

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Washington, D.C.**

VERITAS HEALTH SERVICES, INC. d/b/a  
CHINO VALLEY MEDICAL CENTER

and

Cases: 31-CA-29713, 31-CA-29714,  
31-CA-29715, 31-CA-29716,  
31-CA-29717, 31-CA-29738,  
31-CA-29745, 31-CA-29749,  
31-CA-29768, 31-CA-29769,  
31-CA-29786, 31-CA-29936,  
31-CA-29965, and 31-CA-29966

UNITED NURSES ASSOCIATIONS OF  
CALIFORNIA/UNION OF HEALTH CARE  
PROFESSIONALS, NUHHCE, AFSCME, AFL-CIO

**EXCEPTIONS OF COUNSEL FOR THE ACTING GENERAL  
COUNSEL TO THE DECISION AND RECOMMENDED ORDER OF  
THE ADMINISTRATIVE LAW JUDGE AND BRIEF IN SUPPORT  
THEREOF**

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Pursuant to Section 102.46 of the Board's Rules and Regulations, Counsel for the Acting General Counsel respectfully files the following exceptions and brief in support of its exceptions to the decision and order of Administrative Law Judge William G. Kocol.

**EXCEPTIONS OF COUNSEL FOR THE ACTING GENERAL COUNSEL TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Exception	Page	Line	Text
1	N/A	N/A	<p>To the ALJ's failure to include in his Conclusions of Law that the Charging Party is, and has been at all relevant times, a labor organization within the meaning of Section 2(5) of the Act and that, at all times since April 2, 2010, the Union has been the exclusive collective-bargaining representative of the following unit of Respondent's employees for the purposes of collective bargaining:</p> <p style="padding-left: 40px;">All full-time, regular part-time and regular per diem registered nurses employed by the Employer at its 5451 Walnut Avenue, Chino, California facility in the following departments: Emergency Services, Critical Care Services/Intensive Care Unit, Surgery, Post-Anesthesia Care Unit, Outpatient Services, Gastrointestinal Laboratory, Cardiovascular Catheterization Laboratory, Radiology, Telemetry/Direct Observation Unit and Medical/Surgical.<sup>1</sup></p>
2	N/A	N/A	<p>To the ALJ's failure to include in his Order the remedy that the notice be read publicly by a responsible management official or by a Board agent in the presence of a responsible management official.</p>

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<sup>1</sup> Referred to herein as the Unit.

3	N/A	N/A	To the ALJ's failure to order that the Respondent cease and desist from unilaterally changing terms and conditions of employment of its employees in the Unit without providing the Union with notice of and the opportunity to bargain to agreement or good faith impasse over any proposed changes and that Respondent, before implementing any changes in wages, hours, or other terms and conditions of employment, notify and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the Unit.
4	N/A	N/A	To the ALJ's failure to find that the Respondent unlawfully threatened employees with discipline at its May 2010 meetings.
5	28-29	46-5	To the ALJ's failure to find that the Respondent violated Section 8(a)(5) by announcing a change to its shift switching policy.
6	4	36-37	To the ALJ's finding that "Ronald Magsino worked for Chino Valley from January 2005 until May 10, 2010."

**BRIEF OF COUNSEL FOR THE ACTING GENERAL COUNSEL IN  
SUPPORT OF EXCEPTIONS TO THE DECISION OF THE  
ADMINISTRATIVE LAW JUDGE**

**I. PROCEDURAL HISTORY**

This case was tried before the Honorable William G. Kocol on June 6 through June 10, 2011 and June 15, 2011, in Los Angeles, California, based on a Consolidated Complaint issued by the Regional Director for Region 31 on February 23, 2011 ("the Complaint"). (GC Ex 1(ww).)<sup>2</sup> The Complaint was

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<sup>2</sup> References to exhibits are abbreviated as "GC Ex," for GC Exhibits and "REx" for Respondent Exhibits, followed by the page number of the exhibit where applicable. References to the transcript are abbreviated as "Tr." followed by the name of the witness

based on unfair labor practice charges filed by United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSCME, AFL-CIO (“the Union”).

