been placed there earlier by White and Souers before they entered the break room that morning. Turley did not say anything to White or Souers, and both she and Peak remained in the break room at a table; on occasion one of the two would exit the room for a short time and then return and occupy the table. They did this over the course of approximately 40-minutes to an hour while White and Souers remained there. Finally White and Souers left, as it was apparent that no employees were willing to speak to them in front of Peak and Turley.

³⁵ Insofar as the record shows, only emergency department nurses use the break room, and apparently White and Souers were simply interested in getting nurses to support the separate organizing efforts of dietary, housekeeping, and other ancillary services employees.

The above evidence presented by the General Counsel stands un rebutted, as FMC proffered no witnesses regarding this matter. I find that even if Peak had a genuine concern about protecting employees' property, her continual presence in the break room, together with Turley, was unwarranted; thus, White and Souers, although unknown to Peak, were no more suspect than any other FMC employees who were authorized to use the break room, and there was no showing that the break room was continuously monitored during other shift changes. Further, White and Gorney were not similarly monitored two days earlier. Accordingly, while the August 19 incident was diligently resolved, FMC engaged in similar conduct just two days later. Therefore, contrary to FMC's position, I find there was no effective repudiation of the August 19 incident, as on both occasions employees were effectively precluded and/or inhibited from promoting the Union in the ED break room. On the basis of the foregoing, I find FMC has violated Section 8(a)(1) of the Act by prohibiting employees from engaging in union activity in the ED break room, and by monitoring and engaging in surveillance of the union activities of employees in the break room.³⁶

Alleged unlawful installation of surveillance camera: The complaint alleges that FMC installed a surveillance camera in the cafeteria directly above the table occupied by Barns and other union supporters in order to monitor their union activities. Patsy Crofford, Vice President of Human Resources for Northern Arizona Healthcare, testified that since at least March 2006, a year or so prior to the time the Union began its organizing campaign, there had been a surveillance camera at that particular location, as well as at other locations in the cafeteria. At some point the camera above the union table had malfunctioned, and it was replaced. There was no new installation of an additional camera in the cafeteria after the advent of the Union. There is no contrary evidence. I shall dismiss this allegation of the complaint.

B. Alleged Section 8(a)(3) Violations

Alleged change to Lydia Sandoval's schedule and work assignment: The complaint alleges that FMC changed the work schedule and work assignment of Lydia Sandoval in retaliation for her union activity. Sandoval, a day shift dietary employee, worked on the day shift (from 6:00 a.m. until 2:30 p.m.) in the kitchen and cafeteria area primarily preparing and serving food. In March, after Manager Drake and Robledo became aware of her support of the Union, she was transferred to a later shift (from 11:00 a.m. to 7:30 p.m.).

Robledo testified Sandoval was transferred for various reasons: The grill cook was complaining that Sandoval, who was supposed to be helping him serve the omelets he prepared while customers were waiting at the counter, could not rely on Sandoval to be at her station. Sometimes Sandoval would "disappear" for a half-hour or even longer.

³⁶ Contrary to the position of the General Counsel, I do not conclude the facts warrant a finding that Peak engaged in unlawful interrogation by asking what the employees were doing there, or that Peak disparaged the Union by stating she was uncomfortable leaving White and Souers in the room alone because of prior instances of theft. Nor do I find that Turley violated the Act by removing the notice posted by White and Souers and by repositioning it to the bulletin board designated for union messages; there is no complaint allegation that FMC had deliberately obscured the union bulletin board for unlawful purposes.

This was a big problem for the grill cook, who frequently complained. And customers, who had only a limited amount of time before work, also complained they were having to wait too long. As a result, Robledo repeatedly admonished Sandoval for this, and reported the matter to Drake. Further, the “presentation cook”, who was to prepare food in front of customers during the lunch and dinner period, began work at 11:00 a.m., but was not being kept busy with food orders particularly during the dinner hours, and was underutilized. Therefore, it was decided to transfer the presentation cook to the early shift so that he could assist the grill cook in preparing omelets and other food in front of the customers; this would keep the presentation cook busy as, apparently, he would also help serve the food he and the grill cook were preparing. It would also bring in more revenue, as the cafeteria could introduce specials, prepared by the presentation cook, in order to draw customers. And it was decided to change Sandoval’s shift to a later time so that, in addition to food preparation, she would be able to assist with the catering, apparently setting up and/or bringing food to various groups in or around the cafeteria or hospital as, according to the uncontroverted testimony of Robledo, Sandoval was very knowledgeable about the catering end of the business.³⁷ Robledo testified that Sandoval’s union activity played no part in the decision to transfer her to the later shift. I credit this testimony of Robledo. There is no contrary evidence.

