NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Columbia Memorial Hospital *and* 1199 SEIU United Healthcare Workers East. Case 03–CA–132367

September 1, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

On February 20, 2015, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

ORDER

The National Labor Relations Board orders that the Respondent, Columbia Memorial Hospital, Hudson, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) 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.

(a) To the extent it has not already done so, furnish to the Union in a timely manner the following information requested by the Union on March 19 and April 1, 2014:

i. Copies of contracts of any and all agencies used by the Respondent to cover vacancies in order to avoid the use of mandatory overtime. However, any pricing information set forth in the contracts with the nursing employment agencies the Respondent has used in the prior 1-year period shall be redacted from the contracts.

ii. Dates and times of all calls made to agencies over the last 12 months to avoid the use of mandatory overtime.

iii. Number of agency nurses used by the Respondent over the past 12 months, to include date, shift, and unit worked.

iv. Copies of any and all nursing agency contracts utilized by the Respondent over the last 12 months. However, any pricing information set forth in the contracts with the nursing employment agencies the Respondent has used in the prior 1-year period shall be redacted from the contracts.

v. Number of times the Respondent used and/or attempted to use agency nurses over the last 12 months, including dates and agencies. Name, shift, and detailed explanation of emergency for each time a nurse was mandated over the last 12 months.

vi. Any and all documentation showing the Respondent's attempts to prevent mandating over the last 12 months.

[1] In affirming the judge's findings, we do not rely on his citation to *National Broadcasting Co.*, 352 NLRB 90 (2008), a case decided by a two-member Board. See *New Process Steel v. NLRB*, 560 U.S. 674 (2010). Instead, we rely on *Sho-Me Power Electric Cooperative*, 360 NLRB No. 53, slip op. at 1 fn. 1 (2014), and *Kellogg's Snack Co.*, 344 NLRB 756, 760 (2005). The judge cited a second case decided by a two-member Board. *Monmouth Care Center*, 354 NLRB 11 (2009). Although the D.C. Circuit remanded that decision pursuant to *New Process Steel*, supra, we rely on it here because a three-member panel of the Board subsequently incorporated the decision by reference. See 356 NLRB No. 29 (2010), enfd. 672 F.3d 1085 (D.C. Cir. 2012).

[2] We shall modify the judge's recommended Order to conform to the Board's standard remedial language and in accordance with *J. Picini Flooring*, 356 NLRB No. 9 (2010). We shall substitute a new notice to conform to the Order as modified.

Member Miscimarra notes that most of the requested information was not presumptively relevant, and he would apply *Hertz Corp. v. NLRB*, 105 F.3d 868 (3d Cir. 1997), where the Third Circuit held that an employer's duty to respond was conditioned on the union's disclosure of facts sufficient to demonstrate relevance unless the factual basis was readily apparent from the surrounding circumstances. Here, the immediate occasion for the Union's request was a grievance regarding the assignment of nurses to mandatory overtime on several dates in March 2014, and the scope of the request was broader than necessary to process that grievance. However, applicable New York State law requires the Respondent to "make a good faith effort" to avoid assigning nurses to mandatory overtime, to document "*all* attempts to avoid the use of mandatory overtime," and to make that documentation "available, upon request, to the nurse who was required to work the mandatory overtime *and/or to the nurse's collective bargaining representative*" (emphasis added). In addition, the parties' collective-bargaining agreement contains a declaration that the Respondent operates in accordance with New York State law. In this context, Member Miscimarra agrees it would have been readily apparent to the Respondent that the Union was entitled to the requested information to review the Respondent's adherence to its obligations under State law and the collective-bargaining agreement, separate from any pending grievance. Accordingly, Member Miscimarra would find that the requirements of *Hertz* were satisfied and the Respondent had an obligation to respond to the information request.

(b) Within 14 days after service by the Region, post at its Hudson, New York facility copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 3, 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, 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. If 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 March 19, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 3 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. September 1, 2015

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) 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 refuse to bargain collectively with the Union, 1199 SEIU United Healthcare Workers East, by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, to the extent we have not already done so, furnish to the Union in a timely manner the following information requested by the Union on March 19 and April 1, 2014:

i. Copies of contracts of any and all agencies used by us to cover vacancies in order to avoid the use of mandatory overtime. However, any pricing information set forth in the contracts with the nursing employment agencies we have used in the prior 1-year period shall be redacted from the contracts.

ii. Dates and times of all calls made to agencies over the last 12 months to avoid the use of mandatory overtime.

iii. Number of agency nurses used by us over the past 12 months, to include date, shift, and unit worked.

iv. Copies of any and all nursing agency contracts utilized by us over the last 12 months. However, any pricing information set forth in the contracts with the nursing employment agencies we have used in the prior 1-year period shall be redacted from the contracts.

v. Number of times we used and/or attempted to use agency nurses over the last 12 months, including dates and agencies. Name, shift, and detailed explanation of emergency for each time a nurse was mandated over the last 12 months.

[3] 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."

vi. Any and all documentation showing our attempts to prevent mandating over the last 12 months.