The Complaint alleges that Veritas Health Services, Inc. d/b/a Chino Valley Medical Center (“Respondent,” “Chino Valley,” or “the Hospital”) violated Section 8(a)(5) of the National Labor Relations Act (“the Act”) by unilaterally changing terms and conditions of employment of its employees in the Unit represented by the Union at its Chino, California facility, without providing the Union with notice of and the opportunity to bargain to agreement or good-faith impasse over any proposed changes and by failing to furnish the Union with information requested by the Union on April 9, 2010. The Complaint alleges that Respondent violated Section 8(a)(3) of the Act by disciplining employees and by discharging an employee because they engaged in activity on behalf of the Union. Finally, the Complaint alleges that Respondent violated Section 8(a)(1) of the Act by threatening to more rigorously enforce policies because employees engaged in Union activity; threatening to more closely monitor employees’ attendance and tardiness because of their Union activities; threatening employees with adverse consequences because of their Union activities; threatening employees that they would lose benefits because they voted for the Union; telling employees that

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whose testimony is being cited. When more than one page of a witness’s testimony is cited, the witness’s name follows the last of the citations to the transcript.

they cannot talk to the media or other third-parties about their protected concerted activities and/or working conditions; interrogating employees about their Union activities or support; serving employees and the Union with subpoenas requesting documents reflecting employees' Union support and/or activities; and by creating the impression that Respondent was engaging in surveillance of employees' protected concerted and/or Union activities.

On October 17, 2011, ALJ Kocol issued his Decision and Recommended Order ("ALJD") finding that Respondent committed numerous violations of Section 8(a)(5), (3) and (1) of the Act. ALJ Kocol found that Respondent violated the Act by:

- Threatening employees that it would close the facility and terminate employees if they selected a union;
- Threatening employees with loss of benefits if they selected the Union as their collective-bargaining representative;
- Coercively interrogating employees about their union activities;
- Impliedly threatening employees with layoffs if they supported a union;
- Telling employees that they might lose the family atmosphere and flexibility of scheduling at Chino Valley if they selected the Union;
- Giving employees the impression that their union activities are under surveillance;
- Threatening to discipline employees because they engaged in union activities;
- Informing employees that they could no longer take vacations longer than 2 weeks because the employees had selected the Union to represent them;
- Telling employees that the family atmosphere at Chino Valley is over and that henceforth Chino Valley would begin strictly enforcing its policies and procedures, including tardiness, because the employees voted for the Union;

- Broadly prohibiting employees from speaking to the media, including about the Union or about terms and conditions of employment;
- Serving subpoenas on employees and the Union that requested information about employees' union activities, under circumstances where that information is not related to any issue in the legal proceeding;
- More strictly enforcing a tardiness rule and disciplining employees pursuant to that more strictly enforced rule because employees supported the Union;
- Disciplining employees who fail to attend mandatory meetings;
- Discharging Ronald Magsino for supporting the Union;
- Beginning to discipline employees who fail to attend mandatory meetings without first giving the Union an opportunity to bargain concerning the change;
- More strictly enforcing a tardiness rule and disciplining employees pursuant to that more strictly enforced rule without first giving the Union an opportunity to bargain concerning the change;
- Terminating the practice of paying part-time employees for the time spent attending classes needed to maintain the certifications necessary to perform their work at Chino Valley without first allowing the Union an opportunity to bargain concerning that change; and by
- Failing to provide the Union with requested information that is presumptively relevant to the Union's performance of its representational duties.

ALJ Kocol dismissed the allegation of the Complaint that Respondent violated Section 8(a)(5) by unilaterally notifying employees that they could not make changes or exchange shifts once schedules are posted.

## **II. FACTS AND ARGUMENT IN SUPPORT OF EXCEPTIONS**

**Exception 1. To the ALJ's failure to include in his Conclusions of Law that the Charging Party is, and has been at all relevant times, a labor organization within the meaning of Section 2(5) of the Act and that, at all times since April 2, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the Unit.**

The ALJ properly found that the Charging Party is a labor organization within the meaning of Section 2(5) of the Act but failed to include this finding in his Conclusions of Law. (ALJD 3:2-3.) The Conclusions of Law should be amended to include the ALJ's finding that the Charging Party is a labor organization within the meaning of Section 2(5) of the Act.

The ALJ properly found that Respondent had violated Section 8(a)(5) and (1) by unilaterally changing terms and conditions of employment for employees represented by a union without first notifying the Union of the proposed change and giving it an opportunity to bargain about the change. However, he did not include, in his Conclusions of Law, the predicate to his findings of the 8(a)(5) violations that at all times since April 2, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the Unit. (ALJD 31:47-32:9.)

The Conclusions of Law should be amended to reflect that the Charging Party is a labor organization within the meaning of Section 2(5) of the Act and that, at all times since April 2, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the Unit.