There is no contention that Sandoval is dissatisfied with her work assignments on the later shift. However, she apparently maintains that as a result of vision problems she has difficulty driving at night, and, in addition, she simply prefers the earlier shift so that her nights are free. Regarding the matter of driving at night, the record shows that in the winter it is just as dark at 5:00 a.m., when Sandoval drives to work, as it is a 7:30 p.m., when she now gets off work.³⁸ Regarding the fact that she prefers to work the early shift, she was in fact given this option by Robledo, but, as she would no longer be assisting the grill cook, part of her new duties would be to wash dishes. Sandoval, not wanting to wash dishes, declined, and opted to remain on the later shift.

FMC presented cogent, persuasive evidence in support of its position that Sandoval’s transfer to the later shift was motivated by legitimate business exigencies, rather than in retaliation for being pro-union. I shall dismiss this allegation of the complaint.

Alleged modification of Laverne Gorney’s work schedule: The complaint alleges that FMC modified Laverne Gorney’s work schedule in retaliation for her union activity. Gorney, who has worked for FMC for over ten years, testified that for the last two years she had been washing pots and pans in the dishwashing department. Although she worked weekend shifts (Saturday or Sunday) “quite a few” times during the year, she customarily worked only Monday through Friday with relatively few assigned weekend shifts. Beginning in June, however, at about the time her union activity on behalf of the CWA became generally known, she was assigned three or four Saturday and/or Sunday shifts per month. This was very unusual.

³⁷ Sandoval admits that the grill cook warned her about being away from her assigned workstation, and answered, “Yes” to the following question: “And you remember that Auggie [Robledo] also mentioned to you a couple or three times that you needed to be out serving the customers and that you were disappearing or weren’t at your work station, and he counseled you about that, didn’t he?”

³⁸ Further, the record shows that Sandoval does drive at night to play bingo or for other social purposes.

While Gorney's complaints about her schedule change are somewhat difficult to understand, it appears that her principal complaint is not that she was required to work more Saturday or Sunday shifts, but rather that Drake, manager of the dietary department, made the schedule changes without first consulting her. However, insofar as Gorney's testimony is understandable, Drake had always made such schedule changes without consulting the dietary employees, and this had always irritated Gorney well prior to her union activity. Thus, Gorney testified that she, as well as other dietary employees, were treated similarly: "Anything we say, she [Drake] doesn't listen to us. She didn't check with me. But she is the boss. And that is her way."

Gorney, acknowledging that Drake changed the schedules of other employees at the same time, testified the job duties of the others remained the same, whereas only her job duties changed. Attempting to explain this, Gorney testified she had been accustomed to performing only one job task during her Monday through Friday shifts (washing pots and pans), whereas the particular weekend shifts to which she was assigned required that she perform various job tasks, apparently because fewer employees worked during the weekend. Gorney testified that because she was unable to complete certain tasks before having to begin the next one (she was neither asked the nature of these tasks, nor was she asked why she was unable to complete them), she felt "confused" or perhaps frustrated. However, she later seemed to recant this testimony. Thus, on cross-examination, Gorney testified she did not feel confused about her job duties; rather she was simply irritated that she had not been consulted prior to the time her schedule and/or job duties were changed.

There is no evidence that Gorney's weekend job duties were more taxing or difficult than her weekday job duties, or that her alleged inability to complete the assigned weekend tasks was other than systemic and applicable to all employees who were assigned to that particular weekend shift, or that she was criticized or warned about any work-related deficiencies after being assigned weekend shifts. Further, only four of Gorney's 20 shifts per month were weekend shifts; thus, the great majority of Gorney's shifts continued to be weekday shifts.

The Respondent's work rules state: "...employees may be required to work different hours, shifts, overtime, holidays and weekends, as the workload necessitates...There can be no guarantee that an employee will remain on any of the three shifts or that the employee will always have certain days off."

It appears that Drake has unilaterally changed Gorney's schedule over the years without first consulting Gorney. While the monthly scheduling records show that in fact Gorney was assigned more weekend shifts beginning in June, at a time when Gorney's union activity was known to Drake, there simply is no probative evidence showing that the change in Gorney's schedule and/or job duties in June was motivated by unlawful considerations.³⁹ Accordingly, I shall dismiss this allegation of the complaint.

Alleged subjecting Dale Mackey to more onerous working conditions: The complaint alleges FMC subjected Dale Mackey to more onerous working conditions in reprisal for his union activity. Mackey has worked in the dietary department since about

³⁹ Indeed, in about August, Gorney and others volunteered to accept additional hours of work.

