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

PRIME HEALTHCARE CENTINELA, LLC
d/b/a CENTINELA HOSPITAL MEDICAL CENTER

and **Cases 31-CA-030055**
31-CA-030091
31-CA-068109
31-CA-072675

SEIU-UNITED HEALTHCARE WORKERS-WEST

ORDER DENYING RESPONDENT'S MOTION TO REOPEN THE RECORD

On April 27, 2012, the Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing ("Complaint") was issued by the Regional Director of Region 31. The parties to the Complaint were, as captioned above, Centinela Hospital Medical Center ("Respondent") and SEIU-United Healthcare Workers-West ("Union"). The Complaint described the bargaining unit ("Unit") as "[a]ll full-time, regular part-time, and per diem service, maintenance, technical, skilled maintenance, and business office clerical employees." The case was tried over 5 days in Los Angeles, California, and the parties rested on August 3, 2012, with a briefing schedule set. Post hearing briefs were submitted by both parties on October 19, 2012, and the record closed.

On March 20, 2013, Respondent filed its Motion to Reopen the Record ("Motion") requesting the record, in the above captioned matter, be reopened, pursuant to Sections 102.24 and 102.35(a)(8) of the Rules and Regulations of the National Labor Relations Board, as amended ("Board Rules"), for the purpose of presenting testimony and new evidence relating to an alleged November 30, 2012 collective bargaining agreement between the Respondent and the California Nurses Association ("CNA"), a non-party to this proceeding, comprised of a memorandum of understanding executed on November 30, 2012, a purportedly related tentative agreement, and a December 6, 2012 email between the Respondent and a representative for the non-party CNA. In the alternative, Respondent requests, pursuant to Board Rules Sections 102.24 and 102.35(a)(11), the record be reopened and a March 20, 2013 Declaration of Mary K. Schottmiller, including the 3 attached documents referred to above as exhibits, be accepted as additional evidence. Respondent asserts the aforementioned collective bargaining agreement, or the alternative declaration and exhibits, are relevant to Respondent's contention that it did not violate Section 8(a)(5) and (1) of the National Labor Relations Act as described in paragraphs 16 and 18(b) of the Complaint even though none of the proffered evidence was in existence at the time of trial in these consolidated cases.

On April 3, 2013, in response to an Order to Show Cause issued on March 31, 2013, Counsel for the Acting General Counsel ("CAGC") filed Opposition to Respondent's Motion ("Opposition"). The CAGC asserts Respondent's Motion seeks admission of more recent irrelevant evidence of the same type and nature, as Respondent previously attempted to submit

into the record but was unsuccessful during the hearing in this matter. CAGC also asserts Respondent's Motion is an attempt to delay resolution of this matter and that Respondent has failed to make the necessary showing, under the "extraordinary circumstances" standard, as described in Board Rules Section 102.65(e)(1), to warrant reopening the record.

After considering the arguments as outlined in the aforementioned motions, I find that Respondent has failed to show good cause why its Motion should be granted.

First, as argued by the CAGC, I find that the newly proffered evidence is irrelevant as it relates only to bargaining matters between Respondent and CNA subsequent and unrelated to the collective bargaining matters before me involving the Respondent and the Union. As the CAGC notes in its Opposition, the record is replete with examples of my rulings sustaining objections to admission of the type of evidence Respondent now seeks to admit by way of motion. The question at issue is the viability of the alleged unfair labor practice violations committed by the Respondent against members of the Unit, as represented by the Union. Evidence relating to interactions between the Respondent and: (a) other non-parties such as CNA here; or (b) with the Union with respect to other facilities outside Centinela and different units, do not advance this analysis. *Any* evidence regarding collective bargaining agreements, negotiations, or labor relations history between the Respondent and other labor organizations, such as non-party CNA, is irrelevant, as such evidence is beyond the scope of this proceeding. As a result, I find that the issue raised is a matter that has no effect on my decision here.

More importantly, I deny the Motion as it proffers evidence that is not "newly discovered" concerning alleged events and matters which occurred purportedly in November and December 2012, *after* the close of hearing in this matter. See Board Rules Sections 102.35(a)(8) and 102.48(d)(1); *Fitel/Lucent Technologies, Inc.*, 326 NLRB 46, 46 fn. 1 (1998)(Newly discovered evidence is evidence which was in existence at the time of the hearing, and of which the movant was excusably ignorant.) see also *Owen Lee Floor Service, Inc.*, 250 NLRB 651, 651 fn. 2 (1980)(same). In addition, Respondent seeks admission of evidence, on March 20, 2013, of an agreement that was entered into on November 30, 2012, and ratified on December 5-6, 2012, according to the representations made by the Respondent in its Motion. Pursuant to Board Rules Section 102.48(d)(2), I further find that the Respondent's Motion was not filed promptly on discovery of the proffered evidence as required because almost 4 months have elapsed since the memorandum of understanding was signed.

Finally, I agree with the CAGC's argument that pursuant to Board Rules Section 102.65(e)(1), only "extraordinary circumstances," such as the discovery of new evidence, warrants reopening the record. Because, as stated above, I find that Respondent's proffered evidence is not "newly discovered," I further find that Respondent has failed to establish any extraordinary circumstances that would warrant reopening the record. See *Atlantic Veal & Lamb, Inc.* 355 NLRB No. 38, 1 fn.1 (2010).

For the aforementioned reasons, Respondent's motion is **DENIED** in its entirety.

Date: April 5, 2013, San Francisco, California.

Associate Chief Administrative Law Judge

Served by facsimile upon the following:

John Rubin, Esq., Simone Pang, Esq.	(310) 235-7420
Theodore R. Scott, Esq.	(619) 615-2261(direct fax) (619-232-4302 (firm fax)
Monica Guizar, Esq.	(213) 443-5098

NLRB-SAN FRANCISCO

JOB #481

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	STATUS
001	4/05	12:24	915106634822	EC--S	00' 13"	002	OK
002		12:25	918604309437	EC--S	00' 31"	002	OK
003		12:26	912138942778	EC--S	00' 20"	002	OK

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

FALLBROOK HOSPITAL CORPORATION
d/b/a FALLBROOK HOSPITAL

Case 21-CA-090211

and

CALIFORNIA NURSES ASSOCIATION/NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC), AFL-CIO

ORDER REGARDING CHARGING PARTY'S MOTION FOR BILL OF PARTICULARS

On April 4, 2013, the Charging Party filed a motion for a bill of particulars pertaining to the Respondent's affirmative defense alleging the Union engaged in bad-faith bargaining thereby relieving the Respondent of its duty to bargain.

The parties discussed the motion on a call today, April 5, 2013. Pursuant to that call, the Respondent offered the following information in response to the motion.

- The individual who allegedly engaged in bad faith bargaining is Matthew Stephen.
- The time of the alleged bad faith bargaining was throughout the bargaining sessions, but in particular during the last few. The parties all stated they knew the dates and location of the bargaining sessions.
- The alleged bad faith bargaining was the Union's insistence on bargaining on matters over which the Respondent has no duty to bargain.

I indicated during the prehearing conference that if any party disagrees with this summary of Respondent's oral response, they are to explain in writing. Absent any disagreement, I consider the foregoing responsive to the Charging Party's motion.

Dated, April 5, 2013 San Francisco, California.

Administrative Law Judge