

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

**CALIFORNIA NURSES ASSOCIATION,
NATIONAL NURSES ORGANIZING COMMITTEE**

and

Case No. 31-CB-12913

**HENRY MAYO NEWHALL
MEMORIAL HOSPITAL**

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
OPPOSITION TO RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT**

On June 3, 2011, Respondent served upon the parties its Motion for Summary Judgment (MSJ) and supporting papers that it filed on June 2, 2011. Respondent's MSJ should be denied because there are several genuine issues of material fact in dispute. *Board's Rules and Regulations*, §102.24 (b).

This case involves a printed statement entitled "The Weingarten Rights" on the cover of Respondent's collective-bargaining agreements with Henry Mayo Newhall Memorial Hospital (the Employer) and with other employers, presently unknown to Counsel for the Acting General Counsel. The Complaint alleges that the existence of this language on the cover of collective-bargaining agreements violates Section 8(b)(1)(A) of the Act because it erroneously implies that employees must request a representative of Respondent to accompany them to investigatory

interviews. (Complaint ¶¶ 6(f) and 7). The Complaint further alleges that to the extent that Respondent placed this language on its contracts without the consent or agreement of the respective employers, it constituted an alteration of the terms and conditions of the agreement in violation of Section 8(b)(3) of the Act. (Complaint ¶¶ 6(b)-(e), 8). Respondent denied that its conduct violated Section 8(b)(1)(A) or Section 8(b)(3) of the Act. (Answer ¶7-8).

Moreover, Respondent denied paragraph allegations containing operative facts central to a determination of the legal issues in this case. Respondent denied that it altered the terms and conditions of its agreement with the Employer by adding “The Weingarten Statement” to the cover of the contract without the consent or agreement of the Employer. (Complaint ¶¶6(b)-(c) (emphasis added); Answer ¶6(b)-(c)). Respondent’s *Statement of Undisputed Facts and Evidence* ignores these material facts. As material facts pertaining to the Respondent’s alteration of its collective-bargaining agreement with the Employer remain in dispute, summary judgment is not warranted.¹

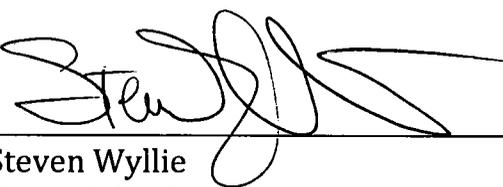
Respondent also denied all facts underlying the allegations pertaining to its collective-bargaining agreements with other employers. The Complaint alleges that Respondent violated Section 8(b)(1)(A) of the Act by maintaining “The Weingarten Rights” statement on the cover of collective-bargaining agreements between

¹ Deferral is inappropriate for several reasons. First, the issue in this case does not require the interpretation of the parties’ collective-bargaining agreement. Rather, the 8(b)(3) allegation is based upon Respondent’s action in unilaterally altering the terms and conditions of that agreement. Moreover, an arbitral award interpreting the agreement would not address the central issue underlying the 8(b)(1)(A) allegation – whether the mere existence of the language on the cover of the contract restrains and coerces employees in the exercise of their Section 7 rights. Finally, deferral to the arbitration process between the Employer and Respondent would not address the remaining allegations of the Complaint concerning the existence of “The Weingarten Statement” on Respondent’s agreements with other employers.

Respondent and other employers presently unknown to the Acting General Counsel. (Complaint ¶6(d)). Respondent denied this allegation, which is central to the 8(b)(1)(A) allegation. (Answer ¶6(d)). Respondent also denied the central factual allegation underpinning the 8(b)(3) allegation concerning other employers, *i.e.*, that Respondent altered the terms and conditions of collective-bargaining agreements it had with other employers, presently unknown to the Acting General Counsel, without those employers' agreement or consent. (Complaint ¶6(e); Answer ¶6(e)). Nor are these factual disputes addressed or otherwise resolved in Respondent's *Statement of Undisputed Facts and Evidence* which simply ignores them. Accordingly, material facts remain in dispute with respect to allegations concerning Respondent's collective-bargaining agreements with other employers. ²

Given the existence of genuine material facts that are in dispute, Respondent's motion for summary judgment should be denied.

Dated at Los Angeles, California, this 16th day of June, 2011.



Steven Wyllie
Counsel for the Acting General Counsel

² Respondent's reliance on *Brisben Development, Inc.*, 344 NLRB 400 (2005) in support of its contention that the Board must establish jurisdiction over each employer with which Respondent maintains a collective-bargaining agreement containing "The Weingarten Rights" statement is misplaced. That case dismissed allegations pertaining to a *respondent employer* over which jurisdiction had not been alleged or established. *Id.* at 401 (emphasis added). In the instant case, Respondent has admitted the factual basis over which the Board can exercise jurisdiction over Respondent. (Answer ¶ 2-3). The Board routinely orders labor organizations to take remedial action that extends to employees employed by employers other than the charging party employer without factual findings of jurisdiction over each individual employer. *See, e.g., International Association of Machinists and Aerospace Workers (L-3 Communications)*, 355 NLRB No. 174, slip op. at 8 (August 7, 2010) (Board order required respondent labor organization to cease and desist from requiring nonmember objectors covered under collective-bargaining agreements – not limited to agreement covering charging party – to annually renew their objections).

Re: *California Nurses Association*
Case No: 31-CB-12913

CERTIFICATE OF SERVICE

I hereby certify that I served the attached copy of the COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT on the parties listed below on the 16th day of June, 2011.

VIA E-FILE

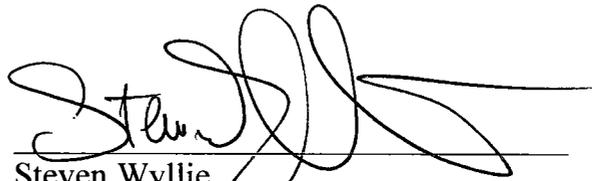
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