2004. He is the only utility aide, a special job designation designed specifically for Mackey due to certain disabilities, including a stroke that has affected his short-term memory. He has multiple duties: while in the kitchen he removes trays, utensils, dishes and trash from the cafeteria conveyor belt, discards the trash, and washes the trays, dishes and utensils, apparently by putting them in dishwashers. When working in the cafeteria he sweeps and mops the dining room floor, cleans tables, straightens and wipes down the chairs, and empties trash receptacles. And primarily during the summer months, when cafeteria customers use the outside patio tables, he similarly sweeps the patio, cleans the seven patio tables, and empties the two patio trash receptacles.

Mackey began wearing a CWA badge on a lanyard in June or July. Drake, according to Mackey, asked him whether he knew about the Union. He replied that he had once been in a union and liked it because the employees got better raises. Drake said she didn't like the union, and, according to Mackey, "looked sort of upset" and just dropped the subject. About a week later, Drake brought in a paper about union matters, and read something to him about management rights and Indian tribes.

The complaint alleges Mackey was subjected to more onerous working conditions in retaliation for his union activity. A composite of the testimony of Drake and Robledo shows the following: The lunch period in the cafeteria begins at 11:00 a.m. and continues until 2:00 p.m., at which time the cafeteria is closed to customers until it reopens at 2:30 p.m. The cafeteria becomes increasingly busy throughout the lunch period, and is apparently at its busiest during the hour or so before it closes. Mackey's half-hour lunch break, from 1:30 to 2:00 p.m., coincided with the busiest time, and at 2:00 p.m., when he returned from his lunch break, he was overwhelmed with work because at that point he had two jobs to do in the short time before the cafeteria reopened: to finish clearing off the conveyor belt that was usually loaded with trays and dishes of customers who were leaving the cafeteria before it closed, and to sweep and mop the cafeteria floor so that it would be dry by 2:30 p.m. when the cafeteria reopened. Because Mackey had trouble completing both of the aforementioned duties in the time allotted, it was decided to change his lunch break to 11:00 a. m., when the cafeteria was least busy, so that he would be working during the busiest part of the lunch period when he was most needed; and to give him a 15-minute break at 1:30 p.m. (instead of a 30-minute lunch break), so that from 1:45 p.m. until shortly after 2:00 p.m. he could complete his job of clearing the conveyor belt and, as soon thereafter as possible, begin sweeping and mopping the cafeteria floor.

Drake and Robledo deny that the change to Mackey's schedule was motivated by his support for the Union. While acknowledging that Mackey is kept busy and has many varied duties to perform in and around the cafeteria, they maintain that changing Mackey's lunch schedule helps the efficiency of the cafeteria operation, gives Mackey fifteen additional minutes to clear the conveyor, and also lessens Mackey's anxiety about having sufficient time to sweep and mop the floor in a timely fashion.⁴⁰ And,

⁴⁰ Robledo testified that Mackey is slow in doing his work, and is so forgetful that Robledo must remind him several times each day what he is supposed to do or what he has forgotten to do. Further, according to Robledo, Mackey always complains, or "nags" about the amount of work he is given and his inability to complete it. Indeed, Mackey admitted he has always had trouble getting things done in the afternoon ever since he started working for FMC; that he sometimes receives help from other employees or supervisors; and that when he complains to Robledo about his inability to

consistent with the testimony of Drake and Robledo, Mackey also testified that the lunch break change has enabled him to keep up with the trays and dishes on the conveyor belt: "...when I have an early lunch, I can keep up with it, but when I had [lunch] before at 1:30 I couldn't."

I credit the testimony of Drake and Robledo. Both gave convincing accounts of the rationale for changing Mackey's lunch break. Further, although Mackey can not always complete all the jobs assigned to him, it is clear that he has not been warned or reprimanded or otherwise counseled for any work-related deficiencies; rather, he is simply advised to do the best he can. Also, it is noteworthy that no other employees have suffered adverse consequences because of their union activity, and it is unlikely that FMC would single out Mackey as the sole recipient of discriminatory treatment.⁴¹ I shall dismiss this allegation of the complaint.

