



United States Government
NATIONAL LABOR RELATIONS BOARD
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December 9, 2013

VIA E-FILING

Gary W. Shinnery, Executive Secretary
National Labor Relations Board
Room 5400 East
1099 14th Street, N.W.
Washington, DC 20570-0001

Re: Salem Hospital Corporation a/k/a
The Memorial Hospital of Salem County
Case 04-CA-097635

Dear Mr. Shinnery:

Attached please find Counsel for the General Counsel's Answering Brief in Response to Respondent's Exceptions to the Decision of the Administrative Law Judge and Cross-Exceptions to the Decision of the Administrative Law Judge and Arguments in Support Thereof in the above-captioned matter. Copies of this Brief and these Cross-Exceptions and Arguments in Support Thereof have this day been served on the persons below by e-mail.

Very truly yours,

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SALEM HOSPITAL CORPORATION
A/K/A THE MEMORIAL HOSPITAL
OF SALEM COUNTY

and

Case 04-CA-097635

HEALTH PROFESSIONALS AND
ALLIED EMPLOYEES, AMERICAN
FEDERATION OF TEACHERS/AFL-CIO

**COUNSEL FOR THE GENERAL COUNSEL'S CROSS-EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE
AND ARGUMENTS IN SUPPORT THEREOF**

Pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, Counsel for the General Counsel respectfully submits the following Cross-Exceptions to the Decision of Administrative Law Judge Michael A. Rosas (herein called ALJ) in the above-captioned matter and arguments in support thereof.¹

1. (ALJD, p. 9, line 36) Counsel for the General Counsel excepts to the ALJ's failure to include in his recommended Order a provision requiring Salem Hospital Corporation a/k/a The Memorial Hospital of Salem County (herein called Respondent) to cease and desist from failing to furnish requested information that is necessary for and relevant to the performance by Health Professional and Allied Employees, American Federation of Teachers/AFL-CIO (herein called the Union) of its duties as the exclusive collective bargaining representative of the bargaining unit employees.

¹ References to the ALJ's Decision are designated by "ALJD" followed by the page and line numbers.

Although the ALJ's Order correctly directs Respondent affirmatively to provide the Union with the information it requested concerning Respondent's new dress policy, the appropriate corresponding "cease and desist" language should have been included. *Crittenton Hosp.*, 342 NLRB 686, 686 fn. 4, 698 (2004); see also *Southern Calif. Gas Co.*, 344 NLRB 231 (2005).

2. (ALJD, p. 10, lines 1 - 3) Counsel for the General Counsel excepts to the portion of the ALJ's recommended Order including a general affirmative bargaining order -- namely, "On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement..."

In *Mimbres Memorial Hosp.*, 337 NLRB 998, 998 fn. 2 (2002), *affd.* by *NLRB v. CHS Community Health Systems, Inc.*, 108 Fed. Appx. 577 (10th Cir. 2004), the Board found that a general affirmative bargaining order *was* not necessary to remedy the employer's unlawful unilateral changes in terms and conditions of employment and failure to provide the union with certain requested information. The Board modified the Order accordingly. The same scenario involving the same violations of the Act exists in this case. As in *Mimbres*, *supra* at 999, the Order should direct Respondent to take the affirmative action of notifying and, on request, bargaining with the Union as the exclusive collective bargaining representative of its unit employees before implementing any changes in their wages, hours, or other terms and conditions of employment. See also *Laurel Baye Healthcare of Lake Lanier*, 352 NLRB 179 (2008), *vacated* 564 F. 3d 469 (D.C. Cir. 2009), *cert. denied* 130 S. Ct. 3498 (2012), *remanded* 355 NLRB 599 (2010); *Tribune Publishing Co.*, 351 NLRB 196, 196 fn. 1, 198 (2007), *enf.*

granted 564 F. 3d 1330 (D. Cir. 2009); *United Rentals, Inc.*, 350 NLRB 951, 954 (2007); *Sunoco, Inc.*, 349 NLRB 240, 240 fn. 2 (2007).

This cross-exception is also supported by *Hanson Aggregates BMC, Inc.*, 353 NLRB 287 (2008), where the Board remedied Section 8(a)(5) violations that concerned Hanson's failure to furnish information to the Union and the unilateral implementation of changes. The Board's Order affirmatively required that the information be provided, that the unilateral changes be rescinded and that affected employees be made whole. The Board's Order in *Hanson* also directed the employer to give the union notice and the opportunity to bargain before making any future changes in the terms and conditions of employment of unit employees. The General Counsel, via a Motion for Modification of Board Order and consistent with the judge's recommended Order, contended that the Board's findings of multiple Section 8(a)(5) violations warranted a broad affirmative directive to bargain and, therefore, requested that the affirmative bargaining provision of the Board's Order be modified to include a broad general bargaining order setting forth the employer's overall obligation to bargain with the union. The Board denied the General Counsel's Motion, noting that a limited bargaining order was the appropriate standard remedy for the unilateral changes as those changes did not individually nor collectively rise to the level of a general refusal to bargain and, further, that all the bargaining violations found therein, including the information request violations, were fully and adequately addressed by the Board's Order and did not warrant a general bargaining directive. (The *Hanson* Order Denying Motion is attached hereto and marked as "Exhibit A.")