COLUMBIA MEMORIAL HOSPITAL

The Board's decision can be found at www.nlrb.gov/case/03–CA–132367 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Greg Lehmann, Esq., for the General Counsel.
Paul E. Davenport, Esq. (Lombardi, Walsh, Davenport and Amodeo, P.C.), of Albany, New York, for the Respondent.
Jay Jaffe, New York, for the Union.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on a charge filed on July 9, 2014 by 1199 SEIU United Healthcare Workers East (Union), a complaint was issued against Columbia Memorial Hospital (Respondent or Employer) on August 21, 2014.

The complaint alleges, essentially, that the Respondent failed and refused to furnish the Union with certain information which the Union requested on March 19 and April 1, 2014, which information is necessary for, and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit.

The Respondent's answer denies the material allegations of the complaint and asserts certain affirmative defenses which will be addressed below.

On November 20, 2014, a hearing was held before me in Albany, New York.[1] On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all parties, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

The Respondent, a not-for-profit corporation with an office and place of business in Hudson, New York, has been engaged in the operation of a hospital providing inpatient and outpatient medical care. Annually, in the conduct of its business operations, the Respondent derives gross revenues in excess of $250,000 and purchases and receives at its Hudson, New York facility, goods valued in excess of $5,000 directly from points outside New York State. 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 has been a health care institution within the meaning of Section 2(14) of the Act. The Respondent also admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Background

The Respondent and the Union have been parties to successive collective-bargaining agreements, the most recent of which is effective from January 1, 2011 through December 31, 2015. The Union has been recognized in the following professional unit:[2]

> All full-time and regular part-time Registered Professional Nurses licensed to practice in the State of New York including per diem Registered Professional Nurses, Pharmacists, Physical Therapists, Medical Technologists, Histology Technologist employed by the Employer at Columbia Division of Columbia Memorial Hospital located at 71 Prospect Avenue, Hudson, NY and its surrounding clinics in accordance with the National Labor Relations Board Certification of Representative, Case No. 3–RC–8323, dated December 9, 1982.

This matter involves the Union's requests for information concerning the operation of the Respondent's mandatory overtime program for registered nurses.[3] Mandatory overtime is the requirement that an on-duty nurse work beyond her regularly scheduled hours of work. Such employees are required to work overtime in order to fill shifts of nurses who are absent for various reasons.

The parties' contract provides that "prior to requiring mandatory overtime, the Employer will exhaust all efforts to obtain needed staff as set forth in [this Article of the contract] and as required by Section 167 of . . . the New York State Labor Law which restricts mandatory overtime for Registered Nurses. . . ."

Director of Human Resources Kelly Sweeney testified that the Respondent undertakes a process before "mandating" that a nurse work overtime, including the steps set forth in the Employer's Nurse Coverage Plan. She stated that each step in the process is documented as required in State Labor Law Section 177.4.

When the nursing administration needs to mandate a nurse, the nursing staffing office first determines whether the need for an extra nurse is on one specific floor. If that is the case, the administration attempts to obtain a nurse from another floor to

[1] The General Counsel's unopposed motion to correct the transcript to change the word "advance" to "abeyance" on Tr. p. 104, is granted.

[2] The contract also covers a unit of service and technical employees, which is not involved in this matter.

[3] Hereafter, the term "nurse" or "nurses" will refer to registered professional nurses.

fill in on the floor where help is needed. Then the staffing personnel examine the patient census of the floor from which the nurse will be transferred to determine if a transfer of a nurse from that floor is feasible.

Following that exercise, the staffing office performs a "call list" in which all nurses employed by the Employer are advised of the opening on the specific shift and floor, and asked if they would work the shift.

If the Employer is unable to obtain one of its nurses to fill the vacant shift, the nurse managers are asked to take the shift. If the Employer still cannot find a nurse for the shift, it then calls one of the nursing employment agencies it contracts with, and asks that a nurse be provided. The agency called is identified on the call list.

If all of these efforts are unsuccessful in obtaining a nurse to fill the vacant shift, an on-duty nurse is "mandated"required to work the shift on an overtime basis, for which she receives bonus pay.

Section 167 of the New York State Labor Law broadly prohibits hospitals from requiring an on-duty nurse to work overtime—a period of time after their regular shift has been completed. However, there are two events in which the hospital may require such overtime. First, in the event of an unforeseen patient care emergency, defined below, or during periods of nurse absences for various reasons, where various steps have first been undertaken, pursuant to the Nurse Coverage Plan, to provide for the vacancy.

