JD(SF)–17–13
Inglewood, California

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

PRIME HEALTCARE CENTINELA, LLC
d/b/a CENTINELA HOSPITAL
MEDICAL CENTER,
Respondent,

and

SEIU-UNITED HEALTHCARE WORKERS – WEST,
Charging Party.

Cases 31-CA-030055
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for the Respondent.
Monica Guizar, Esq. (Weinberg, Roger & Rosenfeld)
for the Charging Party.

DECISION

Statement of the Case

Gerald M. Etchingham, Administrative Law Judge. I heard this consolidated case over 5 days from July 30— August 3, 2012, in Los Angeles, California. Service Employees International Union, United Healthcare Workers–West (the Union) filed a series of charges in this matter, some of which were later amended, from 2010[1] to 2012 and the counsel for the Acting General Counsel (General Counsel) issued the consolidated complaint on April 27, 2012 (the complaint).[2] This is a refusal to provide information and refusal to bargain in good-faith case by the Union against Prime Healthcare Centinela, LLC d/b/a Centinela Hospital Medical Center (Respondent, Centinela, or Employer) where it is alleged that Respondent has violated Sections 8(a)(1) and (5) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et. seq. (the Act).

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and to file

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[1] All dates are in 2010 unless otherwise indicated.

[2] The parties reached a partial settlement agreement on August 1, 2012, which I approved. (Tr. at 404.). Upon approving this agreement, the Regional Director withdrew Paras. 9, 10, 11, 12, and 17 of the consolidated complaint, and the Respondent withdrew any answers filed in response to those paragraphs. (Id.) The General Counsel does not allege or plead an independent 8(a)(1) violation for failure to provide information.

posthearing briefs. [3] On October 19, 2012, said briefs were filed by counsel for the General Counsel and by counsel for Respondent and have been carefully considered. Accordingly, based upon the entire record herein, [4] including the posthearing briefs and my observation of the credibility of the several witnesses, I make the following:

I. FINDINGS OF FACT

A. Jurisdiction

At all times material herein, Respondent, a State of California limited liability company, has been engaged in the operation of a hospital facility providing inpatient and outpatient care, located in Inglewood, California. The evidence establishes, the parties admit, and I find that during the 12-month period immediately preceding the issuance of the instant complaint, which period is representative, Respondent, in the normal course and conduct of its above-described business operations, derived gross revenues in excess of $250,000 and purchased and received goods and services, valued in excess of $5000, which originated outside the State of California. It is alleged, the Respondent admits, and I find that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The complaint further alleges and I find that the Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act as the evidence shows that the Respondent's employees participate in steward, labor management, patient care committee, executive board, and grievance meetings. Moreover, I further find that the Union negotiates collective-bargaining agreements and processes employees' grievances and at no bargaining session between the Respondent and the Union referred to below did the Respondent take the position that the Union was not the proper representative for the bargaining unit or a recognized labor organization.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

B. Background Facts

Prime Healthcare Management (Prime) is the parent organization that owns the Respondent. Prime owns 14 hospitals in California, including the Respondent, which are dispersed throughout California and it owns 4 hospitals outside of California. These 18 hospitals are otherwise known as the Prime Network or Prime Hospitals. Prime employs 13,000 employees across its facilities within and

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[3] For ease of reference, testimonial evidence cited herein will be referred to as "Tr." (Transcript) followed by the page number(s); documentary evidence is referred to either as "GC Exh." for a General Counsel exhibit, and "R. Exh." for a Respondent exhibit; and reference to the General Counsel's posttrial brief shall be "GC Br." for the General Counsel's brief, followed by the applicable page numbers; and the same for Respondent's posttrial brief referenced as "R. Br." Charging Party did not file a posttrial brief.

[4] I hereby grant Respondent's October 22, 2012 motion to correct hearing transcript and supplement it as follows: Tr. 211, line 13: "exasperates" should be "extenuates"; Tr. 218, line 22: "matter as" should be "matters"; Tr. 252, line 23: "protective" should be "collective;"Tr. 254, line 4: "vise" should be "devise"; Tr. 260, line 9: "Vaue" should be "Valle"; Tr. 262, line 15: "Vaue" should be "Valle"; Tr. 269, line 19: "- -" should be "Prime"; Tr. 303, line 15: "Bud" should be "Doug"; Tr. 344, line 6: "illicit" should be "elicit"; Tr. 381, line 9: "position" should be "physician"; Tr. 417, line 9: "2009" should be "2011"; Tr. 594, line 25: "tenant" should be "Tenet"; Tr. 666, line 21: "tenant" should be "Tenet"; Tr. 708, line 19: "to December 10" should be "2010"; Tr. 709, line 3: "or" should be "for"; Tr. 717, line 10: "It's a ruling with respect to all (inaudible)" should be "Is it the same ruling with respect to an offer of"; Tr. 722, line 1: "crime position" should be "Prime physician"; Tr. 722, line 7: "position" should be "physician"; Tr. 722, line 12: "t" should be "to"; Tr. 726, line 3: "RUBIN" should be "SCOTT"; and Tr. 738, line 16: "tenet of" should be "tentative."

outside of California. Some of Prime's hospitals have collective-bargaining agreements with various unions and units apart from the Union/unit in this case with Respondent.

Prime purchased Centinela in November 2007. Prior to said date, Centinela was owned by Centinela Freeman Health Systems, March of 2005 until November 2007, and Tenet Health Systems before March of 2005. In 2003, a union election took place at Centinela. The SEIU Local 399 was voted to be the employee representative. In 2005, Local 399 changed its name to SEIU United Healthcare Workers-West otherwise known as the Union.

When Centinela Freeman Health Systems acquired Centinela in 2005, a collective-bargaining agreement was in place which expired in 2006. When said agreement expired, the Union entered into negotiations with Centinela Freeman in an attempt to negotiate a successor agreement, which lasted until May 2007. No agreement was reached. Pursuant to the collective-bargaining agreement, the parties agreed to go to the Board of Inquiry—where open issues were brought before an arbitrator in January of 2008. On November 2, 2007, the Union was notified, by Centinela Freeman, that Prime purchased the Respondent and that employees would remain Centinela Freeman employees through December 31, 2007. Centinela Freeman attended the Board of Inquiry session on January 2008; the Respondent did not attend the Board of Inquiry and instead wanted to engage in traditional bargaining which began in February of 2008 and lasted until June of 2008. Issues that were not decided during this time period were moved to the Board of Inquiry where they were decided by an arbitrator. The Respondent, as successor, retained Centinela Freeman's employees under their prior working conditions and Respondent assumed Centinela Freeman's role in bargaining with the Union, and continued to operate Centinela Hospital in the same basic manner as the hospital was operated prior to November 2007. (GC Exh. 1(gg) at 3–4.) The Respondent and the Union ultimately entered into a collective-bargaining agreement (CBA) which continued through December 31, 2009, and the Respondent continued to bargain with the Union never taking the position that the Union was not the exclusive bargaining representative of the unit described below or that it was not a successor employer to Centinela Freeman. (Tr. 479–480; GC Exh. 3 at 2–4; GC Exh. 4.)

The Respondent at all relevant times has employed at its facility various classifications of employees including employees in the following bargaining unit (the unit):

> Included: All full-time, regular part-time, and per diem service, maintenance, technical, skilled maintenance, and business office clerical employees.
>
> Excluded: All other employees, managers, supervisors, confidential employees, guards, physicians, residents, central business office employees (whether facility based or not) who are solely engaged in qualifying or collection activities, employees of outside registries and other agencies supplying labor to the Employer and already represented employees.

On April 5, 2011, the Union was certified by the Regional Director of Region 31 in case 31–RC–8875 as the exclusive collective-bargaining representative of the unit. (GC Exh. 7.)

From November 2007—August 1, 2012, the Respondent continued to process grievances filed by the Union on behalf of employees in the Unit, continued to provide certain monthly information regarding these employees, including hires and fires, and continued to remit dues to the Union on behalf of these unit employees. (Tr. 407–408.)

The complaint alleges and I find that the Unit is appropriate for collective bargaining within the meaning of Section 9(b) of the Act and the Union has been at all times material the exclusive representative of employees in the Unit for purposes of collective bargaining.

C. Events Leading to the Employer's Implementation of Its Health Plan

In light of the expiring CBA, between December of 2009 and March 2011, Daniel Bush (Bush) served as the chief negotiator for the Union, as it attempted to negotiate a successor agreement with the Respondent until Richard Ruppert (Ruppert), a contract negotiator, assumed the chief bargaining role for the Union in September 2011. In December of 2009, the chief negotiator for the Respondent, Rada Savitala (Savitala), took leave from Respondent and Mary Schottmiller (Schottmiller), also in-house counsel for the Employer, assumed the role of chief negotiator in February 2010. The Union bargaining committee, including Bush participated in15 bargaining sessions with the Respondent between December of 2009 and March of 2011. The Respondent continued to meet and discuss with Ruppert after Bush was no longer part of the Union's bargaining committee.

On November 2, 2009, Bush sent a letter to Savitala regarding information the Union requested to prepare for bargaining the successor collective-bargaining agreement between the Respondent and the Union. (R. Exh. 2.)[5] The Union requested information which it thought pertinent to the subject of collective bargaining such as workplace safety and staffing levels.[6] Id. Through a letter dated November 12, 2009, Savitala denied the Union's request and asserted various defenses including confidentiality, relevance, and over breadth. (R. Exh. 3.)

In December 2009, the Respondent first introduced new article 15 language concerning health insurance with Respondent proposing to reserve the right to amend its healthcare benefits at any time without further bargaining with the Union. The parties reached tentative agreement on a nondiscrimination clause. (R. Exh. 69.) The Union did not accept the Employer's healthcare proposal; but, it did commit to making a counteroffer.

The main issue of contention between the parties was healthcare. Under the expiring contract, the Employer offered employees both HMO and PPO plans through their contracted insurance provider, Anthem Blue Cross (Anthem). These plans were fully funded plans. Such plans are said to be fully funded because the employer contracts with an external insurance carrier—in this case Anthem Blue Cross—who then becomes responsible for insurance risk by fully funding any insurance claims made against the various insurance policies offered to employees. For this service, the employer pays a premium for each of their enrolled members.[7]

Under the HMO plan that was offered by the Respondent, employees did not make premium contributions toward any level of coverage—i.e. coverage was free for the employee, his or her spouse, and his or her children. There were contributions required under the PPO plan option. Under, the former HMO and PPO plans, employees were not required to use the Respondent's 18 hospitals disbursed throughout California and outside the state. In fact, employees had a difficult time accessing the

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[5] Please note that while I occasionally highlight the record with specific reference to testimony or exhibits, there may be additional evidence in the record that supports a finding of fact or conclusion of law.

[6] As discussed in detail at Section B.2, infra, this information request limited to Centinela information is somewhat similar to the much broader information request the Union presented to the Respondent during the July 23 bargaining session that related to the entire Prime network of hospitals. See GC Exh. 33. As a justification for citing this information, the Union cited to *Winona Industries*, 257 NLRB 695, 697, 697 fn. 9 (1981), which notes that information regarding health and safety is necessary for the Union to administer its duties as the collective-bargaining agent.

[7] Fully funded plans are unlike self-insured plans because under a self insured plan, the sponsoring organization, the employer, pays all of the claims incurred by their members meaning the employer fully funds the insurance programs and maintains all of the risk.

Respondent's hospitals because they were not included within the Anthem provider network. The Employer sought to change this structure during the bargaining process.

One of the initial article 15 healthcare bargaining proposals tendered to the Union in December of 2009 was to keep the current HMO/PPO structure but placed a qualification on the benefit offerings, which had not existed in the previous plan:

"These benefits may be amended from time to time."

(Compare GC Exh. 16 with GC Exh. 6.) The new article 15 healthcare language as proposed by the Respondent in December of 2009 eliminated the previous contract language—"The Facility shall continue to maintain an HMO medical insurance option for full-time and part-time 1 [sic] Bargaining Unit member and their families which will not require any employee payroll contributions." (GC Exh. 6). The rest of the language of article 15 from the expiring agreement remained unchanged. (Compare GC Exh. 6 with GC Exh. 16.)

At trial there was some disagreement as to when the Union was first aware that the Respondent would be offering the EPO option. I resolved this conflict by examining the Employer's December 2009 proposal. As of that proposal, there was no mention of the EPO option. (GC Exh. 6 at 46–47.) The only language change is noted above and accompanying text. Thus, as of December 2009, the Respondent had not committed itself to offering the EPO option at Respondent.

During bargaining sessions on February 4 and 5, no healthcare proposals were exchanged. During these sessions, however, the Employer announced it would be providing a revised health insurance proposal that would eliminate the current HMO/PPO scheme and replace it with a self-funded EPO/PPO scheme. The proposed EPO plan would require employees to make premium contributions at all levels of healthcare options. The Union made it clear that they were not against the concept of a self-funded plan but they did want more information concerning the plan and the Respondent's proposal. Tentative agreement was reached on other CBA provisions such as the filling of vacancies, health and safety, and job security. (R. Exh. 69.)

Respondent's new healthcare proposals were first put forward to the Union bargaining team during the February 16 bargaining session.[8] Under the new proposals the HMO/PPO program was being replaced with the EPO/PPO option program. The only option that would remain without cost to an employee was the EPO employee only option. (GC Exh. 18.) The EPO plan would require for a full-time employee the following bi-monthly healthcare contributions: Employee only, $0; Employee + spouse, $75; Employee + children, $60; Employee + family, $150. (GC Exh. 18.) These deductions were made during bi-weekly pay periods, 26 times throughout the course of the year and represent significant changes for employees of annual contributions for employee and a spouse of $1950, an employee with a child of $1560, and for an employee and family of $3900.

The Respondent tried to justify the change in the benefit offerings as a way for the employees to have access to Prime hospitals in addition to a cost savings for the Employer. (R. Exh. 205 at 11–12.) The Respondent argued that the Prime Network had already administered the EPO plans at Prime's Encino hospital location in the Los Angeles Valley and its Garden Grove hospital location in Orange County, California. The Respondent further argued that all employees at all levels of the organization should have to equally contribute to healthcare coverage. In other words, employees would be required to contribute the same cost for health benefits as Prime's managers without regard to wage disparity. The

[8] The Employer had members of a consulting group present to explain the Employer's healthcare proposal. (R. Exh. 205 at 11.)

contribution rate change was represented by Respondent to be an "internal decision." (R. Exh. 205 at 12.) Under the proposed plan in February, the EPO option would contain doctors from the Prime Network—doctors who had contracts with Prime—and also doctors with contracts with the much broader Anthem HMO network. (Id. at 11–12.) Co-pays and deductibles would be cheaper for Prime Hospitals and Prime physicians. Id. (GC Exh. 18.) However, employees retained the option and could still access the larger Anthem network, if they so chose. (R. Exh. 205 at 11–12.)

During these discussions there was no mention of a "gatekeeper requirement" for employees to go outside of the Prime Network. (Id.) In fact, by way of example, it was noted that if an employee wanted to go to New York he or she would have "full access to the Anthem Network." (Id. at 11.) Discussions in this bargaining session addressed how other plans benefits were not going to change—vision, dental, flexible spending accounts, life insurance. (R. Exh. 205 at 11–13.) Questions arose as to how the proposed changed health care benefits would work on a daily basis. (Id.) The Union maintained concerns regarding the quality of care at Prime Hospitals, that Centinela employees would be forced to use for the first time. The Union also voiced concerns regarding the lack of access for employees to doctors given the proposed network change. The Respondent addressed the latter concern by indicating that employees could go to the Anthem Network if they wanted a different doctor outside the Prime network.

During the March 11 bargaining session, other issues such as wages, staffing committees, staffing ratios, and seniority were discussed. Little, if any, information was discussed about health care benefits. A tentative agreement was reached on the grievance procedure. (R. Exh. 69.)