**Exception 2. To the ALJ's failure to include in his Order the remedy that the notice be read publicly by a responsible management official or by a Board agent in the presence of a responsible management official.**

The ALJ properly found that Respondent should be required to have the notice publicly read by a responsible corporate management official or by a Board agent in the presence of a responsible management official and that, in order to monitor the reading of the notice, representatives of the Board and of the Union shall have the right to be present. (ALJD 32:36-46.) However, the ALJ failed to include this remedy in his Order. The ALJ's Order should be amended to reflect the remedy that Respondent have the notice publicly read by a responsible corporate management official or by a Board agent in the presence of a responsible management official and that, in order to monitor the reading of the notice, representatives of the Board and of the Union shall have the right to be present.

**Exception 3. To the ALJ's failure to order that the Respondent cease and desist from unilaterally changing terms and conditions of employment of its employees in the Unit without providing the Union with notice of and the opportunity to bargain to agreement or good faith impasse over any proposed changes and that Respondent, before implementing any changes in wages, hours, or other terms and conditions of employment, notify and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the Unit.**

The ALJ found that Respondent violated Section 8(a)(5) by more strictly enforcing a tardiness rule and disciplining employees pursuant to that more strictly enforced rule without first giving the Union an opportunity to bargain concerning the change; by beginning to discipline employees who failed to attend mandatory meetings without first giving the Union an opportunity to

bargain concerning the change; and by terminating the practice of paying part-time employees for the time spent attending classes needed to maintain the certifications necessary to perform their work at Chino Valley without first allowing the Union an opportunity to bargain concerning that change. (ALJD 31-32.) However, the ALJ failed to include in his Order a requirement that Respondent cease and desist from unilaterally changing terms and conditions of employment of its employees in the Unit, without providing the Union with notice of and the opportunity to bargain to agreement or good faith impasse over any proposed changes. *See San Miguel Hospital Corp.*, 355 NLRB No. 43, slip op. at 4 (2010). The ALJ also failed to include in his Order a requirement that, before implementing any changes in wages, hours, or other terms and conditions of employment, Respondent notify and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the Unit. *See CG's Lawn & Janitorial Service, LLC*, 354 NLRB No. 126, slip op. at 4 (2010).

The ALJ's order should be amended to include the above-described cease and desist and affirmative provisions to comport with the ALJ's proper findings that Respondent violated Section 8(a)(5) when it began to more strictly enforce a tardiness rule and to discipline employees pursuant to that more strictly enforced rule; by beginning to discipline employees who failed to attend mandatory meetings; and by terminating the practice of paying part-time

employees for the time spent attending classes needed to maintain the certifications necessary to perform their work at Chino Valley, all without first giving the Union an opportunity to bargain concerning the changes.

**Exception 4. To the ALJ's failure to find that the Respondent unlawfully threatened employees with discipline at its May 2010 meetings.**

The ALJ properly found that Respondent, at meetings held in early May 2010, unlawfully threatened to more vigorously enforce its policies and enforce previously unenforced policies since employees chose union representation and instructed employees not to speak to third parties and/or the media about it. (ALJD 8:46-9:6.) However, the ALJ did not make a finding with respect to the allegation that Respondent threatened employees with discipline at mandatory meetings it held for employees in early May 2010 as alleged in Paragraph 23(b) of the Complaint.

The ALJ properly found that,

In early May, mandatory meetings for unit employees were held in the first floor conference room. Present at various times for management were Linda Ruggio, director of nursing, Arthi Dupher, director of human resources, and Cheryl Gilliatt, manager. Lex Reddy, Chino Valley chief executive officer, spoke at these meetings. Reddy told the employees that the election was over and they had to move on. He told the employees that from then on policies and procedures would be strictly enforced and that violators would be dealt with accordingly, being late and sick calls would be monitored. He said that there would be no more family atmosphere at Chino Valley. Reddy informed employees that Chino Valley was contesting the results of the election because the Union used charge nurses to intimidate the staff. Reddy said that Chino

Valley knew about the employees' Weingarten rights but employees would be disciplined without a union representative present. He informed employees that someone had scratched Gilliatt's car with a key and he displayed a photo-graph of the car and blamed this on the Union[.] He mentioned that someone had been negligent in the emergency room. Reddy continued, informing the employees that Chino Valley would be hiring some additional nurses. He said they should make the newly-hired employees feel welcome. Reddy then instructed employees not to speak to the media but rather they should through [sic] channels.

(ALJD 8:7-22.)

While the ALJ properly found that Reddy, at these meetings, violated Section 8(a)(1) by threatening to more vigorously enforce its policies and enforce previously unenforced policies since employees chose union representation and by instructing employees not to speak to third parties and/or the media about it, Respondent also violated Section 8(a)(1) by threatening employees with discipline.