> Part 177.3 Mandatory Overtime Prohibition.
>
> (a) Notwithstanding any other provision of law, a health care employer shall not require a nurse to work overtime. . . .
>
> (b) The following exceptions shall apply to the prohibition against mandatory overtime for nurses:
>
> (3) Patient Care Emergency. The prohibition against mandatory overtime shall not apply in the case of a patient care emergency, which shall mean a situation which is unforeseen and could not be prudently planned for and as determined by the health care employer, that requires the continued presence of the nurse to provide safe patient care, subject to the following limitations:
>
> (i) Before requiring an on-duty nurse to work beyond his or her regularly scheduled work hours in connection with a patient care emergency, the health care employer shall make a good faith effort to have overtime covered on a voluntary basis or to otherwise secure nurse coverage by utilizing all methods set forth in its Nurse Coverage Plan … The health care employer shall document attempts to secure nurse coverage through use of phone logs or other records appropriate to this purpose.
>
> (ii) A patient care emergency cannot be established in a particular circumstance if that circumstance is the result of routine nurse staffing needs due to typical staffing patterns, typical levels of absenteeism, and time off typically approved by the employer for vacation, holidays, sick leave, and personal leave, unless a Nurse Coverage Plan which meets the requirements of Section 177.4 is in place, has been fully implemented and utilized, and has failed to produce staffing to meet the particular patient care emergency. Nothing in this provision shall be construed to limit an employer's right to deny discretionary time off (e.g., vacation time, personal time, etc.) where the employer is contractually or otherwise legally permitted to do so.
>
> (iii) A patient care emergency will not qualify for an exception to the provisions of this Part if it was caused by the health care employer's failure to develop or properly and fully implement a Nurse Coverage Plan as required under Section 177.4 of this Part.

The State Labor Law requires a Nurse Coverage Plan, as follows:

> Part 177.4 Nurse Coverage Plans.
> (a) Every health care employer shall implement a Nurse Coverage Plan, taking into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors. Such plan should also reflect the health care employer's typical levels and types of patients served by the health care facility.
>
> (b) The Plan shall identify and describe as many alternative staffing methods as are available to the health care employer to ensure adequate staffing through means other than use of mandatory overtime including contracts with per diem nurses, contracts with nurse registries and employment agencies of nursing services, arrangements for assignment of nursing floats, requesting an additional day of work from off-duty employees, and development and posting of a list or roster of nurses seeking voluntary overtime.
>
> (c) The Plan must identify the Supervisor(s) or Administrator(s) at the health care facility or at another identified location who will make the final determination as to when it is necessary to utilize mandatory overtime. The Plan may require a nurse to assist in making telephone calls consistent with the Nurse Coverage Plan to find his or her own shift replacement, but may not require a nurse to self-mandate overtime.
>
> (d) The Plan shall require documentation of all attempts to avoid the use of mandatory overtime during a patient care emergency and seek alternative staffing through the methods identified in subdivision (b) of this Section. In the event that the health care employer does utilize mandatory overtime, the documentation of such efforts to avoid the use of mandatory overtime shall be made available, upon request, to the nurse who was required to work the mandatory overtime and/or to the nurse's collective bargaining representative.

Part 177.6 provides that this Part "shall not be construed to diminish or waive any rights or obligations of any nurse or health care provider pursuant to any other law, regulation, or collective bargaining agreement."

The Employer has a current Nurse Coverage Plan which provides, in relevant part, as follows:

> ALTERNATIVE MEASURES
> Columbia Memorial Hospital has employed various measures

to ensure adequate staffing and to allow additional flexibility of staff after time sheets are posted. The hospital work force consists of a 36—37.5 hour work week, allowing any staff to work a minimum of 2.5 additional hours weekly prior to an overtime situation.

Other measures initiated at Columbia Memorial Hospital include:

1. Hiring per diems to fill vacancies.
2. Voluntary cross-training of existing staff to other areas within [the Employer].
3. Flexible hours and shift options for interested staff.
4. Posting job openings where it is accessible for those staff seeking additional or new assignments.
5. Acceptance of volunteers to work extra shifts.
6. Alternative incentives for volunteering extra time.
7. Ongoing calls to staff to cover vacancies and unexpected situations.
8. Scheduling of one additional staff member wherever possible to fill in, in the event of an unexpected absence.
9. Implementation of a software system to allow for self-scheduling and to track vacancies.
10. Contracts with outside nursing employment agencies to provide coverage for both per-diem situations and extended travel assignments.
11. Use of on-call staff in areas where volume and acuity fluctuate (i.e., ICU, OB, Surgical Services)
12. Rotation of staff in accordance with the contract provision to fill staffing needs.
13. Creative scheduling on individual units to cover unexpected needs, which may include temporary coverage by a charge nurse or nurse manager.
14. Relocation and congregation of patients to areas where nursing staff ratios can accommodate patient care needs without creating an overtime situation.
15. Education to staff of the need for early notification to the hospital of any absence. Tracking of absenteeism to assure patient care is not compromised due to abuse of sick time policies.
16. Encouragement to switch with other staff when there is a need to be out of work after the timesheet is published, rather than call list sent.
17 Employment of a recruiter for the Nursing Division who can devote time to marketing, recruitment and retention.
18. Involvement of the nursing staff in recruitment of new staff, and precepting new staff.
19. Initiation of advertising for licensed personnel on radio, television, job fairs and billboards.