On March 26, Schottmiller sent an email to Bush stating the Employer wanted to "roll out" the new EPO plan by July 1. (GC Exh. 21.) Although not disclosed at this time to the Union, this was the date that the Respondent's contract with Anthem Blue Cross was to be renewed or canceled. The email also asked if the employees could be moved to the new plan while keeping "contribution rates the same until…an agreement or impasse [was reached]." (Id.) This was the first instance the Union was made aware that the Respondent wanted to implement the EPO plan by July 1; it was also the first instance in which the Union was made aware that the Respondent wanted to implement the plan before an overall agreement was reached.

On April 19, Bush replied to Schottmiller rejecting the Employer's new healthcare proposal and demanding to continue to bargain over the subject. (GC Exh. 22.) Schottmiller responded indicating that the Respondent would continue to "negotiate over this issue, of course, but would like to know what we can do to get this one issue pushed through" while committing to pay 100 percent of the out-of-pocket costs for employees until agreement or impasse was reached on the issue. (R. Exh. 42.)

On April 23, Schottmiller sent a letter to Bush requesting that the upcoming May 3 and 6 negotiations sessions be dedicated to healthcare, as Respondent believed it to be the "single critical issue" and "must be resolved either by agreement or impasse, by the end of May given the July 1 expiration date of the Anthem Blue Cross plan." [9] (GC Exh. 23.) She also noted in her April 23 correspondence that "reaching agreement on any other economic terms and a final, complete contract is dependent on resolving this issue." (Id.) Schottmiller described in the letter that "we have offered the Union everything we have to offer on this subject" and that "a final, complete contract is dependent on resolving this issue." (Id.)

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[9] I note that Schottmiller's assertion that the Anthem Blue Cross contract was "expiring" is inaccurate as it would not have expired but would have continued (albeit in increased costs to Respondent) had Respondent not unilaterally decided to implement its new EPO healthcare plan on January 1, 2011, because it did not want to incur increased premium costs.

Health insurance was discussed during the May 3 bargaining session. The Employer's position was that the parties would not have a CBA unless the Employer had its EPO plan. (R. Exh. 205 at 19.) Similarly, the Union informed the Employer that the Union would not have an EPO plan that was not free for all employees and that did not have an open network where employees could choose between Prime, Anthem, or other primary care physicians. Schottmiller testified that because Prime did not have a lot of pediatric doctors or gynecologists at its hospitals it was still offering access to the Anthem network so that employees would have more options without having to go for a referral within the Prime system; in other words, there would be no "gatekeeper" requirement. (Tr. at 595, 686–687.)

Technical questions regarding how the plan would work, concerns about plan costs, and concerns about the size of the Prime Network were examples of other topics that were discussed regarding the health insurance proposal. (R. Exh. 205 at 19–20.) The parties also discussed work hours, meal periods, and union representation during these sessions. (R. Exh. at 19–24.)

Before bargaining resumed on May 6, correspondence between the parties took place regarding information surrounding the quality of care at Prime hospitals and the Union's concerns regarding the increase in employee costs under the proposed plan. Specifically, on May 4, Bush wrote to Schottmiller requesting information regarding, technically, how the self-funded plan would operate—questions that he had raised the day before during the May 3 bargaining session—and questions concerning the quality of care at Prime Hospitals noting the requested information was necessary before making "any determination concerning the [Respondent's] 'Prime Network' Proposal." For this purpose, the Union requested the following information, as itemized information request number 9:

> Please provide a list breaking down the quarterly number of in-patient discharges by MS-DRG, broken down by age groups . . . from January 1, 2008 to present. Please specify the following:
>
> a. Quarter and calendar year;
> b. MS-DRG grouper version used;
> c. MS-DRG;
> d. Age group…;
> e. Number of cases;
> f. Average length of stay;
> g. Median length of stay; and
> h. Mortality rate.
>
> . . . (GC Exh. 26.)

Thereafter, the Respondent sent an email which included some of the requested information and on June 4, Schottmiller sent an email letter to Bush providing more information that was responsive to the information requested in his May 4 correspondence. Information in response to request 9, however, was not included. The following was the stated reason for not providing said information:

> The information requested is volume related and provides no assessment of quality care. The requested information only gives rough estimates on the types of patients along with the volume of senior patients versus commercial patients. Since the EPO allows employees to go to all Prime Hospitals along with going outside the network for services we do not offer, this information is not relevant in assessing quality.

(GC Exh. 27.) It was further noted by the Respondent that there were agencies—such as the California Department of Public Health—that would be able to provide the Union with information to assess the quality of care. (Id.)

On May 6, [10] the parties bargained over other topics including work hours, meal periods, and breaks for part-time employees, and health and safety. (R. Exh. at 25–29.) Tentative agreements were reached on a savings clause and notices. (R. Exh. 69.)

It was not until after the May 6 bargaining session that the Union first became aware that the Employer, under the proposed health plan, restricted its proposal even more and would now require EPO plan participants to be burdened with a gatekeeper requirement requiring a referral from their primary care physician before using the Anthem Blue Cross option, as indicated by the comparisons between plan documents sent through email with previous versions. (GC Exh. 29.)

During the June 14 and 15 bargaining sessions, the Union presented a proposal on health insurance. The Union proposed to accept the employer's EPO plan contingent on there being no contributions under the EPO plan at any levels. (GC Exh. 30.) The Union also proposed, as part of the healthcare benefits, a low PPO Plan and a high PPO plan to replace the existing HMO and PPO plans. (Id.) This was an acceptance of a portion of the Respondent's earlier proposal. As part of this proposal, the Union also proposed that the employees be able to select a primary care physician from either the Prime Network or the Anthem Network. (Id.)

The Union was not comfortable with the referral requirement for employees in the EPO option who wished to access the Anthem Blue Cross network of physicians. Specifically, the Union was legitimately concerned about the small number of Prime doctors and few nearby facilities in the Prime Network and also about the quality of care. These concerns are subsets of the overarching concern the Union had with being forced to go from the vast Anthem Blue Cross network of doctors and hospitals, all of which the Union had experience using, to the much smaller Prime Network comprised, as stated above, with 18 hospitals the overwhelming majority of which were unavailable to Respondent's employees due to their inconvenient locations from where the employees lived and worked. For example, it was unreasonable to expect Respondent's employees who lived near Centinela in Inglewood, California, to travel to Prime Network's other hospital and physician locations either in the Inland Empire in San Bernardino or Riverside, California, or the San Fernando Valley locations of Encino or Sherman Oaks, California, or to Prime's locations in San Diego or to its Garden Grove facility or physicians in Orange County, California.[11] Also, as referenced above, the Prime Network had a significant shortage of pediatricians and gynecologists as of June.

On July 21, the Union wanted to keep the costs of employees' premium contributions to at least roughly what employees were currently paying. To resolve this concern, the Respondent commented that it was trying to grow the number of doctors in the Prime Network and had formulated a nomination form that employees could use to nominate doctors into the Prime Network. During this session, the parties reached tentative agreement on two additional contract articles, the Entire Agreement and Discipline. (R. Ex. 69.)

The Respondent presented the Union with its counterproposal during the July 23 bargaining session. The proposal maintained some of the Respondent's prior positions including EPO and employee

[10] According to Schottmiller the bargaining session actually took place on May 5 (R. Exh. at 25).

[11] Obviously, the Respondent could also not expect its employee's to seek medical help on a regular basis from Prime's four hospitals and corresponding physicians outside the State of California.

contributions at all levels within the EPO plan. (GC Exh. 35.) The Respondent rejected the Union's proposal to access the Anthem portion of the EPO network without having to incur a referral expense through a gatekeeper. (Id.) The Employer did lower the employee contributions. (Compare GC Exh. 18 with GC Exh. 35.) During this session, the parties also bargained on wages, loading, vacancies, and health and safety. It was also announced that the Employer would extend its Anthem Blue Cross contract for the rest of the year, but that the Employer wanted to roll out the EPO plan starting January 1, 2011.

Also, on July 23, the Union provided the Employer with an information request (the July 23 information request or the July 23 request) seeking information about the quality of care at all Prime Hospitals arguing that the information "is both relevant and absolutely necessary for the Union to properly evaluate the EPO proposal and the possible changes to the level of care the employees who select health insurance coverage from [the] Prime [Network] may face[.]" Bush reminded Schottmiller in the information request that the Respondent's latest negotiations had become even more restrictive from allowing Respondent employees to move freely between the Prime and Anthem networks to "the most recent iteration [that] would require employees to select a primary care physician solely from the Prime network, … and by extension to Prime hospitals, [therefore,] the quality of care at these Prime hospitals is of crucial importance." (GC Exh. 33.). While the July 23 information request was similar to a request first made to Respondent's CEO Reddy and Prime's assistant general counsel Savitala in early November of 2009 requesting information primarily from only Centinela's facility because of workplace safety and staffing level concerns, the July 23 information request was much broader as it involved the Union's new quality of care concerns for Respondent's employees as prospective patients at all Prime Network facilities in the newest proposed EPO plan. As a result, the requested information was directed to *all* of the Prime hospitals and not just the Respondent. (Compare GC Exh. 33 with R. Exh. 2.[12]) Once again, the July 23 request continued on to state that the Union had "grave concerns about Prime-Centinela's proposed self-funded health plan . . . [one particular area of which]…is the quality of care that would be available for employees under the EPO plan."

The letter requested the following information:

1. PEPPER[13] reports from 2001 to the most recent report issued for each Prime facility…

2. Any other communication between Prime, any of its facilities, and the QIO[14] for California regarding these PEPPER reports, from 2001 to present.

3. For each Prime hospital all-payor claims data from 2001 to present

4. Hospital occupancy rates per unit per month from 2001 to present, at each Prime facility.

5. Any internal documents from 2001 to present reporting on, analyzing, discussing, or otherwise concerning incidents of Stage 3–4 pressure ulcers, rates of septicemia or other

[12] In addition to the differences referenced above, the July 23 information request contained only 3 of 16 requests (5, 6, and 13) that were identical to the November 2 request but even these few duplicative categories relate to the new issue raised by the Respondent's newest EPO plan proposal concerning the quality of care a Respondent employee might receive as a patient from any of the Prime hospitals.

[13] The acronym PEPPER stands for the "Program for Evaluating Payment Patterns Electronic Report." (R. Exh. 2.)

[14] The acronym QIO stands for "Quality Improvement Organization." (R. Exh. 2.)

infections that are commonly hospital-acquired. Include any documents reporting on, analyzing, discussing, or otherwise concerning a connection between such pressure ulcers and such infections rates, or a connection between LVN, LPN, or CAN staffing ratios and such pressure ulcers or such infection rates.

6. Any documents showing known or reasonably believed dates of either Stage 3-4 pressure ulcer development, or septicemia infection or diagnosis, from 2001 to the present. If such documents cannot be realized pursuant to Health Insurance Portability and Accountability Act, then any documents evaluating infection patterns, any documents evaluating rates of Stage 3-4 pressure ulcers, and any documents evaluating any connections between the two.

7. Any communication between Prime, any of its facilities, and the Joint Commission/JCAHO concerning Stage 3-4 pressure ulcers, septicemia rates, or other rates of hospital-acquired infections, from 2001 to present.

8. Any communications between Prime, any of its facilities, and any unit of state or local government concerning Stage 3–4 pressure ulcers, septicemia rates or other rates of hospital-acquired infections, from 2001 to present.

9. Any internal documents, or communications between Prime, any of its facilities, and the California Department of Public Health, reporting on, analyzing, discussing, or other concerning Prime or any of its facilities' efforts to comply with California Health and Safety Code § 1279.1, from 2006 to present.

10. Coding guidelines and training materials for coders at each Prime facility.

11. Names of any coding consultants used by Prime at any of its facilities since 2001.

12. Any communication between Prime, any of its facilities, and any coding consultants from 2001 to present.

13. For each patient diagnosed with septicemia, the portions of the patient chart (redacted to protect patient identify) that support that diagnosis.

14. Description of the content of all trainings given to Prime or any of its facilities' employees regarding the proper cleaning of surfaces that may contain infectious agents.

15. Description of the content of all trainings given to Prime or any of its facilities' employees regarding the prevention and treatment of pressure ulcers.

16. A list of all Nurse Practitioners and Physician Assistants who serve as hospitalists.

(GC Exh. 33.) At the close of its letter, the Union offered to bargain with the Employer regarding the rejection or modification of any of its information requests. (Id.)

In its request, the Union reiterated its concern that employees, who selected the latest EPO plan, may be forced to utilize the Prime Network and therefore Prime Hospitals; thus, the quality of care at these hospitals was of "crucial importance." (Id.) The Union specifically stated that it had identified systemically high levels of septicemia[15] claims at Prime facilities. (Id.) Thus, Union perceived the

[15] Septicemia is a blood infection that is often acquired medical facilities. (Tr. at 105.)

information to be "relevant and absolutely necessary" to properly evaluate the Employer's EPO proposal and the change in the level of care employees might face if the EPO plan remained an option under the offered healthcare options. As such, the Union articulated the aforementioned 16 specific requests for information. (Id.) This was also presented to the Respondent during the July 23 bargaining session.

On August 9, the Employer responded to the Union's information requests, by letter, citing various justifications for not providing the requested information such as: the Health Insurance Portability and Accountability Act of 1996 (HIPPA), privacy concerns, relevance, confidentiality, propriety information, over breadth of the information sought, and the time period for which the information was sought. (GC Exh. 36.) It was the Employer's contention that the information request was part of a campaign against Prime which focused on the high septicemia rates at Prime Hospitals; and therefore the information requests were a way in which the Union could gain access to "information that it is not entitled to." (Id.) Further, the Respondent postured that some of the requests were "obviously irrelevant" since no employees lived near some of the hospitals for which information was requested. (GC Exh. 36.)[16] The Respondent's itemized responses were as follows:

1. These reports are not relevant to the quality of care at Prime Hospitals. If the union is in good-faith interested in assessing quality of care, governmental reports in this highly-regulated industry are abundant and a matter of public record. These reports can be obtained online from…

2. See Response 1 above.

3. This information is proprietary and confidential financial data that the Employer is not obligated to produce to the union. The Employer has not taken any position in bargaining that would even potentially raise any obligation to reveal such information. If you contend otherwise, please explain your position in writing at your earliest opportunity.

4. See Response 3 above.

5. The Employer objects that this request impinges upon statutory patient privacy rights under the Health Insurance Portability and Accountability Act of 1996 (HIPPA) as the request seeks production of records…

6. See Response 5 above.

7. To the extent that any communications covered by this request covers publicly available records, the Employer submits that information is equally available to the union from such entities and that request addressed to Employer is burdensome.

   To the extent that any of the communications covered by this request are confidential submissions that are not available to the public, the Employer will not produce them in the absence of a greater showing of relevance. Even assuming that such relevance is

[16] It is unfrank that the Respondent would submit that some of the information was irrelevant to employees as they did not reside near these hospitals; yet, at the same time, the Respondent preached one of the benefits of its healthcare proposal was access to the Prime Network. Thus, it is axiomatic that the Union, to benefit from the full offerings of the Respondent's healthcare proposal, be allowed access to all relevant and necessary information for all of Prime's hospitals. It is also disingenuous for the Respondent to attempt to force its new healthcare plan on its employees and only offer them their own coworkers at Centinela as the only legitimate health care providers and the Respondent as the only practical hospital covered by the proposed new plan.

demonstrated, it would be expected that the union would execute an agreed upon confidentiality and non-disclosure agreement, prior to any production.

8. See Response 7 above.

9. See Response 7 above.

10. The Employer submits that the company's coding guidelines and training materials are proprietary and confidential information.

11. The request seeks confidential information of the Employer and invades the privacy interest of such consultants.

12. See Response 11 above.

13. The Employer objects that this request impinges upon statutory patient privacy rights…as the requests seeks production of records that would divulge private medical information about patients treated at Prime Hospitals.

14. Employer objects as to time period, specific hospitals covered by this request and asserts that the request is overbroad and not relevant to the union's request for information related to the Employer's new self-insured EPO plan.

15. See Response 14 above.

16. Employer objects as to time period, specific hospitals covered by this request and that the request is overbroad and not relevant to the union's request for information related to the Employer's new self-insured EPO Plan.

