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

SUTTER HEALTH CENTRAL VALLEY REGION,
d/b/a SUTTER TRACY COMMUNITY HOSPITAL

and **32-CA-098549**

CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSES UNITED,
CNA/NNU

Jennifer Kaufman* and *Catherine L. Ventola, Esqs.
for the General Counsel.
David J. Reis* and *Julia M. Levy, Esqs.,
for the Respondent.
Micah Berul, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

Dickie Montemayor, Administrative Law Judge. Pursuant to notice this case was tried in Oakland, California, on November 18, 19, 2013. The California Nurses Association/National Nurses United (the Union), filed the charge on February 15, 2013, and the General Counsel issued the complaint on August 27, 2013, alleging violations by Sutter Health Central Valley Region, d/b/a Sutter Tracy Community Hospital (the Respondent) of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). Respondent filed a timely answer denying that it violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs were received from counsel for the General Counsel (the General Counsel), the Respondent, and the Charging Party. Upon the entire record[1], and based upon my observation of the demeanor of the witnesses and consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, is a corporation engaged in business as a health care institution operating an acute care hospital in Tracy, California, where it annually derives gross revenues in excess of $250,000 and purchases and receives goods valued in excess of $5000 directly from points outside the State of California. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The principal issue in this matter is whether the Respondent violated Section 8(a) (5) and (1) of the Act by unilaterally implementing changes to employee healthcare and wellness program benefits for 2013. The issue was more specifically defined by the parties by stipulation.

At trial, the parties stipulated as follows:

> Since at least 2008, the Employer in this case had an annual practice of reviewing its self-funded medical and wellness programs and other benefit plans and making modifications at approximately the same time each year. Under this practice, the Employer would review its health benefits programs and wellness plans in the late summer or early fall, provide information to employees about anticipated changes in September or October, and then hold benefits open enrollment in October or November to allow employees to make benefit selections and plan administrators to make any changes and send out employee enrollment cards in time for the new plan year on January 1.
>
> For the purposes of this case only, the General Counsel agrees that the Employer has no burden of establishing that the changes to the health benefit programs and the wellness plans that the Employer proposed to the Union in September of 2012, which are the subject of this proceeding, are consistent with the Employer's preexisting annual practice of reviewing and changing its health benefit and wellness plans.

[1] On December 19, 2013, the parties filed a joint motion to supplement the record with what was marked as Jt. Exhibit 4(a). The motion was granted and Jt. Exh. 4(a) was admitted into the record.

The General Counsel is not alleging that the Employer was obligated to refrain from implementing its proposed changes to its self-funded health benefits program and wellness plans until an impasse was reached in bargaining for a collective-bargaining agreement as a whole.

The issues in this case are:

(1) Did the Employer provide the Union adequate notice of the proposed changes to its self-funded health benefit programs and wellness plans and a meaningful opportunity to bargain before implementing the changes;

(2) Assuming the employer had afforded the Union with adequate notice and a meaningful opportunity to bargain, was the employer required to bargain to impasse over the proposed changes to its self-funded benefit programs and wellness plans before implementing them? And if so, did the Employer bargain to impasse over the proposed changes before implementation?

A. Background

Many of the underlying facts surrounding the allegations are not in dispute. Sutter Tracy Community Hospital is a hospital owned and operated by Respondent Sutter Central Valley Hospitals which is a private, not-for-profit corporation affiliated with Sutter Health. The Union represents a bargaining unit of over 150 non-management registered nurses at the hospital. The Union was certified as the exclusive collective-bargaining unit representative of the unit employees on March 23, 2012.[2] In June 2012, the parties began negotiations toward the adoption of an initial collective-bargaining agreement. At the time of the hearing, November 18 and 19, 2013, the parties had engaged in over 40 bargaining sessions. Nevertheless, no final agreement has been reached and the parties are still engaged in negotiations.

The parties were represented in these negotiations by Mike Brannan and Christopher Scanlan. Brannan is the labor representative and acted as Bargaining Lead for the Union. Scanlan is an attorney and legal counsel to Respondent and acted as the chief bargaining table spokesperson for Respondent. Both have been present during all relevant bargaining sessions.

[2] The certified unit consists of:

all full-time, regular part-time, and per diem Registered Nurses employed by Respondent at its facility located at 1420 North Tracy Boulevard, Tracy, California, including Case Manager II, Staff Nurses, and Wound Care Nurses; excluding Employee Health Coordinator, Infection Control Coordinator, Policy & Procedure Coordinator, Quality Management-Infection Control and all other employees, all other professional employees, confidential employees, employees provided by temporary employment and placement agencies, managerial employees, guards, Clinical Nurse Leads, Charge Nurses ("permanent" Charge Nurses), Nurse Managers, Nursing Coordinator, Patient Care Shift Supervisors (House Supervisors), Wound Ostomy Continence Nurse Coordinator, and all other Supervisors as defined in the Act.

B. The Health Plans

In the years prior, Respondent provided health coverage through Sutter Select an umbrella of self funded health plans that service Sutter Health employees. Sutter Select establishes and markets health plans for Sutter Health. Rates are set for the plans at the beginning of the calendar year. Sutter Health plans are subject to IRS rules governing cafeteria plans. The IRS rules require that an open enrollment occur prior to the commencement of the plan year on January 1. Because the plans are offered to employees on a pretax basis, the failure to comply with IRS rules could result in employees losing the tax benefits of the arrangement. In order to remain in compliance with the IRS rules, Respondent has in place a practice of conducting an annual open enrollment. This open enrollment is typically held in the fall usually between mid-October and mid-November. The open enrollment process is held during this timeframe to account for the complex logistics involved in implementing the changes associated with the open enrollment process. Practically speaking, in order to account for all of the steps in the process, the entire open enrollment process must be completed by late November each year. This is because employees need to be given sufficient time to make their elections, information must be entered into the healthcare elections computer system, plan administrators need time to test the system, the vendors need time to process files, the insurance vendors require enrollment eligibility in December and ID enrollment cards have to be printed and provided to employees prior to the new year.

C. Bargaining

In May 2012, the Union, consistent with established and agreed upon negotiation ground rules, submitted a request for information regarding Respondent's then existing health benefits. On June 12, 2012, Respondent provided information to the Union which included copies of the health, dental, and medical benefit plans. Similarly on June, 12, 2012, Respondent presented the Union with its first set of non-economic and benefits proposals. Respondent proposed to maintain the status quo and provide identical benefits to both unit employees and non-represented employees. On August 8, 2012, Respondent provided the Union with plan rate information for all of Respondent's health plans.

In 2012, Respondent offered two tiers of health benefit options to its employees through Sutter Select: (1) a no-cost option for employees, called the EPO Plus Option, which gave access to all Sutter Health Facilities; and a PPO option at an additional cost. Because the costs for the EPO Plus Option and the PPO option were set to increase, Respondent looked to other alternatives. Respondent determined that it could best address the issues by aligning its benefits with that of the other Sutter Health Hospitals in the Central Valley Region in an attempt to increase the risk pool and lower the costs of benefits. Respondent determined that switching to the Sutter Health Central Valley Region Plan (SHCVH) would present the best option. On August 29, 2012, Sutter affiliates made the final recommendation for the 2013 premium rates for the health plans. Regional Hospital leadership then worked with Respondent facility leadership and Sutter Select officials to finalize the plans for the switch to the SHCVH plan.

On September 19, 2012, during a bargaining session, Scanlan presented Brannan a letter addressed to Brannan and signed by Melanie Wallace the human resources director. The letter provided that it was, "notification that consistent with our practice we intend to make certain

changes to the wellness program for the next calendar year." (Jt. Exh. 5, p. 1). The letter explained the intended changes and further noted that "we are prepared to hold off on providing enrollment materials to bargaining unit RN's through the end of October, to ensure adequate time for bargaining if you wish to bargain these proposed changes with us. (Id. at p. 2). The following day Marti Smith, a union labor representative responded to the letter from Wallace. In the letter, Smith notified Wallace of the Union's intent to "exercise our right to bargain this along with all other terms and conditions of employment for Registered Nurses at Sutter Tracy. We see no need to have any discussions apart from main table bargaining at this time. You are therefore cautioned not to implement any changes to benefit plans affecting bargaining unit Registered Nurses until a ratified collective bargaining agreement is in effect." (Jt. Exh. 6, p. 1). Smith also noted that in order to, "embark upon main table bargaining" they would need information related to the plan and requested that Respondent provide the information by October 15, 2012. (Id.)