DOCUMENTATION

All requests for time off, records of extra hours worked, and master time sheets of personnel are maintained in the Nursing Division. In addition, records of payroll including hours worked, dollars paid and utilization of benefit time is available on our Information Services System.

In compliance with the New York State Labor Law, Columbia Memorial Hospital has developed this plan to restrict mandatory overtime for licensed nursing staff except in situations where there is an emergency and it is necessary to mandate staff to provide safe patient care. Columbia Memorial Hospital will make a good faith effort to have overtime covered on a voluntary basis and will institute other options prior to requiring an on-duty employee to remain on duty. Columbia Memorial Hospital will comply with New York State Labor Law, Part 177, Section 167.

B. The Requests for Information, their Asserted Relevance and the Employer's Responses

1. The March 19 request

Nurses complained to nurse Kimberly Bishop, a union delegate, that they had been asked to work mandatory overtime on March 6, 7, and 18, 2014. She testified that between June 2013 and March, 2014, more than five nurses complained to her that they had been improperly mandated, in other words, required to work overtime before the Respondent took the necessary steps to find a replacement. [4]

On March 19, Bishop addressed a request to Kelly Sweeney, the Respondent's human resources director for certain information "for the purpose of filing a grievance." The documents were asked to be provided by March 21.

The request contained nine demands for information. However, only three are before me. Accordingly, evidence concerning the other documents requested but not at issue will not be discussed. The three areas of information sought, as numbered in the original request, are:

> 7. Copies of contracts of any and all agencies used by the Employer to cover vacancies in order to avoid the use of mandatory overtime.
> 8. Dates and times of all calls made to agencies over the last 12 months to avoid the use of mandatory overtime.
> 9. Number of agency nurses used by the hospital over the past 12 months, to include date, shift, and unit worked.

Bishop testified that the information in paragraph 7 was requested in order to determine if the Employer had contracts with nursing employment agencies so that she could investigate the grievance. She explained that the Employer represents in the collective-bargaining agreement, article 12, section 5, above, that it operates in accordance with the New York State Law which requires that a Nurse Coverage Plan include a provision for contracts with nursing agencies.

Further, Bishop stated that she needed the contracts for the grievance so that she could determine whether nurses provided by the agencies had been properly oriented at the Employer—given training in the use of the Employer's computerized medication administration and other Employer policies—before beginning their employment.

Bishop stated that she needed the entire contract so that she could confirm the names of the agencies. She did not need the pricing information set forth in the contracts, but needed the "method and means" by which the Employer obtained nurses.

Bishop stated that she needed the information in paragraph 8

[4] Between August 2013 and March 2014, there were several grievances as to mandating, all of which were resolved.

in order to process the grievance she filed. She also noted that such information was required by Section 177 of the New York State law, which states that the Nurse Coverage Plan requires documentation of all attempts to avoid the use of mandatory overtime, and such documentation shall be made available, upon request, to the Union. Bishop believed that asking for documents for the past year was reasonable.

Regarding the information requested in paragraph 9, the Union sought this information in order to aid in the processing of the grievance, and because such information is required according to the New York State Law. Bishop also stated that the information was necessary because the Employer's Nurse Coverage Plan provides that it has contracts with nursing agencies. Sweeney first claimed that this information was irrelevant, but then notified the Union that it used 14 agency nurses in the past year.

Bishop further stated that she needed the information set forth in paragraphs 8 and 9, above, because neither she nor any other nurse at the Employer had seen an agency nurse work at the Employer on a per diem basis in order to avoid the use of mandatory overtime. That is why she questioned whether the Employer, in fact, had contracts with nursing agencies.

The following day, March 20, Sweeney sent an email to Bishop which stated that "the Employer has begun to compile the information that you requested. However, as the request is voluminous, it will be available by the close of business on March 21. I will make every effort to have it to you in the early part of next week."

On March 20, Bishop submitted the following grievance entitled, "Class Action" because "multiple employees" were required to perform mandatory overtime work:

> The Employer has violated the CBA including, but not limited to Article12, Sect. 3, Article 12, Sect. 5, and Article 19 by mandating employees before attempting alternative staffing identified in the Nurse Coverage Plan.

The parties' contract provides that a grievance shall be filed within 10 days of the event giving rise to the grievance, or within 10 days after the employee knew of that event, and that a failure to abide by such time limit constitutes a waiver of the grievance. Sweeney stated that the three dates in March came within the 10-day time limitation of the grievance filed on March 20.[5]

On March 31, Sweeney provided certain documents to Bishop. She testified that the information provided was voluminous, taking 10 days to compile. The documents provided included the Nurse Coverage Plan, and the vacancy call lists for March 6, 7, and 18. The call lists set forth the names of the two nurse employment agencies the Employer called on the three dates in March. The call lists also included the names of the nurses who were absent, and the calls made to nurses to attempt to fill the shifts.

Although testifying that the information requested was "extremely voluminous," Sweeney did not know if her request for the number of nurses mandated required the nursing department to review voluminous documents. Nor did she know what records that department had to review to report that 14 agency nurses were used in the past year.

Regarding the information requested in paragraph 8, the Respondent provided data for March 6, 7, and 18 only, despite the fact that the request sought information for the past 12 months.

Upon receiving this limited information, on the same day, March 31, Bishop wrote to Sweeney advising that the documents provided did not contain all the information requested in paragraphs 7 through 9, above. Bishop testified that although the names of the two agencies were set forth in the call lists, she needed the contracts themselves to determine if they provided that per diem agency nurses would fill the shifts open due to nurse absences.[6]

Bishop asked that the information be provided by April 2 so that the Union could accept the April 3 date offered by the Employer for a step 3 grievance meeting.

Bishop testified that although her initial March 19 request for information specified three specific dates, March 6, 7, and 18, on which nurses were mandated, her request, in its entirety, was not limited to those three dates since other information was demanded. Such requested data included the Respondent's calls to nursing agencies and the use of agency nurses in the past 12 months.

Sweeney testified, in contrast, that she believed that the Union was simply questioning the Employer's mandating nurses on the three dates in March. She agreed that the grievance does not mention the three dates, but nevertheless believed that it was concerned with those dates because Bishop's March 19 request specified the three dates and requested certain information regarding those dates. Accordingly, Sweeney stated that her responses to some requests were based on the three dates provided by Bishop, being aware of the 10-day limit on filing grievances. Other responses were based on her belief that the documents sought were irrelevant. Still other responses were based on her belief that the collection of the information would be voluminous and burdensome, requiring the Employer to seek such data "across many departments."

Sweeney conceded, however, that certain items requested sought information beyond the three dates, including those which sought 12 months of data. Nevertheless, she did not ask Bishop why she needed 1 year's documentation.

On April 1, Sweeney wrote to Bishop, referencing "Grievance No. 112—Mandating: Information Request." Sweeney apologized for not including the information omitted, and further responded to the March 19 request, as follows:

> 7. Copies of contracts with Agencies is proprietary and will not be provided.
>
> 8. Agencies that were called was attached to call list.
>
> 9. Number of agency nurses used over the last 12 months is irrelevant, and will not be provided.

[5] The grievance was timely since Saturdays and Sundays are not included in the computation of the time required to file the grievance.

[6] I reject the Respondent's argument, on brief, that the Union could have objected to the Employer's responses and submissions, but did not do so. Bishop's complaint to Sweeney on March 31 that not all the requested documents had been supplied constitutes the Union's objection.

As to paragraph 7, Sweeney testified that the contracting agencies expected the Employer to keep the contents of the contracts confidential. She regarded the rates paid and length of the contract to be particularly private information. However, she changed her testimony on cross-examination to state that the length of the contract was not confidential. Bishop testified that the rates paid the agencies did not have to be provided.

Sweeney conceded that she could have redacted the objectionable information, but did not do so or offer to do so. She further stated that she did not offer the Union an accommodation to the Employer's concerns as to the proprietary nature of the contracts because the Union "was clear that they wanted the entire contracts." She stated that she, too, was clear in her position that the contracts were proprietary.

As to paragraphs 8 and 9, Sweeney testified that inasmuch as Bishop asked for the information for three specific dates only, information requested for 12 months is irrelevant and is also outside the 10-day period within which a grievance may be filed. In addition, such a voluminous amount of documents would be "burdensome," involving the human resources and nursing departments.

Sweeney stated that after she provided the information to Bishop on March 31, the Union made no complaints regarding her submission. However, this ignores the fact that on March 31, the same day she received the documents, Bishop wrote to Sweeney advising that the documents provided did not contain the information requested in paragraphs 7 through 9, above.

2. The April 1 request

Union organizer Timothy Rodgers became aware that the Employer did not provide some of the information requested by Bishop. On April 1, he requested certain information, advising that if the information was received by April 2, he would be available on April 3 for the step 3 grievance, but if the information was not received by that time, the grievance meeting would have to be rescheduled:

The requested documents at issue here, as numbered in Rodgers' original demand, are as follows:

> 1. Copies of any and all nursing agency contracts utilized by the employer over the last 12 months.
> 2. Number of times the employer used and/or attempted to use agency nurses over the last 12 months, including dates and agencies.
> 4. Name, shift, and detailed explanation of emergency for each time a nurse was mandated over the last 12 months.
> 5. Any and all documentation showing the employer's attempt to prevent mandating over the last 12 months.

Rodgers testified that the information in paragraph 1, above, was needed because unit employees were not aware that the Employer had used an agency nurse. He asked for the contracts because the Employer stated, in the Nurse Coverage Plan, that it has contracts with nursing agencies.

Rodgers requested the information in paragraph 2 because Labor Law section 167 requires that the Employer keep an accurate record of which agencies it contracts with, and what methods it uses to prevent mandatory overtime. The information was relevant because the Union would be able to assess whether the Employer obtained nurses from the agencies for the three dates requested, and thereby possibly resolve the grievance. Rodgers added that the Union was unable to properly prepare for the grievance because the Employer did not provide the information.