(GC Exh. 36.)

The Union replied to the Respondent's August 9 letter by its own letter dated August 17. In its letter the Union reiterated its requests for information and stated, request by request, reasons to rebut the Respondent's assertions that the information was precluded by the justifications previously offered by the Respondent. (GC Exh. 37.) Said information requests were relevant, according to the Union because the current Anthem healthcare scheme did not include any Prime Hospitals; and, therefore, employees did not have a primary care physician at a Prime Hospital nor experience with Prime Hospitals in general. (GC Exh. 37.) Thus, the relevance and necessity of the information was obvious since the Respondent's self-funded EPO proposal would strongly encourage employees to use Prime Hospitals due to the substantial expense of pursuing health care outside the Prime Network. (Id.) For all intents and purposes given the unavailability of Prime Hospitals and physicians near the employees' residences and work location, the employees were being forced into a system where their primary care physicians were also their coworkers at Centinela. Specifically, item by item, the Union responded as follows:

1. …Given the unprecedented rates of certain conditions at Prime Hospitals, it is uniquely important to access both the quality of care and to benchmark the accuracy of the data used to measure it. The PEPPER reports are relevant in both cases.

2. Communication with government agencies or contracts regarding PEPPER reports is requested to help us interpret the PEPPER results.

3. Claims data is highly relevant to measure the quality of care SEIU members could receive at Prime Hospitals….Moreover, it is through limited access to claims data that union analysts have identified the serious quality questions they want to investigate further, to understand what it would mean for union members to be forced to use Prime Hospitals.

4. Hospital occupancy rates are critical in evaluating the quality of care.

5. Please redact any protected health information and provide the requested documents.

6. See number 5 above.

7. The Union believes these communications are critical to understanding the quality of care issues we have raised with respect to Prime hospitals as such communications may shed light on unusual conditions already identified. The Union is willing to enter into a non-disclosure agreement.

8. See number 7 above.

9. See number 7 above.

10. Coding and documentation issues at Prime are central to understanding the quality of care. It is undisputed that quality is measured through claims data. Given the unusual and alarming infection rates at Prime hospitals, understanding how conditions are getting documented at these hospitals is important in helping untangle the meaning behind the high rates.

11. See number 10 above. In addition, we do not believe that identifying hospital contracts is confidential information. This information is relevant and necessary to these negotiations and must be produced.

12. See 10 above.

13. [W]e specifically stated in our original request number 13 to redact for patient privacy data. Please redact the charts and provide the remaining information.

14. This request is directly relevant to ascertaining quality of care at Prime hospitals. One explanation for high infection rates is poor infection control practices.

15. Training is critical to quality care.

16. We understand Prime is employing mid-level providers such as nurse practitioners and physician's assistance as hospitalists[sic]. . . . The Union may seek to check licenses and verify them against Medicare and state excluded persons lists, and to ascertain whether patients will be treated by doctors when appropriate.

(GC Exh. 37.)

During the August 17 bargaining session, there was no discussion of health insurance. The parties bargained over other topics including health and safety. (R. Exh. 205 at 47–50). A tentative agreement was reached on Employment and Income Security. (R. Exh. 69).

Shortly after the session, Schottmiller sent Bush an August 23 letter informing Bush that the Respondent was continuing along its plan to implement the new healthcare benefit package on January 1, 2011, and that, as a result, the Employer would be holding open enrollment for the new plan in November of 2010. (GC Exh. 38.) Schottmiller also stated that a nomination form was going to be sent out to employees so that they could nominate doctors to be included in the new EPO Network. (Id.)

In separate letter correspondence on August 24, the Respondent repeated its position regarding the Union's information requests stating "many of your requests are overbroad, irrelevant, create serious HIPPA problems and privacy concerns, and are available through various public sources, and apply to hospitals which no Centinela employee would likely ever visit." (GC Exh. 39.) The Respondent also did not provide any information related to the Centinela Hospital that employees would be most likely to visit in the Prime Network for healthcare. The communication continued concerning the validity of the Union's information request. The Respondent also suggested a "face-to-face" meeting with Bush to discuss the Union's position regarding the information requested. (Id.)

In fact, on September 1, a memorandum was delivered to employees in which the Employer notified its employees that, effective January 1, 2011, the Respondent would be offering its new EPO and PPO plans.[17] (GC Exh. 42 A.) It was also posted throughout the workplace and the Employer's intranet. The memorandum included a copy of the doctor nomination form which instructed employees to fill out the form and submit it to the human resources department no later than October 1, 2010. (GC Exh. 42 A.)[18] This concerned the Union because it believed the Employer's actions created a very strong impression that there was going to be a new health plan even though bargaining had not yet been resolved. Further, as indicated above, these actions were taken without knowledge or discussion with the unit employees' bargaining representative.

On September 2, Bush emailed Schottmiller indicating that he had been out of town and that upon his return he had seen her letter concerning the physician nominating forms. (GC Exh. 40.) He requested the Employer not distribute the letter or form without negotiation with the Union first. (Id.) Schottmiller

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[17] The memorandum stated as follows:

"Effective January 1, 2011, Centinela Hospital Center will be offering its new EPO, medical plan, along with new PPO plans. We are currently building out network of physicals, specialists and healthcare providers to make the plan as comprehensive as possible. If you want your doctor or healthcare provider to be a part of the new network, please fill out the attached Physician Nomination form and return it to the Human Resources Department as soon as possible, and no later than October 1, 2010. Although the nomination form only captures data for one physician, you may nominate multiple physicians using separate forms. Additional forms are available in the HR office or copies maybe made at your discretion. Note: Physician nomination does not guarantee inclusion in the Prime Network. The nominated physician will be contacted and must sign an agreement with the network prior to inclusion. Additional details regarding biweekly plan premiums and final summary plan documents will be provided prior to the November 2010 Open Enrollment period. Dates will be announced. If you have any questions regarding this correspondence or the nomination process, please feel free to contact the HR Department, or check the benefits section on the Intranet under Quick Links on the left side of the Homepage. Thank You." (GC Exh. 42 A.)

[18] The draft of the memorandum that was sent out was admitted into evidence as G C Exh. 110 and states as follows: "TO ALL EMPLOYEES: EFFECTIVE JANUARY 1, 2011, CENTINELA HOPSITAL WILL BE OFFERING ITS NEW EPO MEDICAL PLAN, ALONG WITH NEW PPO PLANS. WE ARE CURRENTLY BUILDING OUR NETWORK OF PHYSICIANS, SPECIALISTS AND HEALTHCARE PROVIDERS TO MAKE IT THE BEST PLAN FOR EVERYONE. IF YOU WANT A DOCTOR OR HEALTHCARE PROVIDER TO BE PART OF THE NEW NETWORK, PLEASE FILL OUT THE ATTACHED PHYSICIAN NOMINATION FORM AND RETURN IT TO THE HUMAN RESOURCES DEPARTMENT AS SOON AS POSSIBLE. IF YOU HAVE ANY QUESTIONS, YOU MAY CONTACT HR OR CHECK THE BENEFITS SECTION ON THE INTRANET."

responded through email that she was unaware that he was out of town and that the letters and physician nomination forms had already been sent to union members earlier in the week. (Id.)

On September 15, the Union responded to the Respondent's August 24 letter, reiterating its position that the information was both relevant and necessary to bargaining and requested to bargain over health insurance and the information at the September 30 bargaining session. (GC Exh. 41.) The Union also declined the "face-to-face" meeting, previously suggested by the Respondent, as the Union felt that the issues were better dealt with at the bargaining table with the Union's bargaining team. (Id.) The Employer responded on September 24 repeating its earlier objections that the Union's July 23 information requests were "overbroad, irrelevant, created serious HIPPA problems and privacy concerns, and were available through various public websites." (GC Exh. 42.) The Employer also asserted that providing such information was not required by law and that redacting any identifiers in the information requested would be "overwhelmingly burdensome." (Id.) In this same response, the Respondent informed the Union that, during the September 30 bargaining session, the Respondent would be presenting its last and final offer on the healthcare issue. (Id.)

The Respondent conducted an employee forum meeting on September 27, to inform employees about the new healthcare plan. Respondent's management gave a presentation regarding the new healthcare plan. Respondent's representatives informed employees that they had to choose between the EPO plan and the Anthem plan—employees would have pay for the Anthem plan, if selected, because it was no longer going to be free. Employees were instructed that if they wanted to add their physicians to the small EPO list, they needed to use the nominating form previously distributed. [19] Finally, employees were instructed that open enrollment would take place in November with plan implementation scheduled for January 1, 2011, at which point, if employees did not choose a plan, they would automatically be added to the EPO plan and their dependent(s)' coverage would be discontinued. There was no Union representative present at the meeting.

During the September 30, 2010 bargaining session, the Union was informed that healthcare had become a "single critical issue"—due to the costs of extending the then existing healthcare insurance beyond January 1, 2011—and; therefore, the Respondent did not want to bargain on other matters but rather simply wanted to focus on healthcare. The parties continued to negotiate on healthcare. The Union tentatively agreed to the language in the Health and Benefits Article with the date of implementation left open. (GC Exh. 43). The Employer, proposed a plan that would eliminate the high and low PPO options and combine them into one proposal. The Union rejected this proposal and reproposed what it had proposed earlier that day with the only change being that it was not going to seek a reduction within co-pay for outpatients seeking mental health benefits. (GC Exh. 46). The parties did sign off on a tentative agreement on Recognition. (R. Exh. 69.)

During the October 21 bargaining session, the Respondent presented the Union with a document entitled "Centinela Hospital's Final Offer—October 21, 2010 – 10 a.m." (GC Exh. 48.) The Respondent contends that the parties were not only at impasse with respect to healthcare but were also at impasse with respect to the entire contract. The Union did not agree citing recent changes the Respondent had made to its most current final offer. At this session, the parties did agree to management rights and subcontracting

[19] No evidence was provided as to the steps necessary to add a nominated physician to the Prime Network. I find it unreasonable to expect an employee could easily add their own physician to become a listed provider on Respondent's proposed EPO plan as no evidence was admitted proving this was relatively easy to obtain. Undoubtedly, a negotiated contract would be required between the Prime hospital involved and various nominated physicians including agreed compensation rates paid by Prime to the physician for various treatments and office visits.

articles. (R. Exh. 105.) The Union reiterated its concerns about the number of doctors in the Prime Network and the quality of care that was delivered at Prime Hospitals.

Communication between the parties subsequent to the October bargaining session establishes that the parties differed as to whether impasse had been reached with regard to bargaining. The Respondent maintained its position that the parties had reached bargaining impasse. On October 29, Schottmiller sent a letter to Bush, informing him that open enrollment would begin November 1 for employees and that the Employer was going to be offering the EPO plan option during the enrollment period. (GC Exh. 49). The correspondence also declared the parties had reached impasse during the October 21 bargaining session. (Id.) The letter closed leaving open the possibility "to meet and discuss any other economic or non-economic issues that the SEIU [Union] believes are not at impasse." (Id.)

The Union replied, by letter, indicating that the Union did not believe that it was at impasse and that it was still waiting for information requested regarding the proposal. (GC Exh. 50.) The Union also indicated that it was ready and willing to bargain. (Id.) The Union informed the Employer that it would be filing an unfair labor practice charge for the Employer's unlawful unilateral action. (Id.)

On November 2, the Union requested information regarding doctors in the Prime Network under the EPO Plan (R. Exh. 117), which the Respondent replied to on November 3. (R. Exh. 118.) Other than the physicians listed as working at Centinela, the overwhelming majority of listed physicians were inaccessible to the Respondent's employees because, as stated above, they were located in San Diego, Orange County, the Inland Empire, the San Fernando Valley, or other distant locations. (Id.)

In an email exchange between the parties on December 14, the Respondent indicated that the Respondent would meet with the Union in January 2011 but indicated that the Respondent's position as to impasse had not changed and by meeting the Respondent was not waiving its position that the parties were at impasse. (GC Exh. 51.) On December 15, the Respondent sent a letter to the Union indicating the Respondent's "last, best, and final offer" was set to expire on December 31. (GC Exh. 52.) An updated offer, with the only change being the date of pay raises, was attached. (Id.) The Union responded indicating that it was still waiting for the Employer to respond to bargaining dates it had requested while indicating the December 15 presentation of the "last, best, and final offer" was ill timed because of the holidays. (GC Exh. 54.) The Union sent another letter on December 30 indicating, again, that the parties were far from impasse and requesting more information. (GC Exh. 55.)

On January 13, 2011, the Respondent informed the Union that the Respondent would not make any "substantive changes or movement from the last, best, and final offer" previously sent. (GC Exh. 56.) The Respondent also indicated that it felt that the Union's most recent information request were made in bad faith to frustrate the bargaining process and for the purposes of "manufacturing potential unfair labor practices." (Id.) However, the Respondent indicated that it was in the process of gathering information in response but did not waive its position that impasse had been reached. (Id.) The Union responded challenging the Employer's characterization of the bargaining status and indicated that "[b]y announcing in no uncertain terms that you will not move from your last proposal and will not bargain with the Union, your actions cause the January 27 session to be canceled." (GC Exh. 57.) On February 7, 2011, the Respondent replied stating, among other things, that it "will not make any changes to the substantive terms and fundamentals of its proposals on which agreement has not been reached." (GC Exh. 58.) The letter continued, "[u]nless and until the Union is prepared to agree to those fundamental terms and to enter into a collective bargaining agreement confirming its agreement to them . . .the parties will remain at impasse." (Id.)

The parties met on March 29, 2011. The Union made four bargaining proposals—Employee Status, Compensation, Vacation Benefits, and Sick Leave Benefits. (R. Exh. 205 at 63–65.) The Union stressed that the parties were not at impasse. The Respondent believed the parties were at impasse but

was willing to look at the proposals, as it was not going to consider fundamental changes but would allow smaller changes to the Respondent's proposal.

Communication between the parties ensued. The Union wrote to the Respondent on April 20, 2011, indicating its disappointment concerning the Respondent's lack of counter, indicating it was willing to bargain, and threatened to file unfair labor practice charges for the Respondent's continued refusal to bargain. (GC Exh. 60.)

In a letter dated April 29, 2011, to the Union, the Respondent outlined bargaining topics on which the Employer remained firm. (GC Exh. 61.) One of those terms was the Respondent's healthcare proposal. Respondent did articulate that it was willing to consider "any word-smithing" that would not alter the "substantive terms and fundamentals" of the Respondent's proposals but that would result in the Union agreeing to proffered proposals. (Id.) At this point, it was the Respondent's contention that "Centinela will not abandon or modify the fundamental components of its last, best and final offer." (Id.) Further, the Respondent maintained that unless the Union agreed to those terms, future meetings were not legally required and they would be a waste of time and energy for participants. (Id.)

Ruppert was hired as a contract negotiator for the Union in September of 2011. After taking over the Centinela bargaining, discussion started between Ruppert and the Respondent regarding the Respondent's position. Through email conversations, the Respondent reiterated its position regarding Union proposals. On October 15, 2011, the Respondent wrote to the Union:

> Centinela [Respondent] will not abandon or modify the fundamental components of its last, best, and final offer made to the Union. Accordingly, unless and until the Union is willing to agree to those components, further meetings are not only not legally required, they will be a waste of time and energy of all concerned.

(GC Exh. 65.) The email concluded by inviting the Union to meet on November 29, 2011, if they were willing to bargain. (Id.) The Union responded by reiterating that it was the Union's belief that the parties were not at impasse, cited the outstanding information request regarding the quality of care information, and requested to meet with the Employer to continue to bargain. (GC Exh. 66.) The Union also noted it had some new proposals it wished to present to the Employer. (Id.) The Employer responded and requested clarity on the information sought. (GC Exh. 67.) The Union responded indicating that the information requests outstanding were regarding healthcare. (GC Exh. 68.) The Union also indicated that it had several proposals to present to the Employer. (Id.) On November 23, 2011, the Respondent replied indicating that its position on the open information requests had not changed and reiterated, regarding the Union's new proposals, that "unless they are T/As to our last, best, and final or involve word-smithing our LBF, we will accept them, but we will not have any counters for you as we have already presented our last, best, and final." (GC Exh. 69.)