On September 21, 2012, Wallace wrote Brannan to notify him of Respondent's "plan to adopt, effective January 1, 2013, certain changes to health, dental, vision and wellness benefits." (Jt. Exh. 7, p.1). The letter, which briefly outlined the planned changes and stated, "because 2013 benefits will need to be the subject of open enrollment in November, please let us know immediately if you would like to meet to discuss any of the above changes." (Jt. Exh. 7, p. 2). Wallace also noted that they would "delay releasing any materials to STCH RNs until we have had an opportunity to hear from you about the issue. If we do not hear from you within one week of this letter we will assume that you do not object to the implementation of the proposed changes for STCH RNs. If you do wish to meet with us, we can discuss with you at our next scheduled bargaining session (October 2nd)." (Id.)

On October 2, 2012, the parties met again and the wellness program benefits and health care changes were briefly discussed. Respondent offered to have its benefits experts attend the next scheduled bargaining session to provide information regarding the planned changes. The Union sent out a flyer to its members advising of the proposed changes to the wellness plan and in its flyer noted that "by law Sutter Tracy must continue to offer all benefits without change until we have reached agreement for changes." (R. Exh. 5).

By October 5, 2012, summaries of plan changes were provided to employees by Respondent. On October 5, 2012, Melanie Wallace the human resources director referencing these summaries sent a memo to all Sutter Tracy Community Hospital (STCH) registered nurses. In the memo, Wallace stated,

> [T]here has been some confusion about whether a contract with the union must be in place in order for STCH to implement these benefit changes. Contrary to information provided by the union, a contract does not need to be in place in order for these changes to be implemented. STCH evaluates and makes changes to our benefits for all of our employees every year. Since no union contract has ever been in place, STCH is legally permitted to address benefits for next year on a separate track from our overall contract negotiations. However, we will finalize RN benefits for 2013 only after the C.N.A. has been given a full opportunity to bargain over our proposals. It is our preference and strong desire for RNs to

participate in the same 2013 open enrollment process as the rest of the STCH employees." (Joint Ex. 8).

On October 9, 2012, Marti Smith sent a letter, on behalf of the Union, objecting to Wallace's October 5, 2102 memorandum and demanded that Respondent cease and desist all direct communication with the registered nurses regarding the proposed changes, "until the parties have bargained and reached agreement or impasse on the issue." (Jt. Exh. 9).

On October 10, 2012, the next bargaining session was held and Respondent made available three representatives to provide information and answer questions regarding the planned changes. The parties met again on October 19, 2012. The discussions focused on non-health benefits issues because the Union was still soliciting input from its members and it had not yet formulated any counterproposal. The Union however did request the Summary Plan Descriptions (SPD) at this meeting. After the October 19, 2012, meeting, the Union sent out a flyer to its members asking that they "weigh in on Sutter's proposed changes to our benefits and wellness program." (R. Exh. 7).

On October 24, 2012, at 2:31 p.m. Scanlan via email provided the Union with the SPDs which included a chart that referenced co pays, deductibles, and out of pocket expenses for the new plan. The next bargaining session took place the next day on October 25, 2012. At that session, the Union presented its "counter-proposal" to Respondent's proposal on health benefits (medical, dental and vision). (Joint Ex. 12). Brannan, while handing out the proposal, referenced the difficulty the Union faced with coming up with a counterproposal given the "time constraints." (GC Exh. 2e). Brannan thereafter summarized the Union's proposal. Respondent didn't ask any questions about the union proposal and the parties proceeded to discuss other matters. (R. Exh. 9(e)).

After the Union presented its counterproposal, and after the parties returned from a break in the meeting, Respondent provided the Union with a document that outlined total 2013 healthcare plan costs. This information had not been provided to the Union prior to their formulation of the "counter offer." Upon presentation of the information, Scanlan indicated that with open enrollment coming up in November "we need to figure out what we are going to do," intimating that a final decision needed to be made regarding the plan. Brannan responded that they would look over the information provided and asked what Scanlan's thoughts were about moving ahead. Scanlan replied the he didn't think that the Union had persuaded him that it had the better proposal. (GC Exh. 2(e)). Scanlan also indicated that if they did move forward with the plan they would continue to bargain over health care and a contract. Brannan responded by indicating that the Union was willing to bargain separately over the heath care issue and also suggested that the Unit continue with its current coverage and roll it into the next year. Scanlan indicated that roll over wouldn't be acceptable because of increased costs. Brannan responded that increased costs didn't relieve the employer of its duty to bargain. Brannan asked if Respondent would submit a counteroffer to their proposal. Scanlan responded that they would not. After the meeting ended, Scanlan informed Brannan that Respondent was going forward with the implementation of its healthcare proposal. The next day, on October 26, 2012, Scanlan sent a letter to Brannan advising that the hospital-wide 2013 benefit plan first described in the letters of September 19 and 21, 2012, would be implemented. (Jt. Exh. 14). Four days later, on November 1, 2012, Respondent commenced open enrollment for the new plan.

By letter dated November 12, 2012, the Union reiterated its position that Respondent's unilateral implementation of its healthcare benefits changes was potentially unlawful and that it was willing to reach an agreement over healthcare benefits absent overall agreement. (Jt. Exh. 16). Respondent replied to the letter on November 14, 2012, with a proposal that would give Respondent the right to change healthcare benefits for all of its employees "without need for negotiations." (Jt. Exh. 17). The language in the proposal related to healthcare mirrored that of Respondent's original proposal submitted on June 12, 2012. (Jt. Exh. 4(a)).

D. Discussion and Analysis

Section 8(a)(5) requires that an employer, "bargain collectively with the representatives of his employees." Section 8(d) defines that obligation to include, "the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment. . . ." In *NLRB v. Katz*, 369 U.S. 736 (1962), the Supreme Court made clear that an employer violates Section 8(a)(5) and (1) of the Act if it changes terms and conditions that are mandatory subjects without providing the union representing its employees with prior notice and the opportunity to bargain about such subjects. It is also well settled that an employer that acts precipitously and presents unilateral changes as a *fait accompli* fails to meet the requirement set forth above in *Katz*. See also *UAW-Daimler Chrysler National Training Center*, 341 NLRB 431, 433 (2004).

In *Stone Container Corp*., 313 NLRB 336 (1993), the Board recognized an exception to the general rule that an employer must refrain from making unilateral changes during contract negotiations.[3] *Stone Container* involved an annual wage review which occurred during the time the parties were involved in negotiations for an overall agreement. The Board held that because it was a "discrete event," the employer, after giving notice and providing an opportunity to bargain, was privileged to implement changes without waiting until an overall impasse if, when given the opportunity to bargain, the Union did not submit any counterproposal or raise the issue during negotiations. [4]

The Board reaffirmed its holding in *Stone Container* in a number of cases directly related to health care benefits.[5] In *Brannan Sand and Gravel,* 314 NLRB 282 (1994), the Board reaffirmed that an employer is not required to refrain from implementing the changes [involving a discrete annually recurring event] until an impasse has been reached in bargaining for a collective-bargaining agreement as a whole. But the Board distinguished the case from *Stone Container* holding that unlike the facts presented in *Stone Container,* the respondent in *Brannan* failed to satisfy its obligation to provide the union with timely notice and a meaningful

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[3] I concur with the General Counsel that the exigency exception relied upon by the Board in *RBE Electronics of S.D., Inc.,* 320 NLRB 80, 82 (1995), is inapplicable to this case as Respondent failed to demonstrate that the exigency was caused by external events, was beyond the employer's control, and/or was not reasonably foreseeable.

[4] It is undisputed, and I find, that in this case, the Union did not waive its right to bargain and in fact took active steps to exercise its right.

[5] *See*, *Nabors Alaska Drilling, Inc*., 341 NLRB 610 (2004), *Saint-Gobain Abrasives,* 343 NLRB 542 (2004), and *St. Mary's Hospital of Blue Springs*, 346 NLRB 776 (2006).

opportunity to bargain over the changes in employment conditions. The Board reasoned that Respondent presented the health plan changes as a *fait accompli* and therefore violated Section 8(a)(5) and (1) by unilaterally implementing the health plan changes.