Rodgers testified that the data requested in paragraph 4 was needed because the Union had an obligation to represent the employees. The information would permit the Union to determine whether there was a staffing issue, and to prepare the grievance. The documents would permit the Union to determine what emergency, as defined in Labor Law 177.3(a)(3), the Employer believed existed, which permitted it to mandate the nurses.

Rodgers requested the information in paragraph 5 because Labor Law section 167 is referenced in the collective-bargaining agreement and that law stated that the Employer must document all attempts to prevent mandatory overtime. Rodgers stated that he needed the data to fully and fairly represent employees. He initially believed that mandation had occurred on only 3 days but later learned through employees that it had occurred more often, which caused him to ask for this information for a 12-month period. He was not satisfied with Sweeney's response that the Employer follows the Nurse Coverage Plan. The Union wanted to see the documents and assess them so that it could properly prepare for the grievance. Further, section 167 states that the Employer must keep the documents and provide them to the Union.

On April 3, Rodgers advised Sweeney that the Union had not received the information or any response to its April 1 request, and that it had to cancel the April 3 meeting. Rodgers asked that the documents be sent "in order for the Union to properly prepare for this grievance," asking that the information be sent by April 7.

On April 4, Sweeney wrote to Rodgers, responding to his April 1 request, as follows:

> 1. Copies of contracts with Agencies is proprietary and will not be provided.
> 2. Number of agency nurses used over the last 12 months is irrelevant, and will not be provided.
> 4 and 5.This request is irrelevant to the dates in question.

Sweeney testified that the information in paragraphs 2, 4, and 5 was irrelevant because the information requested, for the past 12 months, was outside the 10-day period for grievance filing inasmuch as the grievance was limited to three dates. Sweeney added that the Union did not claim that any specific instance of mandating was improper during that 12-month period, nor did the Union claim that the information was necessary to investigate "ongoing conduct" which violated the parties' contract. She did not ask Rodgers why he believed the data was relevant.

Moreover, Sweeney testified that the documents requested were "extremely voluminous," and their collection was burdensome since it involved many departments. Sweeney further explained that she and her staff would have to review all the documentation and paper call lists. They would have to deter-

mine why and when employees were on leaves of absence and when they returned from such leaves.

On April 7, Rodgers wrote to Sweeney, informing her that it was not the Employer's prerogative to determine the relevance of the Union's information request, noting that the Union had previously informed her that the information was needed to prepare for its grievance. He again requested that the Employer provide the requested information.

On April 16, Rodgers again wrote to Sweeney, repeating his request for all the information contained in his April 1 letter, noting that such information was needed so that the Union could "prepare for its grievance."

On April 21, Sweeney responded to Rodgers, as follows:

> 1. The Employer's contention remains that the nursing agency contracts are proprietary and will not be provided. However, the Employer does use two agencies that meet the Employer's standards.
>
> 2. The Employer attempts to use agency nurses prior to each mandation.
>
> 4. The Employer follows the Nurse Coverage Plan.

Sweeney stated that she provided the information, above, in order to "get the process moving," believing that such information would "satisfy what he needed." Regarding the contracts with the nursing agencies, Sweeney believed that the important fact was that the Employer had such contracts, not their contents, which she believed were proprietary. Sweeney stated that after sending her response, the Union did not attempt to discuss with her such response, or clarify what it sought in its various requests. In fact, no discussions at all were held since the grievance was filed regarding her responses or why the Union sought 12 months of documentation, or the relevance of the requested data.

It is undisputed that there was no offer at any time by the Employer or the Union, and no discussion between them in which either party sought an accommodation or sought to negotiate any compromise in the information demanded. Nor did the Union attempt to clarify or discuss with Sweeney her objections to the various items she refused to provide, such as the nursing agency contracts.

Sweeney testified that she was "open" to a conversation with the Union concerning why it believed the documents were relevant and as to how she could accommodate her demand for confidentiality. However, as she received no request for such a discussion, none took place.

Analysis and Discussion

The documents requested by the Union are as follows:

> 1. Copies of contracts of any and all agencies used by the Employer to cover vacancies in order to avoid the use of mandatory overtime.
>
> 2. Dates and times of all calls made to agencies over the last 12 months to avoid the use of mandatory overtime.
>
> 3. Number of agency nurses used by the hospital over the past 12 months, to include date, shift, and unit worked.
>
> 4. Copies of any and all nursing agency contracts utilized by the Employer over the last 12 months.
>
> 5. Number of times the Employer used and/or attempted to use agency nurses over the last 12 months, including dates and agencies. Name, shift, and detailed explanation of emergency for each time a nurse was mandated over the last 12 months.
>
> 6. Any and all documentation showing the employer's attempt to prevent mandating over the last 12 months.

I. THE APPLICABLE LAW

The general principles regarding the obligation of an employer to submit information to a union are clear and not in dispute. An employer, on request, must provide a union with information that is relevant to its carrying out its statutory duties and responsibilities in representing employees. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). The duty to provide information includes information relevant to contract administration. *Barnard Engineering Co.*, 282 NLRB 617, 619 ((1987); *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982). The information is necessary to the union's role in administering and enforcing its collective-bargaining agreement. *Shoppers Food Warehouse*, 315 NLRB 258, 260 (1994).