Alleged unlawful negative appraisal to Paula Souers: The complaint alleges that Drake issued Souers an unwarranted negative appraisal and restricted her from speaking to her coworkers. On August 10, approximately 10 days after Souers was asked to leave the kitchen by Supervisor Otero, *supra*, Drake presented Souers with her annual job performance evaluation. Also present during the meeting was Nutrition Services Director Sheila Walsh, who had been hired only four days earlier. Drake invited Walsh to the meeting so that she could observe how Drake performed annual evaluations. Drake, who described Souers as a good employee and wrote many complimentary comments about Souers in other sections of the evaluation, gave her a lower rating ("needs improvement") on one portion of the evaluation, stating under the commentary section:

You understand patient confidentiality.⁴² You recorded a staff meeting without permission from the personnel attending which is against HR. Policy 10-4: "No employee will tape record a meeting or any other conversation that occurs in the work place without the express written or verbal consent of all attendees of the meeting or participants in the conversation. Failure to do so will result in disciplinary action."⁴³ You need to conduct off work business in public areas and not interfere with employees during their shifts.

Souers testified that she asked Drake what she meant by the sentence, "You need to conduct off work business in public areas and not interfere with employees during their shifts." Drake replied, according to Souers, "that means you cannot come into the kitchen when you're not scheduled for work." Souers disagreed, saying she could be in the kitchen while off-duty so long as she had her employee badge and identification. Drake said no. And Drake further said, according to Souers, that Souers was not permitted in the café, apparently meaning the cafeteria, on her days off, and that Drake

do everything that is expected of him, Robledo does not give him warnings or reprimands, but simply tells him to do the best he can.

⁴¹ Mackey complains that the change to his lunch schedule has lessened by 15 minutes the time he has to socialize with his friends at 1:30 p.m. While this may be correct, it simply is an incidental consequence of the more pressing considerations set forth above.

⁴² This is a positive rather than negative evaluation.

⁴³ There is no complaint allegation regarding this incident, and no suggestion by the General Counsel that this criticism of Souers was unwarranted.

didn't want her talking to Shawn White, another union supporter, who works in the grill area of the cafeteria, or Richard, apparently another union supporter, who works in the sandwich area of the cafeteria.

Drake and Walsh testified that Drake did not make the forgoing remarks attributed to her by Souers. I credit their testimony. Both Drake and Walsh appeared to be forthright witnesses with clear recollections of the 30-minute meeting. Further, it is highly unlikely that Drake, who knew Souers to be one of the Union's most active proponents, would have formulated special exclusionary and no-talking rules, applicable only to Souers and no other employees, that are patently contrary to the established work rules for kitchen employees.

I find the negative appraisal issued by Drake to Souers was warranted as a result of Souers's disregard for well-established and lawful work rules that limited kitchen conversation between on-duty and off-duty kitchen employees to relatively brief exchanges. I do not find, as the General Counsel contends, that by counseling Souers to "conduct off work business in public places and not interfere with employees during their shifts," Drake was referring solely to union solicitation. Rather, I conclude that Drake was referring to the 30-minutes Souers spent in the kitchen during which time, regardless of the nature of Souers' "off work business," Souers was interfering with the work of kitchen employees. I further find that Drake did not impose other restrictions on Souers or tell her she could not speak to other employees who worked in the cafeteria. I shall dismiss these allegations of the complaint.

5. Additional Alleged Violations by FMC/Sodexho

A. Alleged Section 8(a)(1) Violations

Alleged surveillance of Barbara Mesa and others: As noted above, Barbara Mesa, an outspoken union advocate, would conspicuously spend her 30-minute lunch period and two 15-minute breaks every day at a table in the cafeteria, socializing and engaging in union-related business with Union Organizer Scott Barnes and other employees. Mesa testified that one day while she was with Barnes at the union's table in the cafeteria, she observed EVS Director Vivian Kasey, who was some 20 feet away from Mesa's table, standing with her arms crossed, looking at Mesa with an "I see you" expression on her face, apparently intended to indicate disapproval of Mesa's association with the Union. This unnerved Mesa to the point that Mesa moved to the other side of the table so that her back was turned toward Kasey and she "wouldn't feel her watching."

Kasey, a Sodexho employee who was no longer working at the hospital at the time of the hearing, was unable to testify in this proceeding because of medical problems. However, in her comprehensive Board affidavit⁴⁴ Kasey generally denies intentionally singling out or staring at Mesa in the cafeteria. Record evidence shows that the personal and/or working relationship between Kasey and Mesa, at least from Mesa's

⁴⁴ Pursuant to Respondents' motion, and over the General Counsel's objection, I determined it abundantly clear, as documented by her physician, that Kasey was unable to testify as a result of a serious medical condition. Accordingly, I received Kasey's Board affidavit, dated December 21, 2007, in evidence, and made it a part of the record as substantive evidence in lieu of her testimony.

perspective, was strained. Indeed, Mesa had recently stepped down from the position of a supervisory lead housekeeper because of a disagreement with Kasey, who according to Mesa, waived her badge in Mesa's face and asserted her authority over Mesa, saying, "That is why I am the director and you are not."

