

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**SAN MIGUEL HOSPITAL CORP. d/b/a
ALTA VISTA REGIONAL HOSPITAL**

and

**Cases 28-CA-21896
28-RC-6518**

**DISTRICT 1199NM, NATIONAL UNION
OF HOSPITAL AND HEALTHCARE EMPLOYEES**

**ACTING GENERAL COUNSEL'S MOTION REQUESTING SPECIAL
PERMISSION TO AMEND COMPLAINT TO REFLECT
THE BOARD'S RECENT CERTIFICATION AND
CHARGING PARTY'S RENEWED REQUEST FOR BARGAINING
PURSUANT TO THE NEW CERTIFICATION**

Counsel for the Acting General Counsel (General Counsel) files this motion requesting special permission to amend complaint (Complaint) to reflect the Board's recent certification and Charging Party's renewed request for bargaining made pursuant to the new certification. The General Counsel seeks to amend the Complaint which issued on May 15, 2008, by adding the following paragraphs:

- 5(b) On September 30, 2010, the Union was certified as the exclusive collective-bargaining representative of the Unit.
- 6(c) On December 10, 2010, the Union, by letter, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit. A copy of the December 10, 2010 letter is appended hereto as Exhibit C.
- 6(d) Since on or about December 10, 2010, the Respondent, by failing to respond to the Union's letter described in 6(c) above, has been refusing to bargain with the Union.

6(e) Since on or about March 12, 2008, and again on December 10, 2010, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

The Acting General Counsel being granted permission to amend the Complaint for this purpose will allow the Board and reviewing courts to have a full and complete record in light of the Board's recent order recertifying the Charging Party as exclusive collective-bargaining representative of employees of Respondent. In support of its Motion, the Acting General Counsel states the following:

I. BACKGROUND

A. History of Representation Petition Filed in Case 28-RC-6518

On April 10, 2007, the Charging Party filed a petition in Case 28-RC-6518 seeking to represent certain unit employees employed by Respondent. On June 21, 22, and 23, 2007, an election was conducted by an agent of the Board among employees of Respondent in units found appropriate for collective bargaining pursuant to a Decision and Direction of Election that issued by the Regional Director of Region 28 on May 25, 2007. The request for review filed by Respondent was denied by a three-member panel of the Board on August 2, 2007. The final tally of ballots for the election reflected that a majority of the votes cast were for the Charging Party. On August 16, 2007, pursuant to objections filed by Respondent, a hearing was held on September 19, 2007. On November 2, 2007, the Hearing Officer issued a report overruling Respondent's objections. On November 26, 2007, Respondent filed Exceptions to the Hearing Officer's Report on Objections. Respondent took exception to the Regional Director's and Hearing Officer's requirement that Respondent file any exceptions to the Hearing Officer's Report directly with the Board and the Hearing Officer's refusal to allow

Respondent to present evidence concerning the appropriate scope of the unit for the election.

On March 4, 2008, the Board denied Respondent's exceptions and issued a Decision and Certification of Representative adopting the Hearing Officer's findings and recommendations.

B. Respondent's Attempts to Test the Validity of Certification of Representative

On May 15, 2008, based on a charge filed by the Charging Party regarding Respondent contesting the Charging Party's certification as bargaining representative in the underlying representation proceeding in Case 28-RC-6518, a Complaint and Notice of Hearing issued in Case 28-CA-21896 alleging Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain with the Charging Party as the exclusive collective-bargaining representative of the respective units of employees of Respondent. On June 8, 2008, the Board issued a Decision and Order granting the General Counsel's Motion for Summary Judgment and found Respondent had not raised any representational issue that was properly litigable in the unfair labor practice proceeding.

C. Challenges Made by Respondent to Certification and Decision of the Board Pursuant to the Decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010)

On July 14, 2008, Respondent filed a Petition for Review with the United States Court of Appeals for the District of Columbia, seeking to have the Court vacate the Certification of Representative in Case 28-RC-6518 and deny the Board's Order in Case 28-CA-21896 finding that Respondent had failed to bargain with the Charging Party in violation of Section 8(a)(5) of the Act. On September 20, 2010, the Court granted the Petition for Review in accordance with the decision issued in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010), on the basis that the certification and the order were invalid because they had been issued by a two-member panel of the Board rather than by one with at least three members.

On September 24, 2010, the Court remanded the cases to the Board for further proceedings consistent with the Supreme Court's *New Process Steel* decision. On September 30, 2010, a three-member panel of the Board issued another Certification of Representation in Case 28-RC-6518 and a Notice to Show Cause as to why the Board should not grant General Counsel's Motion for Summary Judgment in Case 28-CA-21896.