Employees testified that, at a meeting held between 8 and 10 a.m. on or about May 6, 2010 in the first floor conference room, Reddy spoke to about 30 to 40 registered nurses from various departments at the Hospital. (Tr. 41-42/Lina, Tr. 571-572, Tr. 589/Metheny.) Present for management were Angelica Silva, Sandra Moreno, Linda Ruggio, James Lally, and Lex Reddy. (Tr. 572, Tr. 589-590/Metheny.) Reddy started the meeting by introducing the managers to the employees and said that RNs have their rights and management has its rights too. (Tr. 590/Metheny.) Reddy talked about Weingarten rights and

said that he was not going to wait for someone from the outside to come in and witness a nurse being counseled. (Tr. 591, Tr. 593/Metheny.) Reddy said that the Hospital was going to file charges against the nurses that were trying to form a union. (Tr. 572/Metheny.) Reddy told employees present that he was going to enforce the rules. (Tr. 42, Tr. 69/Lina.) Reddy said that “from now on” Chino Valley Medical Center was going to follow all policy and procedure to the fine detail and said that if employees were late, took too many breaks or did not follow procedure, they may be counseled or reprimanded. (Tr. 572, Tr. 593/Metheny.) Reddy also talked about vandalism to Gilliatt’s vehicle, saying that this would not be tolerated and that it happened during the union process. (Tr. 42, Tr. 70/Lina, Tr. 572-573, Tr. 592, Tr. 594/Metheny.) Reddy told the employees that they had five lawyers on hand and that everything would be documented. (Tr. 573, Tr. 592-593/Metheny.) Reddy also spoke about hiring new nurses. (Tr. 592, Tr. 594/Metheny.)

Thus, at the May 2010 meetings, the Respondent, through Lex Reddy, threatened employees that they would be disciplined if they did not follow procedures or if they were late. Such statements constitute violations of Section 8(a)(1) of the Act. *Fortuna Enterprises, L.P.*, 354 NLRB No. 17, slip op. at 10 (2009). It is clear from the record that Respondent not only violated the Act, as found by the ALJ, by unlawfully threatening to more vigorously enforce its policies and to enforce previously unenforced policies since employees chose

union representation and by instructing employees not to speak to third parties and/or the media about it, but also by threatening employees with discipline at these same meetings. Based on the foregoing, the ALJ erred in failing to find that Respondent threatened employees with discipline in violation of Section 8(a)(1) at the May 2010 meetings.

**Exception 5. To the ALJ's failure to find that the Respondent violated Section 8(a)(5) when it announced to employees that they could no longer switch shifts once schedules have been posted.**

The ALJ dismissed the allegation that Respondent violated Section 8(a)(5) when it notified employees that they could not make changes or exchange shifts once schedules are posted. The ALJ properly found that, on April 13, 2010, then-Director of Nursing AnneMarie Robertson ("Robertson") sent a message to employees informing them that:

once a schedule is posted by the Nursing manager there will be no changes or exchanges. If an emergency arises the Manager needs to be informed to remove the staff member from the Master /unit schedule. If it is off shift/the House supervisor will make the immediate change and forward the the [sic] department manager. If an employee has a request for time off they are to utilize the "Request for time off" form which is found on the intranet under Human Resources/forms. The form needs to be completed by the employee and submitted to the Manager for approval allowing sufficient time for review-The employee is responsible to contact the Manager to confirm that a change has or has not been granted. Please do not leave requests on voicemail.

(ALJD 28:4-20.) The ALJ found that, "[t]o the extent that the complaint alleges and the General Counsel argues that an actual

change occurred, I have concluded that the facts do not support that allegation.” (ALJD 28:47-48.) Counsel for the Acting General Counsel does not except to that finding. She does, however, except to the finding that the announcement of a change did not violate Section 8(a)(5). The ALJ determined that because the announcement was roughly consistent with the existing practice, the announcement did not violate Section 8(a)(5). (ALJD 29:4-5.)

Before receipt of the April 13, 2010 message, employees had made changes to their schedules after their schedules had been posted at the facility. (Tr. 269-270/Magsino.) Before April 13, 2010, employee Hilvano made changes to his schedule after it had been posted about once every three months. (Tr. 213/Hilvano.) After receiving the April 13 message, employee Magsino did not ask employees to switch shifts with him after the schedule had been posted. (Tr. 270/Magsino.) Moreover, as found by the ALJ to be an independent violation of 8(a)(1), Respondent, in mid-March 2010, held meetings for employees where Chief Clinical Officer Suzanne Richards (“Richards”) told employees that, when the Union gets voted in, they “would lose the family atmosphere and flexibility of scheduling.” (Tr. 245/Magsino.) Additionally, Respondent, in one anti-union flyer, implored employees to “protect [their] flexibility” and to “vote no on April 1 & 2” and asked employees, “have you ever . . . changed your schedule with a co-worker *after it was posted?*”

(emphasis added) (GC Ex 56.) In another flyer, Respondent advertised employees' "benefits –without a Union." (GC Ex 6.) Among the benefits touted by Respondent was its "flexible scheduling." (GC Ex 6.) Robertson's April 13, 2010 MOX was simply the realization of promises made by Respondent throughout its anti-union campaign.

The ALJ erred in finding that the April 13, 2010 announcement was roughly consistent with the existing practice. In fact, the April 13, 2010 announcement was entirely inconsistent with the existing practice. The evidence established that employees regularly changed shifts after schedules were posted and Respondent's April 13, 2010 message notified employees of the opposite, "once a schedule is posted by the Nursing manager there will be no changes or exchanges."

Mere announcement of a change is a violation of Section 8(a)(5) of the Act, irrespective of whether any attempt at enforcement or discipline or threat of discipline or other steps have been undertaken. *ABC Automotive Products Corp.*, 307 NLRB 248, 250 (1992). The Board found that the respondent's announcement of the change was unlawful regardless of whether any further steps were taken by the respondent, or were ever intended to be taken by the respondent. *Id.* at 250. The damage to the bargaining relationship had been accomplished simply by the message to the employees that the respondent was taking it on itself to set this important term and condition of employment,

thereby “emphasizing to employees that there is no necessity for a collective bargaining agent.” *Id.* at 250. Therefore, as employees’ work schedules are a subject of mandatory bargaining, the announcement itself constitutes an unlawful unilateral change.

In *Kurdziel Iron of Wauseon, Inc.*, 327 NLRB 155, 155 (1998), the Board held that the respondent’s threat to reduce lunch and break times violated Section 8(a)(5) of the Act even “if the announced reduction did not result in the actual curtailment of employees’ breaks.” In *Kurdziel*, the Board found that the damage to the bargaining relationship was accomplished

by the message to the employees that the Respondent was taking it on itself to set an important term and condition of employment, thereby suggesting the irrelevance of the employees’ collective-bargaining representative.

*Id.* The Board noted that the case involved working hours which is a core subject to which the statutory bargaining obligation applies. *Id.* at 156.

Respondent’s unequivocal written announcement that employees would not be permitted to switch shifts after the schedule was posted, within two weeks of the Union election, constituted a unilateral change to employees’ terms and conditions of employment. *Northwest Graphics, Inc.*, 342 NLRB 1288, 1297 (2004) (work schedule changes and issues related to them are mandatory subjects of bargaining). By failing to give the Union notice or an opportunity to bargain before announcing this change to a mandatory subject of

bargaining, Respondent violated Section 8(a)(5) of the Act. *See Treanor Moving & Storage Co.*, 311 NLRB 371, 386 (1993).

**Exception 6. To the ALJ's finding that "Ronald Magsino worked for Chino Valley from January 2005 until May 10, 2010."**

The ALJ erred in finding that employee Ronald Magsino worked for Respondent from January 2005 until May 10, 2010. (ALJD 4:36-37.) Rather, the record establishes and Respondent admitted that Magsino was employed by Respondent until his discharge on May 20, 2010. (GCEx 1(yy):1.) Based on the above, the decision should be amended to reflect that Magsino was employed by Respondent from January 2005 until May 20, 2010.

**III. CONCLUSION**

In conclusion, Counsel for the Acting General Counsel submits that the ALJ's well-reasoned and legally-sound Decision and Order should be adopted in its entirety, except as set forth in these limited exceptions.

Dated at Los Angeles, California, this 29<sup>th</sup> day of December, 2011.

Respectfully submitted,

  
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Re: VERITAS HEALTH SERVICES, INC. d/b/a  
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CERTIFICATE OF SERVICE

I hereby certify that I served the attached copy of the **EXCEPTIONS OF COUNSEL FOR THE ACTING GENERAL COUNSEL TO THE DECISION AND RECOMMENDED ORDER OF THE ADMINISTRATIVE LAW JUDGE AND BRIEF IN SUPPORT THEREOF** on the parties listed below on the 29<sup>h</sup> day of December, 2011.

VIA E-FILE

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