On November 29, 2011, the parties again met. The Respondent started the session by going through each article of the Employer's last, best, and final offer while asking the Union if they were prepared to enter into a tentative agreement on each article. The Union maintained its position that impasse was illegal and premature. The Union also presented the Respondent with three proposals—one for a wellness and health education committee, one for healthcare leaders, and one for whistleblowers. (GC Exh. 70.) The Employer did not comment on the proposals and informed the Union that the Employer would not discuss workplace issues during bargaining. Prior to this bargaining session, the Respondent informed the Union that it had provided all of the information that it would provide. It reiterated this position during the bargaining session while indicating that any union proposals, unless they were tentative agreements to the last, best, and final offer or involve word smithing, would not be met with a counteroffer as the Employer has already presented its last best and final offer.

The Employer and the Union met again on December 22, 2011. The session started with the Respondent reminding the Union that it was the Respondent's position that the parties were still at impasse. The Union proffered proposals surrounding video monitoring, reserve sick leave, and a paid time off counter proposal. (GC Exh. 71.) The Respondent took the proposals; but it did not accept them for their substantive nature.

The parties were supposed to meet in January 2012. A few days before the scheduled bargaining session, on Friday, January 20, 2012, the Union sent an email to the Employer requesting among things to bargaining specifically concerning sick leave and the use of PTO time. (GC Exh. 72.) The Respondent replied indicating that there was

> "no purpose for our meeting . . . [a]ll the issues you want to discuss tomorrow have nothing to do with the terms and conditions set forth in our last, best, and final. If the union's position changes, you can contact me for a new date."

(GC Exh. 73.) The Union replied that it had a counter proposal and a proposal to present and insisted it had the right to bargain over workplace issues and problems. (GC Exh. 74.) The Employer replied unless the Union was willing to accept the Employer's last, best, and final offer was going to be accepted, there was no reason to meet. (GC Exh. 75.) Further meetings between the parties, including the January meeting, which had been previously scheduled, never took place.

II. Analysis

A. *Credibility*

The key aspects of my factual findings above incorporate the credibility determinations I have made after carefully considering the record in its entirety. The testimony concerning the material events in the 2009–2011 bargaining sessions contain sharp conflicts. Evidence contradicting the findings, particularly testimony from Schottmiller, has been considered but has not been credited.

I based my credibility resolutions on consideration of a witness' opportunity to be familiar with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness' testimony; the quality of the witness' recollection; testimonial consistency; the presence or absence of corroboration; the strength of rebuttal evidence, if any; the weight of the evidence; and witness demeanor while testifying and the form of questions eliciting responses. More detailed discussions of specific credibility resolutions appear here in those situations that I perceived to be of particular significance.

I found Bush's testimony to be particularly persuasive. He testified in a detailed and confident manner during the trial with no peculiar hesitation for guidance from others in the courtroom and he believably admitted areas he could not recall. His explanation of the events was supported by the record evidence and was very convincing.

As stated above, I tend to reject most of Schottmiller's testimony unless it is consistent with more reliable evidence. I observed Schottmiller to be evasive, less than serious, and having little recollection of key events without resorting to either her lawyer for leading questions or her bargaining notes for limited assistance. (Tr. 574–580, 587, 592–594, 615, 625, and 677.) Again, Schottmiller was improperly led through portions of her testimony by leading questions from Respondent's counsel. After sustaining a

series of objections to Respondent's counsel's leading questions, I admonished[20] counsel and asked that he please refrain from using leading questions on his direct examination of Schottmiller.[21] I still find it perplexing, as I did during the trial, that Respondent's counsel asked Schottmiller leading questions on direct examination while not doing so with many witnesses on cross-examination. As I indicated during trial, Respondent should have spent more time eliciting information from Schottmiller rather than giving her a sign of what she should say next as such behavior hurt the credibility of his witness. I now draw the negative inferences from the use of leading questions during Schottmiller's direct examination.[22]

Schottmiller also had to have her memory refreshed on numerous occasions through the use of her bargaining notes. While the notes did come into evidence (R. Exh. 205), to the extent that her testimony clarified or explained illegible notes that were taken, I discredit her testimony and rely on the document if it is relevant and understandable. Further, to the extent that Schottmiller contradicted herself during her testimony, I allow the admitted documentary evidence speak for itself. Moreover, I reject Schottmiller's testimony as untrue and disingenuous that the shortage of available physicians to the Respondent's employees in Inglewood, California, particularly pediatricians and gynecologists in Respondent's proposed EPO plan and the Prime Network was not a "quality of care" issue even though she later admitted that the Prime Network of physicians suffered from this same shortage of physicians in September 2010 thereby leading to the sham physician nomination form. Here, according to Schottmiller, the Respondent's employees were led to believe that they could somehow add their personal primary care providers to the Prime Network without any evidence that any physician was added through a contractual relationship or proof that the physician would accept Prime's terms of employment and compensation.

To the extent that the testimony of Bush and Schottmiller is in conflict with respect to how events transpired through the course of negotiations, I relied upon the documents submitted into evidence during the course of this trial. The record is replete with communication between the parties regarding their respective positions, proposals, counter proposals, dates and times of meetings, meeting agendas, and topics discussed and agreed upon. I reject Schottmiller's bargaining note reference allegations at RX 205, pp. 5–6, that Bush and the Union were first informed of Respondent's plan to switch to its self-funded EPO plan in the fall of 2009 as Bush did not recall such a conversation and Schottmiller's notes are unclear as to whether any presentation took place at Centinela rather than some other Prime hospital in the fall of 2009 nor do they indicate who attended or the content of any alleged "presentation."

More importantly, since I find that Respondent's proposed new EPO plan was first disclosed to the Union, instead, at the February 16 bargaining session and evolved to become more expensive and more restrictive to the union employees' options by offering the Respondent's employees with less access to primary care physicians and specialists as the bargaining sessions progressed in May and, finally, July 23, I find that the "quality of care" issue grew in relevance as the terms and conditions of Respondent's health care proposals became more restrictive and expensive to employees. As stated above, it was not until after the May 6 bargaining session that the Union became aware that the Respondent, under its proposed health plan, would require EPO plan participants to use a gatekeeper and obtain a referral from their Prime Network primary care physician before accessing the Anthem Blue Cross specialist network,

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[20] Board rules, Sec, 102.177(b), authorize the judge to "admonish or reprimand, after due notice, any person who engages in misconduct at a hearing." A "formal admonition or reprimand declares conduct improper and cautions offender that repetition of offense will result in more severe discipline." *Sargent Karch*, 314 NLRB 482, 486 fn. 14 (1994).

[21] (Tr. at 566, 570, 573, 576, 580– 581, 586, 594, 617, 621, 623, 626, 643, 667–668.)

[22] Leading questions may impair the probative value of a witness' testimony. *Greyston Bakery, Inc.*, 327 NLRB 433, 440 fn. 12 (1999).

as indicated by the comparisons between plan documents sent through email with previous versions. (GC Exh. 29.) Also, the Respondent presented the Union with its counterproposal during the July 23 bargaining session which, while maintaining some of the Respondent's prior positions including EPO and employee contributions at all levels within the EPO plan (GC Exh. 35), also rejected the Union's proposal to access the Anthem Blue Cross portion of the EPO network without the requirement of a gatekeeper and having to incur a referral expense. (Id.) Consequently, by July 23, I find that the Union was being forced to accept the Respondent's small EPO network of physicians at a higher price than ever before and had legitimate questions as to the quality of care they were being forced to accept from the Respondent.

Finally, to the extent that there was testimony concerning a conversation between Schottmiller and Bush to which only the two of them were privy to, that took place purportedly sometime between March and April of 2010, where Bush allegedly threatened that if the Respondent did not agree to a collective agreement the Union would try and put Lex Reddy, CEO of Centinela Hospital Medical Center, in jail, I disregard the testimony.[23] Schottmiller asserts that Bush made such a statement and Bush asserts that he did not make such a statement. I find Bush more believable on this point especially since Schottmiller's notes make no reference to any alleged threat.

I credit Allen's testimony regarding the nature and form of the Respondent's September 27 employee meeting where the Respondent admitted that its new proposed EPO plan had a small physician list of providers but encouraged employees to nominate their own physicians to see if they could be added to the Prime Network. Her testimony regarding the employee meeting, her receipt of the Respondent's September 1 correspondence regarding the EPO plan, the placement of the memorandum throughout the hospital was very convincing.

B. Respondent's Failure to Provide Information Precludes Impasse

The complaint in this matter alleges that the Respondent failed to provide information to the Union beginning in July of 2010 and failed and refused to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act. The General Counsel's theory is that the information requested was necessary for the Union to formulate and evaluate bargaining proposals and that, since the Respondent never provided this information to the Union, no impasse occurred during the course of bargaining between the parties. Among other reasons for not complying with the Union's information requests, the Respondent asserts that these information requests were "voluminous" and only made at the "eleventh hour." (R. Br. at 60.) The Union's information requests at issue here are memorialized in the July 23 and August 17, formal information requests and both the Employer's formal and informal responses thereafter. (GC Exhs. 33, 36–39.)

1. The information requested by the Union is relevant to the bargaining process

Under Section 8(a)(5) and 8(d) of the Act, an employer is required to provide the union with relevant information needed to enable it to properly perform its duties as the employees' bargaining representative. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967) (citing *Labor Board v. Truitt Mfg. Co.*, 351 U.S. 149 (1956) (holding that an employer had a duty to provide information relevant to bargainable issues upon requests from the union)); see also *Detroit Edison v. NLRB*, 440 U.S. 301, 303 (1979) (noting the duty to supply information turns upon "the circumstances of the particular case") (citing *Truitt Mfg. Co.*, 351 U.S. at 153)).[24] When the union's request for information pertains to

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[23] (Tr. at 383, 672.)

[24] "A broad disclosure rule is crucial to full development of the role of collective bargaining contemplated by the Act. Unless each side has access to information enabling it to discuss intelligently and deal meaningfully with

Continued

employees within the bargaining unit, the information is presumptively relevant and the employer must provide the information. *Disneyland Park*, 350 NLRB 1256, 1257 (2007).

The duty to furnish information requires a reasonable good-faith effort to respond to the request as promptly as circumstances allow. *Good Life Beverage Co*., 312 NLRB 1060, 1062 fn. 9 (1993). "An employer must respond to the information request in a timely manner" and "[a]n unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) as a refusal to furnish the information at all." *Amersig Graphics, Inc*., 334 NLRB 880, 885 (2000); see also *Newcor Bay City Division*, 345 NLRB 1229, 1237 (2005) (and cases cited therein). Here, the Respondent never produced any information responsive to the Union's July 23 information request.

In a case where the information that the union is requesting is not presumptively relevant, it is the union's burden to demonstrate relevance. (Id.) A union satisfies this burden when it demonstrates a reasonable belief, supported by objective evidence, that the information requested is relevant. (Id.) This must be more than a "bare assertion" that the union needs the information. *Detroit Edison Co. v. NLRB*, 440 U.S. at 314. In such a case, the standard for relevance is articulated as a "liberal discovery type standard to the issue of relevancy in evaluating each case on its facts." *Loral Electronic System*, 253 NLRB 851, 854 (1980) (internal citations omitted). Potential or probable relevance is sufficient to trigger an employer's obligation to provide information. *Reiss Viking,* 312 NLRB 622, 625 (1993) (noting the union's request must be based on objective factors and that "hearsay" reports are sufficient to show the union has some basis for making its requests). Proving relevance is as easy as the requesting union indicating the reason for its request. *Paccar, Inc.*, 357 NLRB No. 13, 3 (2011).[25] Thus, the burden to establish relevance is not an exceptionally difficult one requiring only that the desired information be useful to the union in carrying out its statutory duties and responsibilities. *Castle Hill Healthcare Center*, 355 NLRB 1156, 1179 (2010); *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994).

It is worth noting, however, that the union's explanation of relevance "must be made with some precision and a generalized, conclusory explanation is insufficient to trigger and obligation to supply information." *Disneyland Park*, 350 NLRB at 1258 fn.5; see also *Grand Islander Healthcare Center*, 256 NLRB 1255, 1256 (1981) (noting the union is not required to demonstrate the exact relevance of such information unless the employer has demonstrated evidence sufficient to challenge the presumption of relevance). The burden is on the Board to make the threshold determination concerning the relevancy of the information. *Tool &Die Makers' Lodge No. 78*, 224 NLRB 111, 111 (1976) (noting the Board must determine whether the information was needed, relevant to the bargain, and important enough to invoke a statutory obligation for the other side to produce said information).

The information requested by the Union, here, is presumptively relevant. The Board has held that, for example, the content of the workers' compensation policy and the description of the healthcare plan were presumptively relevant to the Union to be used in its role as the exclusive representative of the unit employees. *Honda of Hayward*, 314 NLRB 443, 443 (1994) (affirming the ALJ's finding of

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bargainable issues, effective negotiation cannot occur." *Detroit Newspaper Printing & Graphic Communications Union v. NLRB,* 598 F.2d 267, 271 (D.C. Cir. 1979). '"[R]elevancy is synonymous with "germane"'; and a party must disclose information if it has any bearing on the subject matter of the case." Id. (internal citations omitted).

[25] It is worth noting that an employer's assertions during bargaining can put into play the necessity of information requests. *Paccar, Inc.*, 357 NLRB No. 13 1, 2 (2011). The Board found information concerning labor costs at respondent's other facilities relevant to bargaining after the respondent mentioned during negotiations that labor costs at its other facilities were lower. Id. As the Board stated, it was not surprising the Union requested said information to help it to "sharpen its bargaining proposals accordingly." Id. Thus, to the extent that the Respondent here asserted during bargaining that the Union should have no concerns regarding access or the quality of care under the new healthcare plan, the Union would have a right to such information to verify the Employer's position.

relevance). In *Aztec Bus Lines, Inc.*, the Board affirmed the ALJ's finding that basic information such as the carrier of the health benefit plan was as much of a "component" of the health and welfare plan as was the level of coverage. *Aztec Bus Lines, Inc.*, 289 NLRB 1021, 1037 (1988). In his decision, the ALJ continued to note that it was not more than common sense that the union's interest in the health and welfare plan would include the carrier's identity because this information would enable the union to investigate the carrier's financial condition and reputation for prompt and fair payment of insurance claims. (Id.)

Similarly, the Union's request for information concerning items including those itemized in its request are presumptively relevant, as the Union states, to understand the ramifications of the employer's healthcare proposal—information concerning, wages, hours, and terms and conditions of employment. If details such as the carrier of a health benefit plan have been found to be relevant to enable the union to investigate the worthiness of an insurance carrier, it is apparent that information regarding the training given to employees surrounding proper cleaning of surfaces or training regarding the prevention and treatment of a type of ulcer often contracted during hospital stays or a list of all nurse practitioners and physician assistants serving in the hospitals is equally, if not more, relevant for the Union to properly evaluate the Respondent's bargaining proposal regarding the implementation of the EPO program, especially the quality of care delivered at the 14 Prime hospitals in California. Here, not only was the Respondent proposing to change and increase the cost of an employee's co-pays and deductibles, Respondent was also proposing a new and different network of doctors that the Union sought to evaluate through its information requests.

Moreover, if the information the Union requested to assess the quality of care at Prime Hospitals is found not to be presumptively relevant, the Union easily establishes the requested information's relevance when it responded, through its detailed August 17 letter, to the Employer's objections providing the rationale and basis for how each piece of requested information would enable the Union to properly evaluate the Respondent's healthcare proposal. See *New Surfside Nursing Home*, 330 NLRB 1146, 1146 fn.1, 1149 (2000) (Board affirmed the ALJ's finding of relevance for information requested by the union regarding a submission to government agencies, such as Medicare, and finding that the requested information assisted the union in evaluating the employer's economic proposals and demands during bargaining).