3. (ALJD, Appendix) Counsel for the General Counsel excepts to the failure of the ALJ in the Notice to Employees to include a provision that Respondent will not fail to furnish

requested information that is necessary for and relevant to the performance of the Union as the exclusive bargaining representative of the unit employees.

The Notice to Employees properly indicates that Respondent is to provide the Union with the information it requested concerning Respondent's new dress policy. The Notice does not include the language referred to above in this Cross-Exception. *Crittenton Hosp.*, supra at 687; see also *Southern Calif. Gas Co.*, supra at 232.

4. (ALJD, Appendix) Counsel for the General Counsel excepts to the portion of the Notice to Employees containing a general affirmative bargaining order -- namely, "WE WILL, on request, bargain with the Union as the labor representative for our employees in the following bargaining unit:..."

Instead, the Notice should state that Respondent, before implementing any changes in wages, hours, or other terms and conditions of employment of its unit employees, will notify and, upon request, bargain with the Union as the exclusive collective bargaining representative of the unit employees. *Laurel Baye*, supra at 180; *Tribune*, supra at 196 fn. 1, 199; *United Rentals*, supra at 956; *Sunoco*, supra; *Mimbres*, supra at 1001.

Respectfully submitted,

Dated: December 9, 2013


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NOT TO BE INCLUDED
IN BOUND VOLUMES

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Philadelphia, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HANSON AGGREGATES BMC, INC.

and

Cases 4-CA-33330
4-CA-33508
4-CA-33547
4-CA-34290
4-CA-34362
4-CA-34363
4-CA-34378

INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 542, AFL-CIO

ORDER DENYING MOTION

On September 30, 2008, the National Labor Relations Board¹ issued a Decision and Order in the above-titled proceeding.² The Board affirmed several of the administrative law judge's findings that the Respondents engaged in conduct violating Section 8(a)(5) of the Act, including failing to furnish information, implementation of unilateral changes on January 1, 2006, prior to impasse in contract negotiations, and a refusal to bargain over a premium holiday for dental insurance coverage implemented on October 24, 2005. To remedy these violations, the Board's Order included affirmative provisions requiring compliance with the information requests, rescission of all unilateral changes, and make-whole remedies to employees affected by the changes. The Order also directed the Respondent to give the Union notice and opportunity to

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

² 353 NLRB No. 28

bargain before making any future changes in the terms and conditions of employment for bargaining unit employees.

On October 30, 2008, the General Counsel filed a Motion for Modification of Board Order. In the motion, the General Counsel requests that the affirmative bargaining provision of the Board's Order be modified to include a broad general bargaining order setting forth the Respondent's overall obligation to negotiate with the Union concerning terms and conditions of employment, as originally recommended by the administrative law judge. The General Counsel argues that the Board's findings of multiple Section 8(a)(5) violations warrant the broad directive to bargain. The Respondent filed a response to the motion, stating that the modifications are unnecessary and that the September 30 Order fully addresses the Board's rulings.

Having duly considered the matter, we deny the General Counsel's motion. Contrary to the General Counsel's assertions, a so-called limited bargaining order is the appropriate standard remedy for the unilateral change violations found in this case, which neither individually nor collectively rose to the level of a general refusal to bargain.³ All bargaining violations found here, including the information request violations, are fully and adequately addressed by the Board's Order and do not warrant a general bargaining directive.⁴

³ *Tribune Publishing Co.*, 351 NLRB No. 22 slip op. 1 fn. 1 (2007); *Sunoco, Inc.*, 349 NLRB 240 fn. 2 (2007); *Mimbres Memorial Hospital and Nursing Home*, 337 NLRB 998 fn. 2 (2002), petition for review denied sub nom. *NLRB v. CHS Community Health Systems, Inc.* 108 Fed.Appx. 577 (10th Cir. 2004). See also *Laurel Baye Healthcare of Lake Lanier, LLC*, 352 NLRB No. 30 (2008) (Board narrowed judge's recommended general bargaining order for multiple unilateral changes). This case is distinguishable from *Laurel Bay Health & Recreation Center*, 353 NLRB No. 24 (2008), relied on by the General Counsel, where the Board found an independent general refusal to bargain violation.

⁴ The Board's decision inadvertently failed to mention that the Order was modified to accord with standard remedial practice. See, e.g., *Laurel Baye*, 352 NLRB No. 30 slip. op. 1 fn. 3. Contrary to the General Counsel's argument in support of the motion to modify, the absence of specific exceptions by the Respondent to the judge's recommended order does not preclude the Board from sua sponte addressing remedial issues.

Accordingly,

IT IS ORDERED that the General Counsel's Motion for Modification of Board Order is denied.

Dated, Washington, D.C., December 22, 2008.

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD