

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

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

and

Case 28-CA-21896

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

AMENDED COMPLAINT AND NOTICE OF HEARING

Upon a charge filed by National Union of Hospital and Healthcare Employees District 1199NM, herein called the Union, a Complaint and Notice of Hearing issued on May 15, 2008, against San Miguel Hospital Corp. d/b/a Alta Vista Regional Hospital, herein called the Respondent, alleging that it has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151, et. seq., herein called the Act. Based thereon the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Amended Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Union on April 29, 2008, and a copy was served by regular mail on the Respondent on the same date.
2. (a) At all material times the Respondent, a New Mexico corporation, with an office and place of business in Las Vegas, New Mexico, herein called the Respondent's facility, has been engaged in the operation of an acute care hospital.

(b) During the 12-month period ending April 29, 2008, the Respondent, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$250,000.

(c) During the 12-month period ending April 29, 2008, the Respondent, in conducting its business operations described above in paragraph 2(a), purchased and received at the Respondent's facility goods valued in excess of \$50,000 directly from points outside the State of New Mexico.

(d) At all material times the Respondent 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.

3. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times Richard Grogan held the position of the Respondent's Chief Executive Officer and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of the Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time professional employees, including registered nurses, registered nurse rotating team leaders, registered nurse case manager, licensed practical nurse case manager, cardiac catheterization laboratory supervisors, medical technologists, nuclear medicine technicians, pharmacists, 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, employed by the Respondent at its hospital located in Las Vegas, New Mexico; excluding all employees employed at clinics, physicians, registered nurse permanent team leaders, house supervisors, human resource assistants, executive assistants, medical staff coordinator, staffing coordinator, confidential employees, guards and supervisors as defined in the Act.

(b) On June 21 through June 23, 2007, a representation election was conducted among the employees in the Unit in which a majority of employees voted for representation by the Union.

(c) On March 4, 2008, the Union was certified by a two-member panel of the Board as the exclusive collective-bargaining representative of the Unit.

(d) On September 30, 2010, the Union was certified by a three-panel of the Board as the exclusive collective-bargaining representative of the Unit.

(e) At all times since June 23, 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6. (a) On March 11, 2008, the Union, by letter, requested that the Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit. A copy of the March 11, 2008 letter is appended hereto as Exhibit A.

(b) On or about March 12, 2008, the Respondent, by letter from Richard Grogan, advised the Union that in order to obtain court review of the Board's decision related to the conduct of the election, the Respondent was refusing to bargain with the Union. A copy of the March 12, 2008 letter is appended hereto as Exhibit B.

(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.

(d) Since on or about December 10, 2010, the Respondent, has failed to respond to the Union's letter described in paragraph 6(c) above, and has refused to bargain with the Union.

(e) Since on or about March 12, 2008, and since on or about 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.

7. By the conduct described above in paragraph 6, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

8. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

The Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. **The answer must be received by this office on or before February 28, 2011, or postmarked on or before February 26, 2011.** Unless filed electronically in a pdf format, the Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on the **E-Gov tab**, select **E-Filing**, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on a date, time, and place to be later determined, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, the Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 14th day of February 2011.

/s/ Cornele A. Overstreet _____
Cornele A. Overstreet, Regional Director

Attachments

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
E-mail: eleanor@nmhospitalworkersunion.com



March 11, 2008

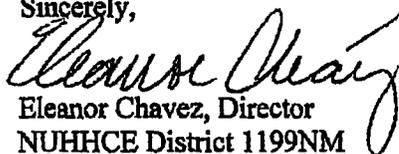
Richard Grogan, CEO
Alta Vista Regional Hospital
104 Legion Dr.
Las Vegas, New Mexico 87701

Dear Mr. Grogan,

As you are aware in a decision dated March 4, 2008 the National Labor Relations Board certified the National Union of Hospital and Health Care Employees Union District 1199NM as the exclusive bargaining representative for the employees at Alta Vista Regional Hospital. I am writing to inform you that we are prepared to commence bargaining for a collective bargaining agreement. 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.

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

Sincerely,


Eleanor Chavez, Director
NUHHCE District 1199NM



March 12, 2008

Eleanor Chavez, Director
District 1199NM, National Union of Hospital and
Healthcare Employees, A.F.S.C.M.E., AFL-CIO
130 Alvarado Drive, N.E. - Suite 100
Albuquerque, New Mexico 87108

Dear Ms. Chavez:

I received the email transmission of your undated letter, as well as your letter dated yesterday, March 11, 2008, informing us that you are prepared to commence bargaining toward a collective bargaining agreement, following the National Labor Relations Board's issuance last week of a "Certification of Representative" to your organization.

Since we disagree with the conduct of the election, we will continue to follow available processes to seek a court review of the NLRB decision. The National Labor Relations Act forces us to refuse to bargain so that we may obtain a court review. Since this is the *only* process we have to obtain a court review of the NLRB's decision, we will have to refuse to begin negotiating.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Grogan', written over a horizontal line.

Richard Grogan, Chief Executive Officer
Alta Vista Regional Hospital

3/17/08

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.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,

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

**UNITED STATES OF AMERICA
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SAN MIGUEL HOSPITAL CORP. d/b/a
ALTA VISTA REGIONAL HOSPITAL

and

NATIONAL UNION OF HOSPITAL AND
HEALTHCARE EMPLOYEES DISTRICT 1199NM

Case 28-CA-21896

DATE OF MAILING: February 14, 2011

AFFIDAVIT OF SERVICE OF: AMENDED COMPLAINT AND NOTICE OF HEARING with form
NLRB-4668 attached

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by postpaid certified mail upon the following persons, addressed to them at the following addresses:

San Miguel Hospital Corp., d/b/a
Alta Vista Regional Hospital
104 Legion Drive
Las Vegas, NM 87701
7001 0320 0000 2489 8828

Don T. Carmody, Attorney at Law
P.O. Box 3310
Brentwood, TN 37024-3310

District 1199NM, National Union of Hospital and
Health Care Employees, AFSCME, AFL-CIO
130 Alvarado Drive NE, Suite 100
Albuquerque, NM 87108-1602

/s/ Katherine Stanley

**Subscribed and sworn to before me this 14th day
of February 2011.**

DESIGNATED AGENT

/s/ Kathleen Smart

NATIONAL LABOR RELATIONS BOARD

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case: 28-CA-21896

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Las Vegas, NM 87701

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