I shall dismiss this allegation of the complaint. Although I credit Mesa's testimony, I am unable to conclude that Kasey's preoccupation with Mesa was, under the circumstances, union-related rather than work-related.

Alleged surveillance and monitoring of Barbara Mesa: As noted, Mesa spent her lunch periods and all of her break periods in the cafeteria at the union table. It was not required that employees clock out or in for lunch or their breaks. Mesa testified that near the beginning of April, her day-shift lead, Bernice Valencia, a supervisory FMC employee, approached her one day after lunch and said, "Vivian [Kasey] told me to come and tell you that you are exceeding your breaks in the cafeteria, it was along the lines, with the Union people." Mesa said, "Yeah, right. I haven't been. I know there is (sic) [surveillance] cameras" in the cafeteria. Valencia, according to Mesa, agreed, saying, "I know you haven't been."

Valencia did not testify in this proceeding. Kasey's affidavit states that from time to time she would have Valencia relay messages to employees, and does recall personally warning a number of employees during the course of monthly staff meetings that they were exceeding their break and lunch periods; however, she does not recall sending Valencia to speak directly with Mesa regarding this matter.

I credit the testimony of Mesa. As both Mesa and her supervisor, Valencia, agreed that Mesa had not been exceeding her breaks, I find that the cautioning or reprimand was unwarranted and that Mesa could reasonably believe it was motivated by her activities on behalf of the Union. Also, I find that by implying Mesa's conduct was being monitored, whether or not this was the case, Kasey created the impression of engaging in surveillance of Mesa while she was engaged in union activities at the union table in the cafeteria. Therefore, I find that by such conduct FMC, through Kasey as FMC's agent, has violated Section 8(a)(1) of the Act.

Alleged warning to Melissa Demmer and Barbara Mesa: Melissa Demmer, a housekeeper, testified that in mid-July, Kasey approached her as she was eating lunch in the cafeteria at the union table with Mesa and Union Representative Barnes. According to Demmer, Mesa was generally known as Barne's "sidekick." Demmer testified that Kasey came over, looked around, and then, while looking directly at Demmer said, "Be careful about who you hang around," adding, "Unions are corrupt."

Mesa testified regarding the same incident: Mesa waived to Kasey, and Kasey approached the union table. Prefacing her remarks with the explanation that she could say whatever she wanted as she only had three days left to work, Kasey then told Demmer "to be careful who she hung out with or which side she picked or something along those lines, because they could get you in trouble." Mesa replied in Demmer's defense that Demmer was an intelligent person and could make an informed decision. Kasey suggested that Demmer come and talk to her in her office.

Kasey's affidavit states:

I do not recall any date near the time I was departing FMC in 7/2007, in which I approached the union table in the cafeteria and had some interaction or discussion with employees at that table. I did not warn people to be careful who they hang out with or suggest to any FMC worker that they could get in trouble for hanging around at the union table or for being seen with the union supporters.

I credit the testimony of Demmers and Mesa and find that Demmers could reasonably interpret Kasey's remarks to be a cautionary warning to Demmers that her association with union advocates could adversely affect her in an unspecified manner. Further, I find Kasey's statement also constitutes a similar, albeit indirect, admonition to Mesa. By such conduct, FMC, through Kasey as FMC's agent, has violated the Act as alleged.

Alleged unlawful surveillance and interrogation by Manager Linda Keeler: The complaint alleges that in January 2008, Linda Keeler, a Sodexho manager, engaged in surveillance of Mesa, and unlawfully interrogated Mesa regarding an incident in the break room. Mesa testified that another employee informed Mesa that Keeler "just took a picture of you guys in the break room." Later that day Mesa asked Keeler about this. Keeler, according to Mesa, explained that she had tried to take a picture but the camera didn't work, and asked who told Mesa that. Mesa said it didn't matter who told her that.

Keeler testified that six employees, not including Mesa, were in the break room when they should have been working. She told the six employees it was time to get back to work, and conspicuously pretended to take a picture of them with her cell phone camera as the photo would capture the clock on the wall and document that they were sitting in the break room at a time they should have been working. Mesa was not in the room. I credit Keeler's testimony. Moreover, as there was no union activity or protected-concerted activity involved in this scenario, Keeler's question to Mesa appears to be no more than an innocent, spontaneous query that could not reasonably be regarded as unlawful interrogation. I shall dismiss this allegation of the complaint.

B. Alleged Section 8(a)(3) Violations

Alleged unlawful changing of Barbara Mesa's work schedule: The complaint alleges that FMC and Sodexho discriminated against Mesa by denying her vacation request and changing her work schedule. Thus, after her union activity was widely known, Mesa was required to work forty hours per week, and in addition, to work every weekend. FMC and Sodexho maintain that denying Mesa's vacation request and changing her work schedule were in accordance with FMC's personnel policies that were applied in a similar manner to all employees.

On June 18, Joe Brown, a Sodexho employee, assumed Kasey's position and became interim director of housekeeping. At that point Brown became responsible for that department's 64 full-time employees. Alice Colorado continued to be the department secretary, and Linda Keeler continued to be a day shift supervisor. Kasey, who was leaving the position, oriented Brown into the day-to-day things he needed to know to successfully continue running the department.

Brown soon learned of Mesa's support for the Union. Prior to Brown's tenure Mesa had voluntarily stepped down as a supervisory lead housekeeper and had become the only relief housekeeper. Brown testified he believed Mesa to be a highly proficient and skilled employee, and sometime prior to July 4, asked Mesa if she would help out as a lead over the July 4 holiday period. Mesa declined, explaining she could not do so because she supported the Union.

As Brown became more familiar with problems in the department, it became apparent that more housekeepers needed to be hired. The current housekeepers were working considerable amounts of overtime, thereby increasing the department's expenditures, and the hospital was not being kept as clean as possible due to lack of personnel coupled with inefficient scheduling of the workforce. In Brown's view, the scheduling of housekeeping employees seemed more to benefit the requests of the employees rather than the needs of the hospital. His end goal was to have people working to benefit the needs of the hospital, rather than vice-versa.

Scheduling of employees, according to Brown, had to be fair, balanced and consistent; and having the correct number of people working each day, so that all the areas of the hospital could be cleaned on a daily basis, would also make the hospital cleaner. When he started in June there were 15 positions open, and he hired as many employees as he could. From July 10 to August 28 he hired a minimum of ten housekeepers, and when he left in October only one position remained open.

Mesa, as a supervisor under Kasey, had worked every other weekend. On the weekends she did not work she also had the following Monday off, thus in effect having a three day weekend every other week.⁴⁵ Further, apparently as an accommodation to her, Kasey permitted Mesa to work 32 rather than 40 hours per week. After Mesa stepped down as a supervisor, becoming the only relief housekeeper, she continued working the same schedule she had worked as a supervisor. Relief housekeepers or "floaters," are employees who do not have regularly assigned areas to clean.

After July 10, Brown hired at least four additional relief housekeepers. They were required to work each weekend in order to fill in for other non-relief employees who had the weekend off and, insofar as the record shows, were required to work 40 hours per week. Similarly, Mesa, also a relief housekeeper, was assigned weekend shifts and a 40-hour workweek. Brown testified it would have been unfair to the other floaters to require them, but not Mesa, to work every weekend, and that Mesa's schedule was changed to benefit the hospital. Mesa complained about the change, and Brown offered her a position as regular housekeeper with an assigned area to clean; this position would permit Mesa to have every other weekend off. He also told her that if she wanted to remain a relief housekeeper, she would have to work every weekend, but could pick her successive two days off during the week. However, in either event, Mesa would have to work 40 hours per week. Mesa declined both offers. There is no showing that Brown has permitted any other housekeepers, whether regular or relief, to work less than 40 hours per week.

⁴⁵ The Respondents' brief acknowledges that Brown's testimony in this regard was incorrect, and that Brown erroneously testified Mesa had, in effect, a four-day weekend off every other week.

Brown testified that Mesa also complained to him in mid-July that her vacation request, submitted July 10 for a vacation extending from July 22 to July 29 in order to attend her daughter's softball tournament in Phoenix, had been denied by her supervisor, Keeler. Mesa requested that Brown overrule Keeler's denial. Brown discussed the matter with Keeler and agreed with Keeler that Mesa's request should be denied as the hospital was short-staffed by 12 employees during the period Mesa wanted off. In accordance with FMC's practice, Mesa was given the option of finding a substitute, in which case her request would be granted. She did not find a substitute. According to Brown, other employees' vacation requests were also denied during the same time for the same reason.