II. DISCUSSION

In its September 30, 2010 Decision and Certification of Representative, the Board granted the General Counsel leave for 10 days to amend the Complaint in Case 28-CA-21896 to conform with the current state of the evidence. The General Counsel did not amend the Complaint during that designated time period because nothing had changed regarding Respondent's alleged unlawful conduct. At the time, Respondent had refused and continued to refuse to bargain with the Union.

New evidence regarding the Charging Party's pursuit of bargaining with Respondent has arisen since the passage of the Board's 10-day leave period. Specifically, on December 10, 2010, the Charging Party sent Respondent a letter requesting Respondent bargain with the Charging Party as the exclusive collective-bargaining representative of certain employees employed by Respondent pursuant to the new Certification that issued by the Board on September 30, 2010. A copy of this December 10, 2010 letter to Respondent from the Charging Party is attached as Exhibit A. Again, as with the requests made after the previous certification, Respondent has continued to refuse the Charging Party's requests to bargain.

For the Board to issue a cogent, well-reasoned decision that a Court of Appeals will uphold, the Board's decision must be supported by substantial evidence on the record as a

whole, and have a “reasonable basis in law.” *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 131 (1944). Substantial evidence is “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477, (1951) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

Here, the General Counsel offers evidence that shows the Charging Party has recently made a new request for bargaining with Respondent in conjunction with the Board’s Certification of Representative that issued on September 30, 2010. This new evidence, along with that already present in the record, shows that Respondent refuses and continues to refuse to bargain with the Charging Party despite numerous requests it do so pursuant to both the first Certification of Representative that issued by the Board on March 4, 2008, and the new one that was issued by the Board on September 30, 2010. The General Counsel seeks to amend the Complaint to reflect this new evidence so that the record before the Board regarding renewed requests and refusals to bargain can be complete. A copy of an affidavit taken from Charging Party President that addresses this new request to bargain is attached as Exhibit B.

III. CONCLUSION

Based on the foregoing, the General Counsel respectfully moves for special permission to amend the Complaint in this matter to reflect the Board’s most recent Certification of Representation and to reflect the renewed but unanswered requests for

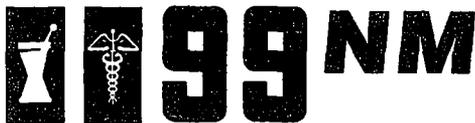
bargaining that have been made to Respondent by the Charging Party pursuant to this new Certification of Representation by the Board.

Dated at Albuquerque, New Mexico, this 14th day of December 2010.

/s/ David T. Garza

David T. Garza
Counsel for the Acting General Counsel
National Labor Relations Board
421 Gold Avenue, Suite 310
P.O. Box 567
Albuquerque, New Mexico 87103-0567

DISTRICT



National Union of Hospital and Health Care Employees
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130 Alvarado Dr. NE • Suite 100
Albuquerque, New Mexico 87108
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www.nmhospitalworkersunion.com



December 10, 2010

Mary Dell Acosta, CEO
Alta Vista Hospital
104 Legion Dr.
Las Vegas, NM 87701

Dear Ms. Acosta,

Following the most recent NLRB decision certifying District 1199NM as the collective bargaining agent for Alta Vista Hospital, District 1199NM demands that bargaining begins immediately. Please notify us of potential dates for negotiations.

Sincerely,

A handwritten signature in cursive script that reads 'Fonda Osborn'.

Fonda Osborn, District President
130 Alvarado Dr. NE
Albuquerque, NM 87108



Exhibit A

County of Bernalillo)
) SS
State of New Mexico)

Case 28-CA-21896

Confidential Witness Affidavit

I, Fonda Osborn, being first duly sworn upon my oath, hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

My office address is located at 130 Alvarado Drive NE, Suite 100 Albuquerque, New Mexico 87108-1602. My office telephone number is (505) 884-7713. I am currently serving as District President of National Union of Hospital and Health Care Employees, District 1199NM, herein the Union. I have served in this position since July 2008. My duties as District President of the Union include monitoring employer adherence to the collective bargaining agreements various employers have with the Union. I also participate in contract negotiations with employers who the Union has a collective bargaining relationship. I also perform other duties that encompass representing all of the employees represented by the Union, process grievances, handle day to day business of the District, and do some organizing.