In the case of nonpresumptively relevant information, once the union has proven the information it requested is relevant to its statutory obligations of performing its duties as the bargaining unit representative, "the employer has the burden to prove a lack of relevance . . . or to provide adequate reasons as to why he cannot, in good faith, supply such information." *Calmat Co.*, 331 NLRB 1084, 1095 (2000) (quoting *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977)). Here, I find that the Respondent has not proven a lack of relevance for the requested information.

The minimal burden the Union would be required to carry to establish the relevance of the information, again, was outlined in its August 17 letter. In this communication, the Union detailed item by item how the requested information would enable to the Union to better understand and evaluate the Employer's healthcare proposal. I find the information is relevant. Respondent employees, as the record has established, are strongly being encouraged to use the new EPO plan which for the first time restricts employees to using the Prime Network. Thus, to the extent that monetary constraints—the need for a referral from a primary care physician to utilize the Anthem Network—and the access constraints—having to obtain a referral and the geographic dispersion of Prime hospitals—push employees or at least strongly encourage them to use the Prime Network under the EPO plan, I find that the aforementioned requested information is relevant for the Union to assess the new benefit plan that includes a new and different network of doctors and facilities it and its members have not used before.

2. The Union's July 23 information request was not made in bad faith

The "presumption is that the union acts in good faith when it requests information from an employer until the contrary is shown." *Hawkins Construction Co.*, 285 NLRB 1313, 1314 (1987), enfd. on other grounds, 857 F.2d 1224 (8th Cir. 1998).

In its brief, Respondent asserts that the Union's July 23 information request was made by the Union in bad faith—to wage a corporate campaign against the Prime Network, to stall negotiations, and to delay the inevitability of employees having to contribute to their healthcare premiums. (R. Br. at 62). I find this unpersuasive. It is true that information requests, like discovery in civil lawsuits, can be initiated to harass the party in which the information requests are aimed. *Graphic Communications International Union v. NLRB*, 977 F.2d at 1169–1170. The United States Court of Appeals for Seventh Circuit describes an information request that is designed to harass as having a tripartite structure: the union may want the information to embarrass the company: the union may want the information in the hopes that the company will refuse its demand allowing it to take protected action against the employer such as an economic strike: the union may want the information to delay the "the evil day" on which the company will act on its demands or moderate its demands faced with threat of delay. (Id. at 1170.) The court noted that bargaining will take longer the more information that the employer must disclose—especially when the information provides a basis for further discussion—which prolongs the parties from reaching impasse and the opportunity the employer has to make unilateral changes in employee's wages and working conditions. (Id.) Respondent's claims in this case directly mimic the aforementioned examples Judge Posner illustrated in his discussion of bargaining requests made in bad faith. The record, however, does not support this assertion.

The Respondent asserts that the Union's request for information was made in bad faith. I find that the information request made by the Union was not made in bad-faith or with an improper motive. As stated above, the quality of care issue in the July 23 information request became necessary and relevant due to the Respondent's shrinking healthcare provider pool combined with its new gatekeeper requirements which made the Prime Network a Respondent's employee's most likely choice for healthcare. The Respondent asserts that the information request made during July was part of a corporate campaign against the Employer's parent company, the Prime Network, because it purportedly mirrored a similar information request made in November of 2009. As such, Respondent argues that the information requests were not valid since it was a continuation of an improper former request.

As stated above, I find that the November 9 information request and the July 23 information request are not mirror image requests of each other. They are materially different. The July 23 information request seeks information about the quality of care at *all* Prime Hospitals and providers arguing that the information "is both relevant and absolutely necessary for the Union to properly evaluate the EPO proposal and the possible changes to the level of care the employees who select health insurance coverage from [the] Prime [Network] may face[.]" Bush reminded Schottmiller in the information request that the Respondent's latest negotiations had changed from allowing Respondent employees to move freely between the Prime and Anthem networks to "the most recent iteration [that] would require employees to select a primary care physician solely from the Prime network, . . . and by extension to Prime hospitals, [therefore,] the quality of care at these Prime hospitals is of crucial importance." (GC Exh. 33).

While the July 23 information request was similar to a request first made to Respondent's CEO Reddy and Prime's assistant general counsel Savitala in early November of 2009 requesting information primarily from only Centinela's facility because of workplace safety and staffing level concerns, the July 23 information request was much broader as it involved the Union's new quality of care concerns for Respondent's employees as prospective patients in the new EPO plan. As a result, the requested information was directed to *all* of the Prime hospitals and Prime physicians and not just the Respondent

Centinela. (Compare GC Exh. 33 with R. Exh. 2). Once again, the July 23 request continued on to state that the Union had "grave concerns about Prime-Centinela's proposed self-funded health plan . . .[one particular area of which] . . . is the quality of care that would be available for employees under the EPO plan."

Without addressing the question of whether the information request submitted in November of 2009 was valid or not, I find that the requested information was valid in the course of bargaining.[26] Thus, the expanded issuance of the information requests by the Union during July was valid to the Union's function as the collective-bargaining representative of its members. Presumably, if the Respondent would have had initially replied to the request in 2009, the Union's repetition of the requests would be in bad-faith at most to the 3 of 16 repetitive requests. However, this question does not need to be addressed because a response was not previously given and the July 23 information request was not a "do-over" from November 2009 but, instead was a materially broader and, therefore, different information request. Simply, the Union requested information in 2009.[27] The Respondent declined to provide it. On July 23, the Union requested the information concerning all of the Prime Network facilities not just Centinela. This latter request was made *after* all of the following took place: (1) the Respondent introduced its new healthcare proposal and its newly proposed gatekeeper requirement making it unlikely that a unit employee could expect healthcare outside the Prime Network; (2) the Union voiced concerns over the Prime Network as it was being proposed as the sole service provider in the EPO network for reasons including but not limited to the quality of care being offered at Prime Hospitals; and (3) the Respondent extended the deadline to implement the new healthcare provisions. The request was made *before*: (1) the Respondent's unilateral implementation of the EPO plan; (2) the Respondent presented its alleged last, best, and final offer; and (3) the Respondent distributed to employees a memorandum announcing the healthcare change and held employee meetings informing employee about the plan without advance notice to the Union.

Based on this chronology of events, there is no indication the Union made the requests simply to wage a corporate campaign against the employer, to stall negotiations, or to delay the inevitability that employees have to contribute to their healthcare premiums. More realistically, it appears the Union made good-faith requests after the stakes of the negotiation were raised—the Employer's push for the drastic revision in healthcare as presented by the new restrictive EPO option. The parties were in the thick of negotiations. They were actively bargaining.

Even if the information was sought to in some ways harass the Respondent, which the record does not support, it does not matter. The good-faith requirement is met if at least one reason for the demand can be justified. *Hawkins Construction Co.*, 285 NLRB at 1314; *Ormet Aluminum Mill Products Corp.*, 335 NLRB 788, 805 (2001); *AK Steel Corp.*, 324 NLRB 173, 184 (1997); *Associated General Contractors of California*, 242 NLRB 891, 894 (1979). In *ACF Industrial, LLC*, 3 days before the

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[26] Even if, arguendo, the information that was sought by the Union was also desired for another purpose, it is established that when a union requests information for a proper and legitimate purpose, it makes no difference that there may also be another reason that the union requested the data or another purpose to which the data might be put to use. *Associated General Contractors of California*, 242 NLRB 891, 894 fn. 11 (1979).

[27] Initially, when the Union requested the information, it did so in the context of seeking information regarding the health and safety of employees at Centinela. The Union made a similar request again after the Employer announced the EPO plan and its components would relegate its employees to use the Prime Network system and not Anthem. Thus, it is important to understand why the Union requested the broader information, as now they were being "locked into" healthcare within the Prime Network given the employee contribution schedules and the "gatekeeper" function of the EPO plan. In other words, the Respondent made the requested information even more relevant through the specific components of its EPO healthcare proposal by July 23 that included limited access only to the Prime Network physicians and hospitals.

respondent implemented its final offer the union submitted an extensive information request concerning health-and-welfare benefits which the Board found to be in bad faith. *ACF Industrial, LLC*, 347 NLRB 1040, 1046 (2006). It should be noted that in *ACF Indus., LLC*, this information request was made months after the respondent first informed the union that it would be reducing benefits to remain competitive, after the parties had met twice with a federal mediator, and after two versions of the respondent's economic package had been rejected twice by union vote. (Id. at 1040–1041.) The Board majority adopted the ALJ's inference that the union's motivation for requesting the information was a "purely tactical" attempt to forestall impasse rendering the information request made in bad faith. (Id. at 1046.) However, the Board noted the seminal rule stated, supra, that an information request cannot be treated as in bad faith "if at least one reason for it can be justified." (Id.) (internal citations omitted). The Board further stated that given the relevance of the information sought and given that the respondent had offered to continue negotiations over the health coverage after implementation, the union was within its right to request the information. (Id.)

Thus, notwithstanding the possibility that Respondent is correct and a negative inference can be drawn concerning the Union's motivation in making the information requests, the timing here is unlike that in *ACF Industrial, LLC*, making the case distinguishable. Also, in this case, unlike the facts in *ACF Industries*, supra, the issue is not whether there is an overall impasse in bargaining, but an impasse solely on healthcare as the parties reached more tentative agreements after the Respondent improperly declared impasse on healthcare in October 2010. Moreover, as stated above, during the September 30, 2010 bargaining session, Respondent took the position that healthcare had become a "single critical issue"—due to the costs of extending the then existing healthcare insurance beyond January 1, 2011—and; therefore, the Respondent did not want to bargain on other matters but rather simply wanted to focus on healthcare.

Furthermore, here there is at least one reason to justify the Union's information demands. In accordance with my early findings, supra, the information requested by the Union is necessary and relevant to enable the Union to evaluate its concerns over the quality of care offered in the Prime Network of providers which under the Respondent's proposed benefit package would in all likelihood be the primary healthcare provider for Respondent employees given the "gatekeeper" requirement to access the Anthem network, formerly freely available to unit employees.

The Respondent asserts in its brief that the information requests were indicative of bad-faith bargaining because the Union had already agreed to the Prime Network and premium sharing by employees in two other Prime Network locations— Garden Grove in Orange County and Encino in the San Fernando Valley. (R. Br. at 63.) This argument is misplaced. The Union's July 23 request for information in this case is not different than any other bargaining situation where a union wants to know information about other employer plant locations. For instance, in *Paccar, Inc.*, the Board found the union's requests for information concerning labor costs at the respondent employer's other facilities presumptively valid where the employer had put at issue the labor costs at the current facility. *Paccar, Inc.*, 357 NLRB No. 13, 2.

The circumstances here are no different. The Respondent put in issue the fact that it wanted to give its employees access to the Prime Network like other Prime locations had. Thus, the Union here could request information regarding what it thought was necessary to make a decision on behalf of these bargaining unit members at this Centinela location. The fact that the Union had negotiated and allowed the healthcare changes at two other hospital locations owned by Prime as the parent organization but not yet at the Respondent here does not take into account changes at the Respondent's location otherwise known as Centinela. The mere fact that the Union represents employees at other Prime hospitals does not mean that Respondent employees at Centinela do not have the right to necessary and relevant information regarding the Respondent's healthcare proposal that would allow them to be informed consumers and make informed decisions during bargaining. Frankly, these three locations are all distinct with different

members within each bargaining unit not to mention their separate geographical locations miles, and in some cases, counties apart from each other.

The Union has a presumptive right to request information regarding wages, hours, and terms and conditions of employment it sees as necessary to bargain and fashion remedies for the members it represents at Respondent's location in Inglewood, California. The Union may negotiate CBA's at various Prime hospitals but negotiations with Respondent are distinct and separate from any earlier or future CBA negotiations at other Prime Network locations. As a result, I find that the Union had a presumptive right to the July 23 requested information which would allow it to evaluate employer proposals and fashion counter proposals regarding topics relating to wages, hours, terms and conditions of employment. Also, as stated above, I further find that even if it does not have a presumptive right to the information, the Union established the requested information's relevance to bargaining. The Respondent's bare and unfounded assertions that the information requests were intended for other purposes do not, without more proof, win the day. Rather, such arguments fall flat in the face of relevant information requests made during a very fluid time in negotiations for which at least one reason can be justified. The Respondent has not proven that the Union had no valid motive in making its July 23 information requests.

3. Respondent's other asserted defenses for its failure to provide information have no merit

The Respondent asserted other grounds, beyond relevance, for refusing to provide the Union with the requested information during the course of bargaining through its August 17 letter.

First, the Employer informed the Union that the information it sought was available from public information sources. This, however, does not excuse the Employer's obligation to provide the Union with the information it requested. The case law is instructive that a union's right to information is not defeated merely because it may acquire the requested information through an independent source or course of investigation. *Kroger Co.*, 226 NLRB 512, 513 (1976); see also *People Care, Inc.*, 327 NLRB 814, 824 (1999).

The Respondent also argues on more than one occasion that the information the Union was seeking was confidential. The Board recognizes that the respondent' claim of confidentiality must be balanced against the union's need for relevant information as it acts as the representative of its employee members. *Howard University*, 290 NLRB 1006, 1007 (1988) (citing *Detroit Edison v. NLRB*, 440 U.S. 301 (1979)). The employer has the burden to demonstrate that its failure to provide relevant and necessary information to the Union under the auspicious of confidentiality grounds is excusable. *McDonnell Douglas Corp.*, 245 NLRB 881, 890 (1976). The Board has also held that "[l]egitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not." *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1105 (1991).[28]

Here, beyond making a blanket assertion of confidentiality, the Respondent has not shown specifically why some of the Union's requested information could not be provided. Take, for example, the names of any coding consultants used by the Respondent. (GC Exh. 36). The Respondent answered the Union's request by asserting that said information was confidential and would invade the privacy of the Respondent's consultants. (Id.) The requested information, however, is not confidential. As the Respondent did not prove or attempt to prove such information was confidential.

[28] General assertions of confidentiality or privilege do not warrant complete refusal to provide that information but instead imposes an obligation on the parties to bargain in good faith to reach an accommodation of interests. See *SBC California*, 344 NLRB 243, 243 (2005). The party asserting confidentiality has the burden of proof. *United States Postal Service (Main Post Office)*, 289 NLRB 942, 944 (1988), enfd., 888 F.2d 1568 (11th Cir. 1989).

In *National Extrusion & Mfg. Co.*, 357 NLRB No.81, 17 (2011), the Board agreed with the ALJ's conclusion that the respondent violated the Act because it failed to advance arguments and prove information such as the names of current or past customers were confidential. (Id.) The ALJ continued to note that there was no information to evidence that the company feared the union would misuse said information. (Id. at 156 fn.31.)[29] The Respondent here has equally made no arguments even though this was the alleged basis for failing to provide more than one set of the information requested by the Union. Further, even if the Respondent truly had these concerns, action is incumbent upon the Respondent to propose alternatives or seek to bargain to resolution its confidentiality concerns. (Id. at 157.) The Board has stated that:

> With respect to the confidentiality claim, it is well established that an employer may not avoid its obligation to provide a union with requested information that is relevant to bargaining simply by asserting a confidentiality interest in the information. Rather, the employer has the burden to seek an accommodation that will meet the needs of both parties. . . [by ,]upon informing the Unions of its confidentiality concerns, . . . [holding its] obligation to come forward with an offer of accommodation.

Nationall Steel Corp., 335 NLRB 747, 748 (2001). See *Borgess Medical Center*, 342 NLRB 1005, 1106 (2004), where the Board stated:

> When an employer demonstrates a substantial confidentiality interest, it cannot simply ignore the Union's request for information. It must still seek an accommodation of its concerns and the Union's need for the requested information. The burden of formulating a reasonable accommodation is on the employer; the union need not propose a precise alternative to providing the requested information unedited.