Where the requested information concerns terms and conditions of employment of employees within the bargaining unit, the information is presumptively relevant, and must be provided on request, without need by the requesting party to establish specific relevance or particular necessity. In those cases, the employer has the burden of proving lack of relevance. Where the information sought concerns persons outside the bargaining unit, the union must make a special demonstration of relevance. *Iron Workers Local 207 (Steel Erecting Contractors),* 319 NLRB 87, 90–91 (1995). A union has satisfied its burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information. *Shoppers Food Warehouse*, above, at 259 (1994).

The Board uses a broad, discovery-type standard in determining the relevance of requested information. *Shoppers Food Warehouse*, above. A showing of possible or potential relevance is sufficient to establish the employer's duty to provide the information. In determining whether information is relevant to the processing of a grievance the Board does not pass on the merits of a union's claim that the employer has breached the collective-bargaining agreement. *Certco Distribution Centers,* 346 NLRB 1214, 1215 (2006).

The Union asserts that it needed the requested information in order to prepare for meetings with the Employer concerning the grievance it filed. It also needed the information in furtherance of its obligation to represent the unit employees. The grievance called into question the Respondent's requirement that on-duty nurses work overtime on three dates in March, 2014.

The requests for information must be viewed in the context of the clear interest by the state in avoiding mandatory overtime. The statutory imperative unmistakenly disfavors overtime work for on-duty nurses and requires specific steps a hospital must take to avoid the use of mandatory overtime.

In addition, the statute significantly requires that, when the hospital mandates nurses, its documentation of efforts to avoid mandatory overtime "shall be made available, upon request … to the nurse's collective bargaining representative. . . ." Accord-

ingly, the state statute requires the Employer to furnish to the Union precisely the type of information sought in the complaint. Therefore, in addition to Board law which supports a finding that the information must be provided, the New York statute demands it.

II. CONTRACTS WITH NURSING EMPLOYMENT AGENCIES USED IN THE PAST 12 MONTHS

The contracts the Respondent has with nursing employment agencies are relevant. The Union needed the contracts to confirm that it has such contracts.

The Union need not have taken at face value the Employer's statement that it had such contracts. I reject the Employer's argument that the appearance of the names of the two agencies in the call lists was sufficient. Although the call lists identified the names of two agencies the Employer used in requesting nurses, only the contracts themselves would prove their existence. Further, Bishop testified that she needed to see if the contracts provided that the agency nurses would fill the vacant shifts.

The state statute requires that the Nurse Coverage Plan identify and describe as many alternative staffing methods as are available to it, including contracts with such agencies.

In making this finding I do not imply that the Employer would list agencies that it did not call and does not have contracts with. However, proof of the actual contracts is essential. Among the steps listed by the statute which an employer can take to avoid mandatory overtime are "contracts with per diem nurses, [and] contracts with nurse registries and employment agencies for nursing services. . . ." The emphasis by the State on such contracts firmly shows that such agreements are an important avenue to obtain "staffing through means other than use of mandatory overtime. . . ." Bishop's reasoning that the contracts would supply the "method and means" by which the Employer obtained nurses from the agencies are certainly relevant to its understanding of how the agency nurses were obtained and how they were utilized by the Employer.

The contracts could also provide information concerning the orientation of the agency nurses to the Employer's operations. That is of importance, as testified by Bishop, since the agency nurses would be working alongside the unit nurses whose overwhelming concern is the welfare of the Employer's patients. The unit nurses, naturally, had an interest in determining whether the agency nurses became familiar with the Respondent's policies and practices involving patient care.

In addition, the nursing agency contracts would be useful in the prosecution of the Union's grievance which claimed that employees were improperly mandated to work overtime in violation of the parties' contract. The collective-bargaining agreement provides that prior to requiring overtime, the Employer "will exhaust all efforts to obtain needed staff as set forth in the contract and in the State Labor Law" which includes having contracts with nursing employment agencies. As to the three dates in question, the Union needed the contracts, as set forth in Bishop's and Rodgers' letters, for the grievance – to see if the Respondent could have and should have used agency nurses, as required in the statute and in the Nurse Coverage Plan, prior to mandating the three nurses.

In *Monmouth HealthCare Center,* 354 NLRB 11, 37, 51 (2009), and *Milford Manor Nursing & Rehabilitation Center*, 346 NLRB 50, 51 (2005), the Board directed the employers to furnish to the Union the contracts and pricing information for the nursing agencies they used. In those cases, the unions claimed that the agency nurses were used too often, thereby diluting the unit. Here, the Union makes the opposite claim—that agency nurses were used too infrequently—that the Respondent should have utilized agency nurses more often rather than mandating the unit nurses.