I find that in this case, as in *Brannan Sand and Gravel*, Respondent did not afford the Union a reasonable opportunity to bargain and presented the health care plan and wellness program benefit changes as a *fait accompli*.

E. The Denial of a Meaningful Opportunity to Bargain

Good-faith bargaining requires timely notice and "meaningful opportunity to bargain" regarding the employer's proposed changes, as no genuine bargaining can be conducted where the decision has already been made and implemented. See *Pontiac Osteopath Hospital*, 336 NLRB 1021, 1023-1024 (2001), C*astle Hill Health Care Center*, 355 NLRB 1156, 1189 (2010), and *S & I Transportation,* 311 NLRB 1388 (1993).

I find there is sufficient objective evidence in the record to support the finding that Respondent made up its mind regarding its health care plan and wellness benefit proposals early on in the process and never seriously intended to bargain with the Union over the matters. The record includes a clear expression of Respondent's intentions at the outset of bargaining as well as after the announced implementation of the health care plan and wellness program benefit changes. Respondent unequivocally asserted that its position was to offer the same health benefits it was offering to non-represented employees and reserve exclusively to itself the right to add, increase, reduce or eliminate any given benefit *without the need for negotiations (*emphasis added*). (Jt. Exh. 17).*

Other objective evidence of the Respondent's intent is found in the timing of the notice to the Union.[6] It is undisputed that Respondent knew about the intended changes well in advance of its notification to the Union and was behind the scenes planning changes. It is also undisputed that Respondent had in mind a November launch for the open enrollment which would require that the plan be in place and ready to go. Nevertheless, Respondent purposely delayed informing the Union about both its annual practice and/or the planned changes that were underway. This is true despite the fact that Respondent was regularly meeting with the Union regarding other issues. Respondent instead chose to inform the Union only after all the plan features and changes had been finalized.

Other evidence of Respondent's intent is found in the direct communication with represented employees of the summaries of its planned changes. This communication took place even before the Union was afforded the opportunity to present its counterproposal. (Jt. Exh. 8). A reasonable inference to be drawn from this evidence is that the summaries were final and Respondent had no intention of altering them. If Respondent had a genuine interest in bargaining it would not have sent the proposals to the employees without providing the Union an

[6] Respondent argues that the Union engaged in "bad faith" bargaining on account of its delay in submitting its counterproposal and "squandered" its opportunity to bargain. Respondent cannot be heard to complain about the timing of the Union's counterproposal when it had no real intention of considering it.

opportunity for input regarding them. When the Union presented its counterproposal not a single question was asked of them. Nor was the Union given the opportunity to consider or study the newly presented plan cost information. The undisputed evidence of record is that the Union's counter proposal was flatly rejected.

I find that a reasonable inference to be drawn from the totality of all of this evidence is that Respondent never really intended to bargain with the Union and the notice of proposed changes provided to the Union was simply a means to inform it of a *fait accompli.* Applying the reasoning and rationale set forth above in *Brannan Sand and Gravel,* I find that Respondent violated Section 8(a)(5) and (1) of the Act.

In view of my findings above, I need not reach the issue of whether bargaining to impasse was required or other subsidiary issues related to impasse.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(5) and (1) of the Act by implementing its health care plan and wellness program changes unilaterally changing terms and conditions of employment without providing reasonable notice and an meaningful opportunity to bargain about such changes.

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

REMEDY

Having found that the 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.

Respondent was at liberty to make changes applicable to unrepresented employees. However for those represented employees, Respondent shall be required to make the unit employees whole in all respects for all losses whatsoever resulting from the changes in benefits beginning on January 1, 2013, through the present, and shall return all unit members to the status quo ante health care plan and wellness program, until such time as the Union expressly agrees to those changes in the health plan, or a collective bargaining agreement or an impasse in negotiations is reached as provided in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest to be computed as provided for in *New Horizons for the Retarded,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). This includes reimbursing unit employees for any expenses resulting from Respondent's unlawful changes to their contractual benefits, as set forth in *Kraft*

Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), affd. 661 F.2d 940 (9th Cir. 1981), with interest as set forth in *New Horizons,* supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Sutter Health Central Valley Region, d/b/a Sutter Tracy Community Hospital, Tracy, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with California Nurses Association/National Nurses United as the exclusive collective bargaining representative under Section 9(a) of the Act for the following appropriate unit of employees:

> All full-time, regular part-time, and per diem Registered Nurses employed by Respondent at its facility located at 1420 North Tracy Boulevard, Tracy, California, including Case Manager II, Staff Nurses, and Wound Care Nurses; excluding Employee Health Coordinator, Infection Control Coordinator, Policy & Procedure Coordinator, Quality Management-Infection Control and all other employees, all other professional employees, confidential employees, employees provided by temporary employment and placement agencies, managerial employees, guards, Clinical Nurse Leads, Charge Nurses ("permanent" Charge Nurses), Nurse Managers, Nursing Coordinator, Patient Care Shift Supervisors (House Supervisors), Wound Ostomy Continence Nurse Coordinator, and all other Supervisors as defined in the Act.

(b) Unilaterally changing its health care plan and wellness program benefits and employee contributions for such benefits insofar as such changes are applicable to employees in the above unit, without giving the Union reasonable notice and a meaningful opportunity to bargain.

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

2. The Respondent shall take the following affirmative action necessary to effectuate the policies of the Act.

[7] 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) Upon request of the Union, rescind all changes to health care plan and wellness program benefits applicable to unit members and return all unit members to the health plans that were in place prior to the changes including vision and dental benefits. In doing so, Respondent shall ensure that such restoration is done in a manner that is effectuated without any lapse of health care plan or wellness program coverage for any affected unit member.

(b) Make whole all employees in the above unit for any monetary losses occasioned by the health care plan or wellness program changes including but not limited to any and all out of pocket expenses or changes to co-pays that would not have occurred but for Respondent's unilateral changes to its health care plan and wellness program benefits and employee contributions for health plan coverage in the manner set forth in the remedy section of the decision.

(c) On request, bargain with the Union as the exclusive representative of the employees in the recognized and appropriate unit concerning terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement.

(d) Within 14 days after service by the Region, post at its facility in Tracy, California copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 32, 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. In addition to physical posting of paper notices, the 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

8 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."

(e) Within 21 days after service by the Region, file with the Regional Director 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.

Dated, Washington, D.C. March 13, 2014

Dickie Montemayor
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

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

After a hearing before an administrative law judge, 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 refuse to bargain collectively and in good faith with the California Nurses Association/National Nurses United as the exclusive representative under Section 9(a) of the Act for the following appropriate unit of employees:

All full-time, regular part-time, and per diem Registered Nurses employed by Respondent at its facility located at 1420 North Tracy Boulevard, Tracy, California, including Case Manager II, Staff Nurses, and Wound Care Nurses; excluding Employee Health Coordinator, Infection Control Coordinator, Policy & Procedure Coordinator, Quality Management-Infection Control and all other employees, all other professional employees, confidential employees, employees provided by temporary employment and placement agencies, managerial employees, guards, Clinical Nurse Leads, Charge Nurses ("permanent" Charge Nurses), Nurse Managers, Nursing Coordinator, Patient Care Shift Supervisors (House Supervisors), Wound Ostomy Continence Nurse Coordinator, and all other Supervisors as defined in the Act.

WE WILL NOT unilaterally change our health care plan or wellness program benefits and employee contributions for health care plan coverage insofar as such changes are applicable to employees in the above unit, without first timely notifying the Union and providing them with a meaningful opportunity to bargain.

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

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the above bargaining unit.

WE WILL make employees whole and reimburse employees in the above unit for any losses incurred as a result of Respondent's January 1, 2013, unlawful unilateral changes to its health care plan and wellness program, with interest.

WE WILL, upon request of the Union, rescind the unilateral changes to the health care plan and wellness program and restore all affected unit employees to the plans that were in effect prior to the unilateral implementation.

SUTTER HEALTH CENTRAL VALLEY REGION,
d/b/a SUTTER TRACY COMMUNITY HOSPITAL

(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.

Ronald V. Dellums Federal Bldg. and Courthouse, 1301 Clay Street, Room 300N, Oakland, CA 94612-5224
(510) 637-3300, Hours: 8:30 a.m. to 5 p.m.

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, (510) 637-3253.