(internal citation omitted).[30]

The record is replete with the Union's concessionary actions such as requesting to bargain with the Respondent regarding confidentiality concerns, agreeing to enter into a disclosure agreement, and allowing the Respondent to redact and provide a confidentiality log regarding information it saw as confidential. (GC Exh. 33); (GC Exh. 37.) The record is void of any attempts by the Respondent to answer the Union's information requests or to provide accommodations in light of the Respondent's confidentially concerns. The Respondent argues in its brief that it offered the Union the opportunity to meet "face-to-face" to discuss each parties' respective positions. (R. Br. at 66); (GC Exh. 39.) I find this insufficient, however, to relieve the Respondent of its duty to provide information under the auspicious of confidentiality. The Union responded to the Respondent's August 24 letter by declining the "face-to-face" meeting as the Union felt that the issues were better dealt with at the bargaining table with the Union's bargaining team. (GC Exh. 41.) Given the reason asserted by the Union for not wanting a "face-to-face" meeting and the fact that the Union was the first to suggest a disclosure agreement and reiterated its willingness to enter into one, in its September 15 response, I find it disingenuous for the Respondent to

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[29] Confidentiality issues were not raised at trial and were not raised in Respondent's posthearing brief. I merely address these issues because they were the Respondent's stated reasons at the time and subsequently thereafter for not providing the Union with the relevant information during the course of bargaining.

[30] Absent proof the union is unreliable in respecting confidentiality agreements, the employer's failure to test the union's willingness to hold information confidential weights against its defense. *Reiss Viking,* 312 NLRB at 662 fn. 5. This does not imply that the employer's failure to show that the union is unreliable in respecting confidentiality agreements is a per se violation of the Act. Id. Rather, such a failure is an important factor in assessing the Employer's confidentiality defense. Id.

now argue that the Union refused to meet and bargain therefore relieving it of 8(a)(5) obligation to produce the requested information.

I further find that the Respondent has failed to assert any legitimate justification for failing to provide the information. In its brief (R. Br. at 54), the Respondent correctly notes that a party may be relieved of providing information where such a request is unduly burdensome to the party. See *Tree Fruits Labor Relations Committee, Inc*, 121 NLRB 516, 518 (1958). Furnishing existing data, however, has been found not to be unduly burdensome on respondents. *Taylor Forge & Pipe Works*, 113 NLRB 693, 694 (1955) (noting an information request where the employer was not required to draw up accounts or make extensive surveys but was only requested to turn over existing information is not unduly burdensome); see also *Whitin Machine Works,* 108 NLRB 1537, 1538 (1954) (noting no showing had been made by the employer that compliance with the union's request would place an "unwarranted and undue burden" on the employer).

Respondent asserted an unduly burdensome justification in response to the Union's request for "any communication between Prime, any of its facilities, and the Joint Commission/JCAHO concerning Stage 3–4 pressure ulcers, septicemia rates, or other rates of hospital-acquired infections, from 2001 to present." Beyond the Respondent's blanket self serving statement housed within its August 9 response to the Union's information request, the Respondent has not shown that the request was unduly burdensome. This is especially relevant where this request targets one facet of the Union's concern with the quality of care at the hospitals within the Prime Network. In response to the Respondent's other defense asserted regarding this particular information request—confidentiality—the Union responded by indicating it would enter into a disclosure agreement indicating its flexibility to the Employer's concerns.

Moreover, there is no indication that the Union would not have accepted some communications, redacted documents, or some reports in response. There is no indication the Employer attempted to provide *any* information. There was no accommodation offered to the Union with this request. The Respondent never indicated the true volume of information represented by this request. In essence, if as Schottmiller indicated in her testimony—that there were no quality of care issues or concerns within the Prime Network—this information should have been very easy to provide the Union. Respondent cannot argue on one hand that there are no concerns about quality of care at its facilities while, on the other hand, profess that information used to access quality of care would be too voluminous to provide to the Union so that it could comply with its statutory obligations.

I find that Respondent failed to do anything other than provide the Union with the baseless assertion that the information was confidential and could not be provided because of the undue burden that would be placed on the Employer by responding to the request. I find the Respondent has not asserted any appropriate defense to its failure to provide the Union with its requested information. Given the information is relevant, it must be supplied in a timely fashion. It was not supplied at all. Absent adequate defenses, which have not been demonstrated here, such conduct is violative of Section 8(a)(5) and (1) of the Act.

4. Failing to provide information precludes establishing impasse

Having found the information requested relevant and the requests not made in bad faith, Respondent's failure to provide information colors the entire bargaining process and as a result it is unknown as to whether the Union and the Employer would have bargained to impasse or reached an agreement regarding healthcare because the Union was never furnished the relevant and necessary information to evaluate key components of the Employer's proposed healthcare plan.

Failure to furnish a union with such information can preclude a good-faith bargaining impasse, *Calmat Co.*, 331 NLRB at 1895. Such a situation arises when a party's failure to provide requested

information *necessary* for the other party to create counterproposals and therefore to engage in meaningful negotiation will preclude a lawful impasse. *E.I. Du Pont de Nemours & Co.*, 346 NLRB 553, 558 (2006), enfd. 489 F.3d 1310 (D.C. Cir. 2007) (emphasis added); *Decker Coal Co.*, 301 NLRB 729, 740 (1991) ("A failure to supply information relevant and necessary to bargain constitutes a failure to bargain in good-faith in violation of Section 8(a) (5), and no genuine impasse could be reached in these circumstances.") (internal citations omitted)). The Board in *Sierra Bullets, LLC*, 340 NLRB 242, 243 (2003), notes that the *Decker Coal* theory of a 8(a)(5) violation is only valid when the subject of the information requests made by the union is related to the core issues that are separating the parties in negotiations, thereby making an unfilled information request able to preclude bargaining to impasse. Here, I find that the unfilled July 23 information request is related to the core issue of the quality of care as to Respondent's proposed new healthcare plan that separate the parties to this negotiation. Therefore, the *Decker Coal* theory is applicable.

Failing to provide relevant information prevents the party requesting information from having the opportunity to fully explore concessionary subjects in order to present useful bargaining alternatives. *Pertec Computer Co.*, 284 NLRB 810, 812 (1987) (considering a situation where the employer withheld financial and subcontracting information). Even in the cases, where the employer has complied with its statutory duty and had provided information, the Board has concluded that a genuine impasse cannot be declared and a final offer implemented "before the union had a reasonable opportunity to review the relevant information provided to it . . . and to analyze the impact such information would have on any counteroffers it might make." *Decker Coal Co.*, 301 NLRB at 740 (citing *Storer Communications, Inc.*, 294 NLRB 1056, 1057 (1989)). This is especially true as the information missing in this case was regarding healthcare and the Union's ability to properly evaluate the Respondent's materially changed healthcare proposal which, among other things, completely took away free access to the vast Anthem Blue Cross Network and replaced it with Prime's own smaller network with a gatekeeper requirement at a significantly higher cost to employees.

An employer has a duty to refrain from implementation unless and until an overall impasse has been reached on bargaining for an agreement as a whole. *Master Window Cleaning, Inc.*, 302 NLRB 373, 374 fn. 9 (1991) (citing *NLRB v. Katz*, 369 U.S. 736 (1962)); *NLRB v. Auto Fast Freight*, 793 F.2d 1126, 1129 (9th Cir. 1986), *enfg.* 272 NLRB 561 (1994); and *Lawrence Livermore National Security, LLC*, 357 NLRB No. 23, slip op. at 3 (2011). The Act prohibits employers from taking unilateral action regarding mandatory subjects of bargaining such as rates of pay, wages, hours of employment, and other conditions of employment. *Garden Grove Hospital & Medical Center*, 357 NLRB No. 63, slip op. at 1 fn. 4, 5 (2011).

The simple fact is that the Union made an information request of the Respondent during the course of bargaining a CBA. This information was relevant because it was made to enable the Union to "knowledgably evaluate" the Respondent's proposed EPO healthcare plan that included a different and limited physician network in contrast to the larger traditional Anthem network. See *Harmon Auto Glass*, 352 NLRB 152, 154 (2008), aff'd 355 NLRB 364, 364 fn.3 (2010)(Changed circumstances during bargaining session made information request relevant and impasse could not occur until the information provided.) By not providing this information, impasse was not reached. Since impasse in bargaining was not reached, the Respondent violated the Act by unilaterally replacing its premium based HMO medical plan option using the large Anthem network of physicians and facilities with the self-funded EPO medical plan option with its limited Prime physician and facility network and also requiring a substantial annual contribution from Respondent's employees where none existed beforehand.

Thus, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with information requested and therefore bargained in bad faith with the Union which precludes any finding of impasse and makes unilateral implementation of the Respondent's healthcare proposal an unfair labor practice. By such action, Respondent violated paragraphs 16, 18 (b)-(c), and 21

of the complaint. Because the parties never reached impasse, Respondent also violated paragraph 19 of the complaint. As a result, I also find the Respondent's affirmative defenses meritless. [31]

C. Consideration of the Totality of Circumstances

Assuming, arguendo, that Respondent's refusal to provide requested information did not prevent a lawful impasse by itself, I consider the facts referred to above under the totality of circumstances standard as to whether a lawful impasse was obtained and whether the Respondent acted in good-faith bargaining.

A party will be found to have violated his duty to bargain if, "when negotiations are sought or are in progress, he unilaterally institutes changes in existing terms and conditions of employment." *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1963). In comparison, however, after good-faith negotiations have resulted in bargaining to impasse, as negotiations have exhausted the prospects of concluding an agreement, the respondent would be able to make unilateral changes, as long as they are comprehendible given pre-impasse bargaining proposals. (Id.) The Board has very clearly stated the axiom to determine the existence of impasse. Simply, as noted by the U.S. Court of Appeals for the District of Columbia, the Board concludes impasse has been reached when "there was no realistic possibility that continuation of discussion at the time would have been fruitful." *American Federation of Television & Radio Artists v. NLRB*, 395 F.2d 622, 628 (D.C. Cir. 1968).[32]

In other words, impasse is reached at "the point in time of negotiations when the parties are warranted in assuming that further bargaining would be futile. . . [as]. . .'*[b]oth parties* must believe that they are at the end of their rope.'" *A.M.F. Bowling Co.*, 314 NLRB 969, 978 (1994) (internal citations omitted) (emphasis added). In *Grinnell Fire Protection Systems Co.*, the Board noted that the question of impasse was decided upon an evaluation of the totality of the bargaining circumstances. (328 NLRB 585, 585 (1999).) The Board has previously given direction regarding factors to consider when considering the totality of any particular bargain including "the bargaining history, the good-faith of parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, [and] the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed." *Taft Broadcasting Co.*, 163 NLRB at 478.[33]

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[31] This finding also forecloses the Respondent's argument that it did not unlawfully condition bargaining on the Union's acceptance of its last, best, and final offer during the time period from December 4, 2009, through December 22, 2011. (R. Br. at 67).

[32] The court of appeals noted that the Board's finding of impasse reflected its conclusions as noted and was a sound standard of deadlock. (395 F.2d 628 fn.17.)

[33] A full analysis under the principles as described in *Taft Broadcasting Co.*, 163 NLRB at 475, is unnecessary because the Respondent's failure to provide requested relevant information, itself, precludes the parties from reaching impasse, as described above. However, I will address these factors to the extent they are raised within the Respondent's and the General Counsel's posthearing briefs. For the sake of completeness and to the extent the Respondent asserts that it met and conferred with the Union during their course of bargaining, it would be remise not to briefly note that it is true that the number of negotiation sessions can serve as a factor of whether a party has reached impasse with the rule of thumb being, the more meetings, the better and the chance of finding impasse during the course of the negotiation. *PRC Recording Corp.*, 280 NLRB at 635. However, this is not conclusive. In *Taft Broadcasting Co.*, the Board, in finding that an impasse was reached in bargaining, considered that the parties had engaged in more than 23 bargaining sessions with the progress on the issues being inappreciable and with the parties believing that the parties were farther apart at the end of bargaining than they were when they started. (163 NLRB at 478.) Comparatively, in *Caravelle Boat Co.*, the Board noted that the existence of 14 bargaining sessions between the parties "without more" was insufficient to establish impasse had been reached. (227 NLRB 1355, 1358 (1977).)

To the extent the both parties reference, incorporate, or allude to in their respective post-hearing briefs, the factors to evaluate impasse as outlined in *Taft Broadcasting Co.*, 163 NLRB at 478, I will address them.

1. Contemporaneous understanding

The General Counsel argues that a lack of contemporaneous understanding by the parties precludes finding an impasse was reached. The failure of a party to communicate to the other the "paramount importance of the proposals presented" or "to explain that a failure to achieve concessions would result in a bargaining deadlock evidences the absence of a valid impasse." *The Hotel Roanoke,* 293 NLRB 182, 185 (1989). While it is true that the Respondent did communicate to the Union that the Respondent believed it was at an impasse on healthcare and therefore would implement its own proposals on January 1, 2011, a mere recitation by a party that bargaining is at impasse does not establish the existence of a legal impasse. *Ryan Iron Works*, 332 NLRB 506, 514 (2000); *PRC Recording Corp.,* 280 NLRB 615, 640 (1986) (the ALJ noting the existence of legal impasse is a conclusion for the Board and the courts). In *PRC Recording Corp.*, the ALJ found, in part, that, even though the respondent employer used the word "impasse," it was done so in the "midst of, and as a device to induce, further bargaining with the union." (Id.)

When the union realistically believes further bargaining might produce an agreement, *both* parties cannot be said to be at the "end of their rope," thereby precluding a contemporaneous understanding that impasse was reached. *Cotter & Co.*, 331 NLRB 787, 788 (2000) (the Board noting the course of conduct, evidenced by the union's attorney specifically stating the parties were not at impasse and the union's willingness to continue to meet and bargaining indicated the union believed further negotiations might produce agreement) (internal citation omitted); see also *Beverly Farm Foundation v. NLRB*, 114 F.3d 1048 (1998)(affirming the Board's finding that the employer violated section 8 (a)(5) and (1) when it twice refused to bargain with the union when the union had requested bargaining and submission of new proposals while noting that if a genuine impasse had previously existed the union's communication required the employer to resume bargaining).

Given the established record and the aforementioned applicable case law, I find that there is no clear point where *both* parties in this case believed negotiations were at impasse.

Respondent first expressed its urgency in an April 19 letter stating "but would like to know what we can do to get this one issue pushed through[,]" (R. Exh. 42); and after the Respondent sent an April 23 letter to the Union indicating healthcare was the "single critical issue" and that it "must be resolved either by agreement or impasse, by the end of May given the July 1 expiration date of the Anthem Blue Cross Plan."(GC Exh. 23.)

During the June bargaining session, the Union presented a counterproposal which accepted the Employer's proposal of a self funded EPO plan with a low PPO plan and a high PPO plan and other suggested modifications. (GC Exh. 30.)[34]

On July 23, the Employer responded with a counter proposal suggesting higher employee contributions at all levels among the key three benefit package offerings—EPO, high PPO, and Low PPO plan. (GC Exh. 35.) On September 30, the Union tentatively agreed to the language in the Health and

[34] In this proposal, the Union suggested that there be no employee premium contributions for the EPO plan and low contributions for the PPO plans. (GC Exh. 30.) The Union also proposed employees are able to select a primary care physician from either the Prime or Anthem Network. Id.

Benefits Article with the date of implementation left open. (GC Exh. 43.). Next, the Employer, proposed a plan that would eliminate the high and low PPO options and combine them into one proposal. The Union rejected this proposal and re-proposed what had proposed earlier that day with the only change being that it was not going to seek a reduction within copay for outpatients seeking mental health benefits. (GC Exh. 46.)

During the October 21 bargaining session, the Respondent again changed its healthcare proposal by restoring the high and low PPO options and presented the Union with a document that was entitled "Centinela Hospital's Final Offer." (GC Exh. 48.) According to the Union, the Respondent announced that the parties were at impasse. The Union announced its disagreement citing the recent changes in the Respondent's most current final offer, as evidence of the continued need to negotiate. At this session, however, the parties did agree to articles involving management rights and subcontracting. (R. Exh. 105.)