I am familiar with an employer known as San Miguel Hospital Corporation d/b/a Alta Vista Regional Hospital, herein the Employer. The Employer operates a hospital in Las Vegas, New Mexico. The Union is currently the exclusive collective bargaining representative for certain employees employed by the Employer. Specifically, the employee unit includes all full-time and regular part-time professional employees working at the Employer's hospital located in Las Vegas, New Mexico, including registered nurses, registered nurses rotating team leaders, registered nurse case managers, licensed practical nurse case managers, cardiac catheterization laboratory supervisors, medical technologists, nuclear medicine technicians, pharmacists,

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Exhibit B

registered pharmacists, occupational therapists, physical therapists, registered respiratory therapists, speech pathologists, and other nonprofessional employees, including all technical employees, skilled maintenance employees, business office employees, and other nonprofessional employees, and, per diem employees averaging four or more hours of work per week for the last quarter prior to the eligibility date.

On April 10, 2007, the Union filed a representation petition in Case 28-RC-6518 seeking to represent the unit employees employed by the Employer that I described above. The Union won the election conducted by the National Labor Relations Board (Board) that was held on June 21, 22, and 23, 2007. The Employer filed objections to the election. On March 4, 2008, the Board overruled the Employer's objections and issued a Certification of Representation that certified the Union as the exclusive collective-representative of the unit employees.

The Employer never honored the Board's certification decision. Shortly after the Board's certification decision on March 4, 2008, the Union sent the Employer a letter dated March 11, 2008 requesting the Employer recognize the Union as the exclusive collective-bargaining representative of the unit employees and to bargain collectively with the Union regarding their terms and conditions of employment. The Employer responded by letter dated March 12, 2008 informing the Union that pending the court review of the Board's certification decision, the Employer was refusing to bargain with the Union.

The Union made other requests to the Employer since the March 4, 2008 certification to meet and bargain for a new contract but these requests were ignored and unanswered by the Employer. I sent the Employer a letter on December 9, 2010 requesting that the parties meet and negotiate for a new contract and that the Employer provide an updated list of employees and employees that had been separated since the certification. I informed the Employer that the Union was ready and available to negotiate. The Employer never responded to my letter. The Union never received a

response to its letter from the Employer. I am including with my affidavit a copy of the December 9, 2010 letter I sent to the Employer as Exhibit A.

On July 19, 2010, I again made a request to the Employer that the parties meet and bargain for a new contract and again asked the Employer for an updated list of employees and employees that had been separated since the certification. The Employer never responded to my letter. The Union never received a response to its letter from the Employer. I am including with my affidavit a copy of the July 19, 2010 letter I sent to the Employer as Exhibit B.

Through litigation that was brought on by the Employer, the Board's Certification of Representative that issued on March 4, 2008 was vacated by the Court of Appeals because it had only been issued by two Board members. The matter was sent back to the Board in September 2010 to consider the certification issue with a Board that had more than two members. During this whole process, the Employer did not alter its position and continued to refuse the Union's request to bargain over the terms and conditions of employment for unit employees.

On September 30, 2010, the Board issued another Certification of Representation in Case 28-RC-6518. The Board issued this decision with three members. Pursuant to this new certification, on December 10, 2010, I sent a letter to Employer Chief Executive Officer (CEO) Mary Dell Acosta. The letter stated that following the most recent NLRB decision certifying the Union as collective-bargaining agent for the Employer's employees, the Union demanded that the Employer bargain immediately with the Union. I also asked in the letter that the Employer provide the Union with potential dates for negotiations. I sent this letter to the Employer by certified mail on December 10, 2010. I am including with my affidavit a copy of the December 10, 2010 letter I sent to CEO Mary Dell Acosta as Exhibit C.

The Union has not given up its attempts to represent the unit employees employed by the Employer that are involved with 28-RC-6518. The Union wants the

new Certification of Representative that was issued by Board on September 30, 2010 to be recognized and honored by the Employer. The Union still wants the Employer to collectively bargain with the Union over the terms and conditions of employment for the unit employees the Union has been certified to represent.

The Union has made its most recent request to the Employer to bargain with the Union pursuant to the Board's Certification of Representative that issued on September 30, 2010 because it firmly believes it is the exclusive collective-bargaining representative of the unit employees and because the Union wishes to act in this capacity for represented unit employees. Since the Board issued its first Certification of Representative on March 4, 2008, the Employer has failed to bargain with the Union despite numerous requests it do so. The Union did not make its new request to bargain after the September 30, 2010 certification until December 10, 2010 because it was unsure if the first certification issue had been fully litigated by the parties. Even so, the Employer has refused and continues to refuse to bargain with the Union since the new Certification of Representative issued on September 30, 2010. To date all of the Union's requests to bargain have been refused, denied, and/or not responded to by the Employer.

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I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make any changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 5 pages, including this page, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.


Fonda Osborn

Subscribed and Sworn to Before me at Albuquerque, New Mexico this 13th day of December 2010.