I credit Brown's testimony. Brown gave cogent, persuasive reasons for taking the action he did, and there is no showing that Brown harbored any animosity toward Mesa. Brown, not Kasey, changed Mesa's work schedule and affirmed the decision to deny Mesa's vacation request. Brown was determined, I find, as the new interim director of housekeeping, to treat all employees similarly, and to apply FMC's personnel policies equally and in accordance with the best interests of the hospital. He was unwilling to make exceptions or to give Mesa or any other employee preferential treatment. I shall dismiss these allegations of the complaint.

Alleged unlawful discharge of Michael Conant: The complaint alleges that FMC/Sodexo discharged Michael Conant, a housekeeping employee, because of his activity on behalf of the Union. Conant, who cleaned rooms after patients were discharged, worked for FMC for 2 years. Insofar as the record shows, the only union activity attributable to Conant is the fact that he wore a union button at work during July, the last month of his employment. He had had a poor attendance record prior to his wearing a union button, and had received several corrective actions under FMC's no-fault absenteeism policy, including a verbal warning, a written warning, and a three-day suspension. Then, after a series of 4 unscheduled absences from May 18 to July 27, he was discharged by Brown on August 1. It appears unnecessary to discuss either Conant's absentee history or the parameters of FMC's absentee policy, as the General Counsel does not dispute the fact that Conant's absenteeism warranted his discharge in accordance with FMC's policy. However, the General Counsel maintains that, as demonstrated by an analysis of FMC's past practice, Kasey had not strictly adhered to FMC's absentee policy, and therefore Brown, too, should have been guided by Kasey's example.⁴⁶

As noted above, Brown took over Kasey's role as director of housekeeping for Sodexo. Assuming *arguendo* that during Kasey's tenure there was a lack of uniformity in her interpretation or implementation of FMC's absentee policy, the record shows that Kasey played no role in Conant's termination. Rather, the matter was brought to Brown's attention by Colorado, his secretary. The recommendation to discharge Conant was made by Brown and, after review, was approved by Schuler. Brown testified he acted in accordance with FMC's explicit absentee policy, and was not influenced by any union activity in which Conant may have been engaged. The record shows that Brown,

⁴⁶ The Respondents disagree with the accuracy of the General Counsel's analysis and the conclusions drawn therefrom, and further maintains there could be a variety of discrete reasons, including mere inadvertence or perhaps the press of more immediate departmental concerns requiring attention, underlying any inconsistencies in the enforcement of the policy.

from the inception of his tenure with FMC, attempted to enforce FMC's policies with consistency because it was important that all employees be treated equally. There is no showing that Brown has granted leniency to any employee who has failed to comply with FMC's absenteeism policy. I credit Brown's testimony. I shall dismiss this allegation of the complaint.

Alleged unlawful written warning to Haskielena Begay: The complaint alleges that FMC/Sodexo unlawfully issued housekeeping employee Haskielena Begay a written warning for having two unscheduled no-fault absences on successive days,⁴⁷ and, in addition, a three day suspension for failure to call in during one of those two days she was absent. These occurrences were brought to Brown's attention. Brown testified that when Begay returned to work he summoned her to his office in order to investigate the matter. Brown asked her what had happened over the weekend. Begay said she was not able to come in. Brown said he understood that on one of those days she was a "no call/no show," and advised her that a violation of this nature was a "big deal." Begay said she just didn't have her cell phone. Begay did not deny this conversation. Thereafter, Brown instructed Begay's supervisor, Keeler, a Sodexo manager, to issue the warning and the suspension. There is no question that the warning and suspension complied with FMC's absentee policy.

On Begay's next workday, shortly after she arrived at work, Keeler gave her the written warning, which Keeler had signed. Begay testified that she began wearing a union lanyard or button that very day, and that Keeler observed it with a look of disapproval as the two were speaking. Keeler denies this, stating she did not observe Begay wearing any union identification that day. Then, the record shows, it was not until several hours later, after Begay's union sympathies were allegedly known, that Keeler presented Begay with the second document, also signed by Keeler, advising Begay of her three-day suspension. Begay asked Keeler why she did not receive the two documents at the same time, and Keeler replied, according to Begay, "Well, I didn't know how to suspend people."

The General Counsel, acknowledging the initial warning had been prepared prior to the time Begay arrived at work, takes the position that Keeler and/or Brown had intended to give Begay only the single written warning, but then, within two hours of learning Begay was a union proponent, added a three day suspension as retaliation for her union activity. The warning and suspension are certainly related, and the record does not show why both the warning document and the suspension document were not given to Begay at the same time. I nevertheless credit Brown's testimony that he did not know of Begay's union activity at the time he instructed Keeler to issue the two documents. Brown, during his meeting with Begay, several days prior to the time she allegedly exhibited her preference for the Union, pointedly advised her that, in particular, he considered her no-call/no-show to be a "big deal." Nothing in the initial warning issued by Keeler referenced this fact. It is reasonable to conclude that from the outset, and not because of her union activity, Brown intended to impress upon Begay the seriousness of her infraction.⁴⁸ The suspension document issued to Begay is a written restatement of his succinct verbal admonition. Thus the document states, *inter alia*:

⁴⁷ Begay had previously received a verbal warning for absences.