Even into November, the Union was requesting information regarding doctors in the Prime Network under the EPO Plan which the Respondent was responding. (R. Exh. 117.) In its November 1 communication, the Union reiterated its disagreement of impasse and stated that its position was that the Respondent has failed to reach legal impasse. (GC Exh. 50.)

Throughout 2011, the parties continued to meet all the while the Respondent was asserting impasse and the Union was offering and making proposals. During this period, the Respondent maintained that it would not consider "fundamental changes" but that it would consider "smaller changes," and that it would consider "word-smithing" changes. Yet, the Union and the Respondent continued to meet and make proposals and requested to bargain.[35]

During a March 29, 2011 bargaining meeting, the Union made four counter proposals involving employee status, compensation, vacation benefits, and sick leave benefits that Respondent agreed to consider. (R. Exh. 205 at 63–65.) The parties continued to correspond and meet in April, October, November, and December even after Ruppert assumed the helm as chief negotiator for the Union in September 2011. At a late November 2011 session, the Union presented the Respondent with three proposals involving wellness and health education committee, one for healthcare leaders, and one for whistleblowers. (GC Exh. 70.) Ruppert reiterated his belief that the parties were not at impasse, cited the Union's outstanding information requests, ongoing flexibility, and requested to submit proposals to the Respondent.[36]

The aforementioned course of bargaining establishes the Union, by way of its conduct, not only thought there was more to bargain over concerning the proposed EPO plan, as well as other topics but also continually requested the quality of care information and asked to engage in bargaining. This conduct continued through the December 22, 2011 bargaining session when the Respondent declared that bargaining was contingent upon the Union accepting the Respondent's last, best, and final offer. (GC Exh. 51.) Even the email exchanged between Ruppert and Schottmiller in January 2012 indicates the Union was requesting bargaining and had a proposal to offer. (GC Exh. 72–75.) Finally, I further find that Respondent's self imposed deadline of December 31, 2010, when it asserts that its Anthem Blue Cross contract was "expiring" and led to its January 1, 2011 unilateral implementation of its new EPO healthcare plan also cannot create and justify an impasse finding, especially where, as here, the evidence suggests that further bargaining could be productive.

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[35] After the Employer declared impasse, it continued to meet with the Union. It did so disclaiming that its willingness to meet waived its contention the parties were at impasse.

[36] The Union engaged in conduct by continuing to ask for information regarding the EPO proposal to demonstrate that it was making more than a "bald statement of disagreement" as to whether the parties had reached impasse.

Thus, I find that this factor weighs in favor of a lawful impasse not being reached during the course of bargaining. See *Newcor Bay City Division*, 345 NLRB 1229, 1238–1239 (2005)(union's continued assertion that movement is possible in future, depending in part on what information respondent provided, substantial evidence of finding no impasse); *Grinnell Fire Systems, Inc*., 328 NLRB 585–586 (1999), enfd. 236 F.3d 187 (4th Cir. 2000) (no impasse where employer expressed unwillingness to move from its position and union had not offered specific concession, but had declared its intention to be flexible and sought further bargaining). See also *Cotter & Co*., 331 NLRB 787, 788 (2000) (no impasse, where union attorney stated parties were not at impasse and respondent would act unlawfully if it implemented its offer).

2. Good faith of the parties in negotiation

Respondent asserts, by way of its posthearing brief, that it was free to "seek concessions" from the union during the course of bargaining and subsequently asserts that it did not bargain in bad faith with the Union. The Respondent, in part, contends the General Counsel's allegation of bad-faith bargaining is baseless with respect to the Employer's conduct before September 1. The Respondent also contends that the Union's bad faith precludes a nonfinding of impasse. Not surprisingly, the General Counsel also asserts that the Respondent's bad-faith conduct precludes a finding of impasse.

Good faith is a standard that derives its meaning only in the "application of particular facts of a particular case." *NLRB v. American National Insurance Co.*, 343 US 395, 410 (1952). While taking a strong position during negotiations is not itself indicative of bad faith, *Taft Broadcasting Co.*, 163 NLRB at 478, there is certain conduct that has been held to be indicative of lack of good-faith bargaining. *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984). Said conduct includes: delay tactics, unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to bypass the union, failure to designate agents with sufficient authority, withdrawal of already agreed-upon provisions, and arbitrary scheduling of meetings. (Id.) While the record here supports some of the aforementioned behavior, there is conduct which I will explore in examining both parties' contentions.[37] It has never been necessary for an employer to engage of all of the aforementioned activities before it can be concluded that bargaining has not been in good faith. *Altorfer Machinery Co.*, 332 NLRB 130, 148 (2000). Conduct addressed in each party's brief will be addressed herein.

a. Unreasonable bargaining demands

The Respondent asserts, and I find, that it did not make unreasonable demands during the course of negotiations.

The content of bargaining proposals, however, exchanged during the bargaining process, must not be exchanged with the "intent to frustrate the agreement where . . . the entire spectrum of proposals put forward by a party is so consistently and predictably unpalatable to the other party that the proposer should know that agreement is impossible." *NLRB v. Mar-Len Cabinets, Inc.*, 659 F.2d 995, 999 (1981). The Board has made it clear that it does not decide that a particular proposal is either "acceptable" or "unacceptable" to a party; rather, proposals are to be considered on the basis of objective factors, while

[37] To the extent that Respondent held meetings concerning EPO plan enrollment without notifying the Union, the Respondent is not considered to have bypassed the Union by such behavior. *Harris-Teeter Super Markets*, 310 NLRB 216, 217 (1993) (noting the difference between seeking employees' views during a negotiation process and merely informing employees of a pre-determined course the employer was committed to, the former and not the latter being an example of bypassing the union during negotiations). However, such activity is indicative of bad faith. See infra Part C.2.b.

considering whether a demand made during negotiations is designed to frustrate agreement. *Reichold Chemicals, Inc.*, 288 NLRB 69, 69 (1988).

Here, there is no evidence Respondent's proposals were either made with the intent to frustrate the bargaining process or were made with the intent to engage in a game of "cat and mouse" with the Union.

Simply, the stark contrast between Respondent's employees' current healthcare plan and the proposed plan is the nature of a hard bargain. The most instructive consideration on this issue is the Board's statement in *Barry-Wehmiller Co.*, "[w]hat is important is whether they are *'so illogical'* as to warrant the conclusion that the Respondent by offering them demonstrated an intent to frustrate the bargaining process and thereby preclude the reaching of any agreement." (271 NLRB 471, 473 (1984) (quoting *Hickinbotham Bros. Ltd.,* 254 NLRB 96, 103 (1981) (emphasis added).) The Respondent's plans were not "so illogical" as to render its proposals to be considered offered in badfaith.

The Respondent's proposed EPO plan did make substantial changes to the current employee healthcare offering. The Employer's main explanations for its motivation to introduce the EPO benefit program was: (1) the self-funded plan would be cheaper than the fully funded plan and (2) the Respondent wanted to give employees access to hospitals and physicians in the Prime Network.[38] Under the prior Anthem Network, employees did not pay at any level of coverage and are now in a new system in which the only option remaining without costs to employees is an individual employee only option under the Employer's EPO plan. Thus, at all other levels of coverage, under the Employer's EPO plan, employees now must contribute to their own healthcare premiums. Obviously, this change in healthcare provision could become quite expensive for employees based on the number of family members present on any one existing employees benefits plan. The EPO plan would require for a full-time employee the following annual healthcare contributions: Employee only, $0; Employee + spouse, $1950 (26 x $75); Employee + children, $1560 (26 x $60); and Employee + family, $3900 (26 x $150.00). (GC Exh. 18.) These deductions were made during bi-weekly pay periods, 26 times throughout the course of the year, (Id.), and represent significant changes in healthcare purchase options for employees.

In addition, the proposed EPO plan restricted Prime employees to healthcare facilities within the Prime network. Reducing the facilities, locations, and practitioners within the healthcare plan not only greatly reduces an employee's choice for healthcare options regarding physicians and hospitals, but it also reduces the general geographic size of the footprint in which employees can seek healthcare—emergency or preventative—when needed.

The Respondent attempted to remedy the Union's concerns by offering employees access back to the Anthem Network and by allowing employees to nominate physicians into the EPO program. The record establishes, at first, there was no mention of a "gatekeeper" function which would impose additional costs and delay on employees—requiring them to see a primary care physician before gaining access to the Anthem Network (the healthcare system which was formally free and likely houses many of the physicians which employees visited). See GC Exh.17 (indicating no mention of a "gatekeeper" requirement in the plan description). This was later changed. (GC Exh. 29) ("Members must obtain a referral from their Prime PCP when using Anthem Blue Cross Network"). Such alteration only continues to increase the costs of the new EPO healthcare plan for employees. The Respondent further attempted to address the Union's concerns by offering a nomination form suggesting that employees could nominate physicians to become part of the EPO plan.

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[38] As previously discussed, Respondent contradicts its stated purpose for offering the Prime Network with one of its stated reasons for not providing the Union with the relevant and necessary information it needed to bargain with the Employer. See supra note 15.

Notwithstanding the nature of the changes and the timeliness of rising healthcare costs, the Respondent's proposal is not "so illogical" as to frustrate bargaining. "The Act does not require employers to be equitable in their dealings with their employees. An employer can be as greedy as it pleases. If it makes claims of poverty, or any other substantial factual claim, it must substantiate the claims if the union so demands." *Graphic Communications International Union v. NLRB*, 977 F.2d 1168, 1171 (7th Cir. 1992).[39] The Respondents shift in healthcare coverage does not surpass the threshold stands articulated through case law to find a violation of the Act for proposals to be so far afield to frustrate the bargaining process.

Respondent argues that the Union acted in badfaith by making healthcare proposals and counterproposals it knew the Respondent would not accept. In the same vein, I find this argument meritless—primarily, because, as described, supra, the Union's demands were equally not "so illogical" to constitute bargaining in bad faith.

b. Unilateral changes in mandatory subjects of bargaining

Unilateral acts by the employer, when the parties are in the course of negotiations and impasse has not been reached, demonstrate bad faith on behalf of the employer. *Fitzgerald Mills Corp.*, 133 NLRB 877, 882 (1961) (noting that the union protested the employer's actions and was willing to continue to bargain) enfd. 313 F.2d 260 (2d Cir. 1963). The justification for unilateral actions on the grounds that, among other rational, the changes were put into effect only after they were offered to the union, that the union was notified in advance of the change, and that the union had been consulted about the changes did not provide adequate basis for the employer to make unilateral changes. See *Herman Sausage Co.*, 122 NLRB 168, 171–172 (1958) (determining the employer had not met its duty to negotiate in good faith) enfd. 275 F.2d 229, 234 (1960) (noting the employer sought to justify its action based on the fact that impasse had arrived even though the evidence supported impasse had not been reached); *Langlade Veneer Products*, 118 NLRB 985, 988 (1957) (finding impasse had not been reached and noting the respondent had scheduled bargaining sessions after the implementation of its unilateral action).[40]

Given my findings, supra Parts B and C.1 above, impasse was never reached during the bargaining between the Employer and the Respondent therefore, the unilateral change in the mandatory subject of bargaining indicates that the Employer's implementation of the EPO healthcare plan was not only in violation of the Act but also indicative of bad faith which would also show that impasse was never reached during the course of bargaining. In addition, I further find bad faith for unilateral changes in mandatory subjects or conditions of employment is found in the Respondent's efforts to advance its new healthcare EPO plan with distribution to all of its employees of its September 1 memo before the January 2011 implementation.

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[39] An employer's desire to cut labor costs—as a standalone goal—is not indicative of an illegitimate bargaining goal. *Concrete Pipe*, 305 NLRB 152, 153 (1991) (reserving the ALJ's finding that the respondent employer's proposals were so intrinsically unreasonable to constitute evidence of bad-faith bargaining). In reversing the ALJ, the Board noted that the general counsel presented no evidence that the respondent employer's proposals, that sought deep cuts—reducing pay, number of holidays, increasing employee benefit contributions 50 percent— in alleged noncompetitive existing benefits programs, based on its assertion that its competitors had lower labor costs were accurate; therefore, according to the Board, it could not follow that an employer's attempt to bargaining for comparable wages and benefits meant the employer was seeking to frustrate negotiations. Id.

[40] After the Employer implemented the EPO healthcare plan in January of 2011, the Employer continued to bargain through January of 2012.

Announcing the implementation of a unilateral change violates the Act where no impasse has been reached because it causes employees to assume that the change was going to take place anyway. *ABC Automotive Products Corp.*, 307 NLRB 248, 249–250 (1992) (finding an employer's letter to its employees was unlawful because it signaled a condition of employment was going to change). Announcing a possible change is tantamount to implementing said change, even if the change is never implemented. (Id. at 250.) In *ABC Automotive Products Corp.*, the Board stated that damage to the bargaining relationship had been accomplished by the employer's message to employees that the employer "was taking it on itself to set this important term and condition of employment, thereby 'emphasizing to the employees that there is no necessity for a collective bargaining agent.'" (Id.) (Citing *Famous Barr Co. v. NLRB*, 326 NLRB 376, 384 (1945).)

Announcements suggesting unilateral changes that might not actually alter employee behavior are still in violation of the Act. See *Kurdziel Iron of Wauseon, Inc.*, 327 NLRB 155, 155 (1998) (noting that an employer's posted memo which represented a unilateral reduction in lunch and break times damaged the bargaining relationship between the employer and employees even if the announcement did not actually curtail employees' breaks); see also *CJC Holdings, Inc.*, 327 NLRB 1041, 1041 fn.2 (1996) (adopting the ALJ's finding that the respondent committed an 8(a)(5) violation by announcing the intention to implement its last and final offer with respect to dental insurance and noting the promise of action itself was enough to change the terms of employment)).

Here, even before the Employer declared impasse in October 2011, it had already sent a memorandum to employees announcing the implementation of the EPO healthcare plan 1 month earlier. On September 1, the Employer sent a memorandum to employees (the September 1 memo) announcing the change in healthcare to the EPO program. (GC Exh. 42 A.)[41] The memorandum also announced that further information about the EPO implementation would be released prior to the upcoming November Open Enrollment period and instructed employees to contact HR for any questions. This memorandum is a violation of the Act prohibiting an employer from making announcements concerning unilateral changes when no impasse had been reached.[42]

I find that such actions are violations of Section 8(a)(5) and (1) of the Act. Therefore, I find the Respondent violated paragraph 18 of the complaint by distributing its September 1 memo to its employees and discontinuing its HMO medical plan benefits and implementing its new EPO plan on January 1, 2011, without first bargaining with the Union to a good-faith impasse .

c. Respondent's failure to provide information

The failure to provide information can also be considered indicative of bad-faith bargaining. As stated above, I find that Respondent's failure to provide information is a sole ground for which a legal impasse was avoided. Moreover, I further find that Respondent's failure to provide information is bad-faith conduct that further weighs toward a finding that Respondent did not bargain in good faith.

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[41] This information was also posted on the Employer's intranet network.

[42] The Respondent asserts in its posthearing brief that the Union never requested to bargain over the notice. However, the record evidence indicates that the Union was unaware the posting was even sent to employees until after the fact. Bush wrote to Schottmiller via email on September 2 informing her that he had seen the letter and requesting the Employer cease from distributing the letter or the physician nomination form without negotiation with the Union. (GC Exh. 40.) Thus, I find it disingenuous for the Respondent to defend its actions by saying the Union never requested to bargain over the letter when the evidence indicates the Union's first knowledge of the letter was after the fact. Moreover, in Schottmiller's September 3 response, she admits that : "The letters and election forms all went out to SEIU employees earlier this week." (GC Exh. 40.)

d. Overall bad-faith bargaining

The complaint alleges that by its overall conduct, Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the bargaining unit. (GC Exh. 1(z) at 6–9.) As stated earlier in this decision, I have found that Respondent violated Section 8(a)(5) and (1) of the Act by: (a) failing and refusing to respond to the Union's July 23 information request about the quality of care at the Prime Network facilities and physicians (Section B, supra); (b) distributing a memorandum to its bargaining unit employees on or about September 1, 2010, announcing that it would be implementing its new EPO healthcare plan effective January 1, 2011, before any lawful impasse had been reached (Section C.2b, supra); and (c) unilaterally implementing its new EPO healthcare plan on January 1, 2011, during collective bargaining, without bargaining with the Union to a lawful impasse in negotiations (Section C.2b, supra).