David T. Garza, Board Agent
National Labor Relations Board

DISTRICT



National Union of Hospital and Health Care Employees
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130 Alvarado Dr. NE • Suite 100
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www.1199nm.com



December 9, 2009

Richard Grogan, CEO
Alta Vista Regional Hospital
104 Legion Dr.
Las Vegas, New Mexico 87701

RE Request for negotiations

Dear Mr. Grogan,

As you are aware in a decision dated December 2, 2009 the National Labor Relations Board (NLRB) has ruled in favor of the National Union of Hospital and Health Care Employees, District 1199NM

I am writing to inform you that since our certification we have been prepared and ready to commence bargaining for a collective bargaining agreement. This letter serves as a request to negotiate on behalf of the workers who are currently employed at your facility.

Additionally the union is requesting an updated list of employees, and a list of employees that have been separated since our certification. I am requesting dates you are available to begin contract negotiations February, 2010. Please let me know who will be acting as the lead negotiator for the hospital so that I may contact him/her to schedule dates for negotiations.

Please contact me at your earliest convenience. I will make every attempt to meet with you soon after. I await your response.

If you have questions feel free to call me at 884-7713.

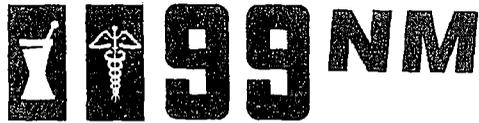
Sincerely,

Fonda Osborn, President
NUHCE District 1199NM



Exhibit A

DISTRICT



National Union of Hospital and Health Care Employees
AFSCME / AFL-CIO
130 Alvarado Dr. NE • Suite 100
Albuquerque, New Mexico 87108
Phone: (505) 884-7713 • Fax: (505) 884-7667
www.1199nm.com



July 19, 2010

Richard Grogan, CEO
Alta Vista Regional Hospital
104 Legion Dr.
Las Vegas, New Mexico 87701

RE Request for negotiations

Dear Mr. Grogan,

As you are aware in a decision date June 11, 2010 the National Labor Relations Board (NLRB) has ruled in favor of the National Union of Hospital and Health care Employees, District 1199NM.

I am writing to inform you that since our certification we have been prepare and ready to commence bargaining for a collective bargaining agreement. This letter serves as a request to negotiate on behalf of the workers who are currently employed at your facility.

Additionally the union is requesting an updated list of employees, and a list of employees that have been separated since our certification. I am requesting dates you are available to begin contract negotiations. Please let me know who will be acting as the lead negotiator for the hospital so that I may contact him/her to schedule dates for negotiations.

Please contact me at your earliest convenience. I will make every attempt to meet with you soon after. I await your response.

Sincerely,

Fonda Osborn, President
NUHHCE District 1199NM



Exhibit B

DISTRICT



National Union of Hospital and Health Care Employees
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December 10, 2010

Mary Dell Acosta, CEO
Alta Vista Hospital
104 Legion Dr.
Las Vegas, NM 87701

Dear Ms. Acosta,

Following the most recent NLRB decision certifying District 1199NM as the collective bargaining agent for Alta Vista Hospital, District 1199NM demands that bargaining begins immediately. Please notify us of potential dates for negotiations.

Sincerely,

A handwritten signature in cursive script that reads 'Fonda Osborn'.

Fonda Osborn, District President
130 Alvarado Dr. NE
Albuquerque, NM 87108



Exhibit A handwritten symbol consisting of a stylized letter 'G' or a similar shape.

CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S MOTION REQUESTING SPECIAL PERMISSION TO AMEND COMPLAINT TO REFLECT THE BOARD'S RECENT CERTIFICATION AND CHARGING PARTY'S RENEWED REQUEST FOR BARGAINING PURSUANT TO THE NEW CERTIFICATION in SAN MIGUEL HOSPITAL CORP. d/b/a ALTA VISTA REGIONAL HOSPITAL in Cases 28-CA-21896 et al., was served via E-Gov, E-filing, e-mail and overnight delivery via United Parcel Service on this 14th day of December, on the following:

Via E-Gov E-Filing:

Lester A. Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

One Copy via e-mail on the following:

Don T. Carmody, Attorney at Law
134 Evergreen Lane
Glastonbury, CT 06033
E-mail: bryancarmody@bellsouth.net

Shane C. Youtz, Attorney at Law
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E-mail: shane@youtzvaldez.com

One Copy via overnight delivery:

San Miguel Hospital Corp. d/b/a
Alta Vista Regional Hospital
104 Legion Drive
Las Vegas, NM 87701

District 1199NM, National Union of
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E-Mail: nm1199@flash.net

/s/ Katherine Stanley

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