⁴⁸ I credit Brown's testimony that he regarded Begay highly, and wanted to impress upon her the serious implications of her actions, as he did not want to lose her as an employee. Begay continued working in the housekeeping department until January

Haskielena must properly notify the department before the start of her shift. The department counts on her presents (sic) as an employee to be here or to call so we could fill her position in her absents (sic).

Haskielena absenteeism No Call No Show are considered very serious and may lead to termination if not Corrected. Haskielena should take this warning very seriously.

I find that the second document presented to Begay, incorporating her three-day suspension, was consistent with Brown's earlier admonition, and was not, as the General Counsel contends, an afterthought designed to punish Begay for supporting the Union. I shall dismiss this allegation of the complaint.

Conclusions of Law and Recommendations

1. FMC and is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.
2. Sodexo is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
3. The Unions are labor organizations within the meaning of Section 2(5) of the Act.
4. FMC has violated Section 8(a) (1) of the Act as found herein.

The Remedy

Having found the Respondent Flagstaff Medical Center, Inc., has violated and is violating Section 8(a)(1) of the Act, I recommend that it be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. I shall also recommend the posting of an appropriate notice, attached hereto as "Appendix."

ORDER⁴⁹

The Respondent, Flagstaff Medical Center, its officers, agents, successors, and assigns, shall:

2008, when she voluntarily accepted a position with FMA in another department as a patient care technician.

⁴⁹ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from:
 - (a) Interrogating employees about their union activity on behalf of the Communications Workers of America.
 - (b) Engaging in surveillance of employees or monitor their union activities.
 - (c) Warning employees that they should be careful about associating with union advocates.
 - (d) Telling employees that they should not discuss their wages with other employees.
 - (e) Threatening employees that if the Union negotiates a raise for employees, budgetary considerations would cause the layoff of recently hired employees.
 - (f) Prohibiting employees from engaging in union activity in the Emergency Department break room.
 - (g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the foregoing rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the purposes of the Act:
 - (a) Within 14 days after service by the Region, post at its Flagstaff, Arizona facility copies of the attached notice marked "Appendix."⁵⁰ Copies of the notice, on forms provided by the Regional Director for Region 28 after being duly signed by FMC's representative, shall be posted immediately upon receipt thereof, and shall remain posted for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by FMC to ensure that the notices are not altered, defaced, or covered by any other material.

⁵⁰ If this Order is enforced by a judgment of the United States Court of Appeals, the wording 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."

(b) Within 21 days after service by the Regional Office, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that FMC has taken to comply.

Dated: May 20, 2009.

Gerald A. Wacknov
Administrative Law Judge

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 a 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 interrogate employees about their union activity on behalf of the Communications Workers of America.

WE WILL NOT engage in surveillance of employees or monitor their union activities.

WE WILL NOT warn employees that they should be careful about associating with union advocates.

WE WILL NOT tell employees that they should not discuss their wages with other employees.

WE WILL NOT threaten employees that if the Union negotiates a raise for employees, budgetary considerations would cause the layoff of recently hired employees.

WE WILL NOT prohibit employees from engaging in union activity in the Emergency Department break room.

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

FLAGSTAFF MEDICAL CENTER, INC.
(Employer)

Dated:

By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

2600 North Central Avenue, Suite 1800

Phoenix, Arizona 85004-3099

Hours: 8:15 a.m. to 4:45 p.m.

602-640-2160.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 602-640-2146.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

FLAGSTAFF MEDICAL CENTER, INC.

and Case Nos. 28-CA-21509
28-CA-21637
28-CA-21664

COMMUNICATION WORKERS OF
AMERICA, LOCAL UNION 7019, AFL-CIO

and Case No. 28-CA-21548

NATIONAL NURSES ORGANIZING
COMMITTEE/CALIFORNIA NURSES
ASSOCIATION (NNOC/CNA)

FLAGSTAFF MEDICAL CENTER, INC.,
and SODEXHO AMERICA, LLC, as Joint
Employers

and Case Nos. 28-CA-21704
28-CA-21728

COMMUNICATION WORKERS OF
AMERICA, LOCAL UNION 7019, AFL-CIO

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