In sum, viewing the Respondent's conduct in its totality, I find that the Respondent did engage in overall bad-faith bargaining as alleged in paragraph 21 of the complaint. By refusing to respond at all to the Union's July 23 information request seeking necessary and relevant information about the quality of care in connection with the Respondent's new EPO healthcare plan, giving notice of the January 1, 2011 implementation date for the plan through the September 1 memo to bargaining unit employees without first bargaining with the Union as the exclusive representative, and unilaterally implementing its new EPO healthcare plan on January 1, 2011, before reaching a lawful impasse in negotiations with the Union, the Respondent demonstrated an intent to frustrate the possibility of reaching any agreement.

D. Critical Issue Impasse

Parties need not reach impasse on all bargaining issues before an employer may lawfully implement its bargaining proposals. *CalMat Co.*, 331 NLRB at 1097. In other words, a single issue may be seen as having such importance that it justifies an overall finding of impasse on all of the bargaining issues. (Id.) In the situation where impasse on a single or critical issue creates a complete breakdown in bargaining, the employer is free to implement its last, best, and final offer. *Sacramento Union*, 291 NLRB 552, 554 (1988) *enfd. sub nom* 888 F.2d 1394 (9th Cir. 1989). See *Taylor-Winfield Corp.*, 225 NLRB 457 (1976), for a discussion where the Board affirmed the ALJ's ruling dismissing the consolidated complaint and finding that the parties reached impasse over the single critical issue of pensions thereby allowing the employer to unilaterally change its employee's terms and conditions of employment with respect to pensions without violating the Act. See also, *Holmes Typography, Inc.*, 218 NLRB 518 (1975), where the Board affirmed the ALJ's finding that the employer had not violated section 8(a)(5) of the Act for unilaterally implementing the terms included in its final offer after the parties had deadlocked over wages and the length of the work week. The party who insists on impasse on a single, critical issue to justify its implementation of bargaining proposals must demonstrate three things:

> [F]irst, the actual existence of a good-faith bargaining impasse; second, that the issue as to which the parties are at impasse is a critical issue; third, that the impasse on this critical issue led to the breakdown in overall negotiations—in short, that there can be no progress on an aspect of the negotiations until the impasse relating to the critical issue is resolved.

CalMat Co., 331 NLRB at 1097.

To the extend Respondent, in its brief, engages in a discussion of critical issue impasse, it is mistaken. The record is full of situations through communications during bargaining or through correspondence where the Respondent used verbiage such as the "single critical issue." See, i.e., GC Exh. 23. However, using the correct lingo does not relieve the Respondent of liability when the legal test cannot be met. The Board's affirmation of the ALJ's findings in

Holmes Typography, Inc. and *Taylor-Winfield Corp.*, for example, came under the supposition that the parties had engaged in good-faith bargaining. See *Taylor-Winfield Corp.*, 225 NLRB 457, 461 (1976) (noting the general counsel did not assert the respondent generally bargained in bad-faith and to the extent the general counsel did assert bad-faith bargaining it was unsupported by the record evidence); *Holmes Typography, Inc.*, 218 NLRB 518, 525 (1975) (noting the employer did not engage in bad-faith bargaining). The Board in *CalMat Co.,* sets forth its first requirement—the actual existence of good-faith bargaining.

Given my findings and legal conclusion above, supra, Sections B.4 and C.b.2 of this decision, the Respondent fails to satisfy the first requirement of the *CalMat* analysis. I find that the parties did not reach a good-faith bargaining impasse on the healthcare issue.

E. The Union Did Not Waive Its Right to Bargain

Respondent argues that the Union waived its right to bargain over the change in working conditions because after it noticed the change in working conditions it did not request to bargain with the Respondent.

The Board has consistently held that even when an employer does not give the union formal notice of a proposed change in working conditions, the employer is not necessarily in violation of Section 8(a)(5) if the union receives actual notice of the change at a time which would allow for meaningful negotiations to take place and does not act with due diligence to request bargaining over the proposed change. *Armour & Co.*, 280 NLRB 824, 828–829 (1986) (citing *W.G. Best Homes*, 253 NLRB 912, 919 (1980); *Citizens National Bank of Willmar*, 245 NLRB 389 (1979); *International Offset Corp.*, 210 NLRB 854, 855 (1974) (noting that the union never tested the employer's willingness to bargain therefore the employer's actions could not be found to violate the Act) (citing *Times Publishing Co.*, 72 NLRB 676, 683 (1947) (noting that if the employer's good-faith for negotiation is not tested the absence of it cannot be found)).

The Respondent cites *WPIX, Inc.*, 299 NLRB 525 (1990), for the premise that, here, when the Union was notified of the Respondent's change and implementation of the new EPO healthcare plan, it did not request to bargain with the Respondent; therefore, it waived its bargaining rights to the subject.

In *WPIX, Inc.*, the Board noted that the union received actual notice of the change more than a week prior to its implementation and there was no evidence advanced that the respondent in the case made any specific statements or took any specific actions to suggest that it would not bargain or that it refused to bargain with the union. (299 NLRB at 526.) Further, the Board noted that there was no evidence that a request by the union to bargain would have been futile on the union's behalf even though the bargaining relationships between the parties were strained, as the general counsel had not set forth sufficient evidence to excuse the union from its obligation to request bargaining over the change in working conditions when it had actual notice. (Id.) This case was distinguished from *Armour & Co.*, where, as the *WPIX, Inc.,* Board noted, the union had specifically requested to bargain with the employer and the employer never responded to the union's bargaining request. (Id.) Three months later, the employer had closed the plant and implemented severance and vacation pay for the employees affected by the plant closing, which is what the union had requested to bargain over. (Id.)

In *Armour & Co.*, the ALJ noted that the union did not have to "grovel or undertake apparently futile acts," as it had already requested to bargain and had been denied by the employer and it was pointless for the union to try again given the bargaining history. *Armour & Co.*, 280 NLRB 824, 829 (1986). As such, the union could not have been said to waive its right to bargain over the unilateral change. See *PRC Recording Corp.*, 280 NLRB 615, 636 (1986), where the ALJ notes the union's "failure to protest unilateral change does not constitute 'acquiescence' where the employer's decision to make the

unilateral change has already been reached or, particularly, where it has been implemented, thus making any protest by the Union futile."

Moreover, Respondent's reliance on *American Diamond Tool, Inc.*, 306 NLRB 570, 571 (1992), is misplaced. Respondent's brief accurately cites the following quotation from the Board, "In our view, the [u]nion could not accept such unilateral conduct without challenge at the bargaining table and thereafter seek to assert a bargaining right merely by the filing of an unfair labor practice charge." (Id.) This legal principle and the facts under which is arose, however, are inapposite from the facts here. The Board made this observation under facts where the union had the opportunity to request bargaining about unilateral layoffs and failed, without excuse, to request to bargaining. (Id. at 570.) The Board therefore noted that the union had signaled its willingness to permit such conduct to happen in the future—constituting a waiver—because, as the Board noted, it was incumbent upon the union to take a more affirmative action in order to preserve its right to protest the employer's unilateral action, a layoff. (Id.) The Board further noted, as stated above, that the union could not accept the unilateral employer conduct without challenge and then subsequently attempt to cement its bargaining rights by filing an unfair labor practice charge. (Id. at 571.)

Such situations stand inapposite and have been distinguished from situations in which the union files unfair labor practice charges after an unlawful unilateral change as such action further rebuts any inferences of waiver. *PRC Recording Corp.*, 280 NLRB at 636; see also *Caravelle Boat Co.*, 227 NLRB 1355, 1358 (1977) (noting "a waiver of bargaining rights by a union will not be lightly inferred and must be clearly and unequivocally conveyed"). Simply, the aforementioned legal principle is not applicable in a case, such as here, where the Union requested information relevant and necessary for bargaining, requested bargaining several times, and continued to challenge the Respondent on its position of impasse when the Union did not have the necessary information needed to evaluate the Respondent's bargaining proposals.

I find the record is full of examples of the Union continually requesting answers to its information requests and requesting the opportunity to bargain with the Respondent as it did not see impasse being reached. I find that this case is analogous to *Armour & Co*., supra, given the Union's relentless attempts to obtain information both relevant and necessary to the bargaining process. The Union made these attempts before the Respondent presented its final offer in October 2011 and continued through January of 2012 until the Respondent finally refused to meet with the Union unless it was prepared to accept the Employer's final offer. (GC Exhs. 72–75).

Based on the aforementioned facts and rules of law, I find the Respondent's argument that the Union waived its right to bargain over the unilateral change is meritless.

CONCLUSIONS OF LAW

1. Respondent Prime Healthcare Centinela d/b/a Centinela Hospital is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Service Employees International Union, United Healthcare Workers–West is a labor organization within the meaning of Section 2(5) of the Act with 9(a) status under the Act.

3. At all material times, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees employed at its Inglewood, California facility in the following appropriate unit:

> Included: All full-time, regular part-time, and per diem service, maintenance, technical, skilled maintenance, and business office clerical employees.

> Excluded: All other employees, managers, supervisors, confidential employees, guards, physicians, residents, central business office employees (whether facility based or not) who are solely engaged in qualifying or collection activities, employees of outside registries and other agencies supplying labor to the Employer and already represented employees.

4. By failing and refusing to provide the Union in a timely and complete fashion, since on or about August 9, 2010, with relevant and necessary information that the Union had requested to evaluate the Respondent's healthcare proposal, the Respondent has violated Section 8(a)(5) and (1) of the Act.

5. By distributing a memorandum to its employees on or about September 1, 2010, announcing that it would be implementing its new EPO healthcare plan effective January 1, 2011, before impasse had been reached, Respondent has violated Section 8(a)(5) and (1) of the Act.

6. By unilaterally implementing its new EPO healthcare plan on January 1, 2011, during collective bargaining ,without bargaining with the Union to a lawful impasse in negotiations, Respondent has violated Sections 8(a)(5) and (1) of the Act.

7. By failing and refusing to bargain in good faith with the Union, as demonstrated by the Respondent's overall conduct referred to herein from early 2010 through December 2011, including Respondent's conditioning bargaining upon the Union's acceptance of the Respondent's last, best, and final offer, the Respondent violated Section 8(a)(5) and (1) of the Act.

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

9. I recommend dismissing the complaint allegations that are not addressed in the Conclusions of Law set forth above or settled earlier.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent has unlawfully failed and refused to provide the Union with necessary information needed to evaluate the Respondent's now implemented healthcare plan, I will order it to do so. In additional, I shall recommend that it be ordered to rescind the unilateral change and bargain, upon request, with the Union in good faith.

Finally, Respondent shall be required to make whole its employees for any losses they suffered or expenses they incurred, including increased premium costs that resulted from Respondent's unlawful changes in healthcare insurance since January 1, 2011. Such amounts shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical*, 356 NLRB No. 8 (2010), set aside by 647 F.3d 1137 (D.C. Cir. 2011).[43] Respondent shall also compensate its employees for the adverse tax consequences, if any, of receiving one or more lump-sum payments covering periods longer than 1 year, *Latino Express, Inc.,* 359 NLRB No. 44 (2012).

[43] *Kentucky River* requires that interest be compounded daily.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:[44]

ORDER

The Respondent, Prime Healthcare Centinela, LLC d/b/a Centinela Hospital Medical Center of Inglewood, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Service Employees International Union, United Healthcare Workers–West (the Union) by failing and refusing to timely and completely providing the Union with necessary and relevant information to the Union's performance as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

Included: All full-time, regular part-time, and per diem service, maintenance, technical, skilled maintenance, and business office clerical employees.

Excluded: All other employees, managers, supervisors, confidential employees, guards, physicians, residents, central business office employees (whether facility based or not) who are solely engaged in qualifying or collection activities, employees of outside registries and other agencies supplying labor to the Employer and already represented employees;

(b) Failing and refusing to bargain collectively with the Union by distributing a memorandum to its employees on or about September 1, 2010, announcing that it would be implementing its new EPO medical plan effective January 1, 2011, before a lawful impasse had been reached with the Union;

(c) Failing and refusing to bargain collectively with the Union by unilaterally implementing changes in the terms and conditions of employment of its employees in the above described unit on January 1, 2011, in the absence of a lawful bargaining impasse with the Union;

(d) Failing and refusing to bargain in good faith with the Union, as demonstrated by the Respondent's overall conduct referred to herein from early 2010 through December 2011, including Respondent's conditioning bargaining upon the Union's acceptance of the Respondent's last, best, and final offer;

(e) Changing bargaining unit employees' healthcare benefits and other terms and conditions of employment without first giving the Union notice and an opportunity to bargain about those changes; and

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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[44] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Provide the Union with the requested information relevant and necessary to evaluate the Respondent's healthcare EPO proposal, as identified in the Union's July 2010 information request;

(b) Upon request of the Union, rescind the unilaterally implemented changes in employees' healthcare coverage, copays, premiums, and healthcare provider networks and restore the coverage, co-pays, premiums, and healthcare provider networks available to employees prior to January 1, 2011;

(c) Make bargaining unit employees whole, with interest, in the manner set forth in the remedy section of this decision for any losses they suffered or expenses they incurred as a result of the unlawful action by Respondent;

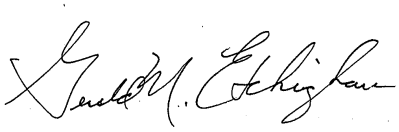
(d) Before implementing any change in bargaining unit employees' healthcare benefits or other terms and conditions of employment, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the bargaining unit described above;

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order;

(f) Within 14 days after service by the Region, post at its facility in Inglewood, California, copies of the attached notice marked "Appendix."[45] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2011; and

(g) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply; and

Dated, Washington, D.C. April 12, 2013



Gerald M. Etchingham
Administrative Law Judge

[45] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to bargain collectively with the Service Employees International Union, United Healthcare Workers–West (the Union) as your exclusive collective-bargaining representative by failing to timely and completely supply information that is relevant and necessary to the Union's performance as the exclusive collective-bargaining representative of its unit employees. The unit is:

Included: All full-time, regular part-time, and per diem service, maintenance, technical, skilled maintenance, and business office clerical employees.
Excluded: All other employees, managers, supervisors, confidential employees, guards, physicians, residents, central business office employees (whether facility based or not) who are solely engaged in qualifying or collection activities, employees of outside registries and other agencies supplying labor to the Employer and already represented employees.

WE WILL NOT fail or refuse to bargain collectively with the Union by distributing a memorandum to its employees on or about September 1, 2010, announcing that it would be implementing its new EPO medical plan effective January 1, 2011, before a lawful impasse had been reached with the Union.

WE WILL NOT fail or refuse to bargain collectively with the Union by unilaterally implementing changes in terms and conditions of employment in the above described unit, in the absence of an overall lawful bargaining impasse.

WE WILL NOT fail or refuse to bargain in good faith with the Union, as demonstrated by the Respondent's overall conduct from December 2009 — 2011, including Respondent's conditioning bargaining upon the Union's acceptance of the Respondent's last, best, and final offer from early 2010 through December of 2011.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union the requested information.

WE WILL upon request of the Union, rescind the unilaterally implemented changes in unit employees' healthcare coverage, copays, premiums, and healthcare provider networks, and restore the coverage, co-pays, premiums, and healthcare provider networks available to employees prior to January 1, 2011.

WE WILL make whole unit employees for any losses that you suffered or expenses you incurred as a result of the unlawful actions taken against you, with interest.

Prime Healthcare Centinela, LLC d/b/a Centinela Hospital Medical Center

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

11500 West Olympic Blvd., Suite 600
Los Angeles, CA 90064
Hours: 8:30 a.m. to 5 p.m.
(310) 235-7352

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (310) 235-7352