Regardless of whether the claim is that agency nurses should have been used more or less often, the principle is the same. That information regarding the use of agency nurses is relevant and must be provided to the Union. See also, *St. George Warehouse, Inc.,* 341 NLRB 904, 910 (2004), where the Board found a violation in the employer's refusal to provide the union with the names of temporary agencies supplying workers to the employer, and the contracts setting forth the terms and conditions which applied to those employees.

Sweeney objected to producing the contracts because they were proprietary and contained confidential information, especially pricing. Where a party claims confidentiality it has an obligation to seek to bargain or seek an accommodation in order to satisfy its privacy claims. Here, the Respondent did not do so.

The Board has defined the term "confidential information" which could, in certain circumstances, justify an employer's refusal to turn over information:

> Confidential information is limited to a few general categories: that which would reveal, contrary to promises or reasonable expectations, highly personal information, such as individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits. *Detroit Newspaper Agency*, 317 NLRB 1071, 1073 (1995).

The Respondent has not shown why its contracts with the nursing agencies are confidential. Nor do its unexpressed concerns establish that it met the strict requirements set forth above. Sweeney's testimony that the agencies expected that their contracts would be kept confidential was not proven. *Medstar Washington Hospital Center,* 360 NLRB No. 103, slip op. at 1 and 4 fn. 1 (2014).

> When raising confidentiality as a justification for nondisclosure, the employer has the burden of establishing a legitimate claim of confidentiality. The party making a claim of confidentiality has the burden of providing that such interests are in fact present. By asserting confidentiality, the respondent assumed the burden of coming forward with evidence to back its position, and it has not done so. Accordingly, the respondent has not established its confidentiality claim." *Lasher Service Corp*., 332 NLRB 834, 834 (2000).

In *Monmouth HealthCare Center,* and *Milford Manor Nursing & Rehabilitation Center*, above, the Board directed that

pricing information in the nursing agency contracts be provided to the union. Here, however, Bishop testified that she did not seek pricing data. Accordingly, I will order that any pricing information in the contracts the Respondent had with nursing employment agencies be redacted before they are submitted to the Union.

III. OTHER REQUESTS FOR INFORMATION

The other information requested by the Union were documents specifying (a) the dates and times of all calls made to agencies in the past 12 months to avoid the use of mandatory overtime (b) the number of agency nurses used by the Employer in the past 12 months including date, shift, and unit worked (c) the number of times the Employer used and/or attempted to use agency nurses in the last 12 months including dates and agencies, and the name, shift, and detailed explanation of the emergency for each time a nurse was mandated over the past 12 months and (d) any and all documentation showing the Employer's attempt to prevent mandating over the past 12 months.

All the Union's requests meet the broad definition of relevance, utilized by the Board, that such information would be "of use" to the Union in carrying out its statutory responsibilities. *Wisconsin Bell,* 346 NLRB 62, 64–65 (2005). As the Supreme Court stated in *Acme Industrial*, above at 437, the union's request may be based "upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities."

All of the documents requested are directly related to, and can reasonably be construed as potentially being of use to the Union in determining whether the Respondent had not been using agency nurses to avoid the use of mandatory overtime. The Union reasonably needed this information to determine, as part of its grievance, whether the Respondent violated its contract by its alleged failure to use agency nurses as an alternative to requiring on-duty nurses to work overtime.

In that regard, the Union had a reasonable belief based on anecdotal evidence from Bishop that neither she nor any other nurse had seen an agency nurse work at the Employer on a per diem basis in order to avoid the use of mandatory overtime. All the documents sought evidence, in aid of its grievance, as to whether the Employer had used agency nurses. The information sought specific, precise data which would tend to prove or disprove the Union's claim in its grievance that nurses had been improperly mandated. Thus, the Union sought the dates and times of calls to the agencies, the number of agency nurses used and where they worked, and the number of times agency nurses were used.

Of course, this data would be of use to the Union in meeting its responsibility as the employees' bargaining representative in policing the contract to ensure that the Respondent complied with its contractual and statutory duty to take appropriate steps to avoid mandating overtime. One of those steps included using agency nurses before mandating unit nurses to work overtime.

The other items requested, an explanation of the emergency for which nurses were mandated, and documents showing the Employer's attempts to prevent mandating, are each well within the Union's responsibility to police its contract. By asking for the emergency for which nurses were mandated, the Union was asking for an explanation why an employee was mandated, clearly a relevant inquiry concerning the nurse's working conditions. Documents showing the Employer's attempts to prevent mandating is required by the state statute and also seeks relevant information.

Thus, I find that the Union had a reasonable belief that its contract had been violated. That belief justified its request for the information. *Shoppers Food Warehouse,* above. I emphasize in this regard that I need not and do not decide whether in fact, the Respondent violated its contract. Rather, I conclude only that the Union has established a reasonable belief that the contract may have been violated by the Employer's failure to use agency nurses, and that the information sought may be of use to the Union in ascertaining whether the contract had been breached. The issue of whether the Respondent violated the contract is for the arbitrator to decide.

In *Monmouth HealthCare Center* and *Milford Manor Nursing & Rehabilitation Center,* above, the Board held that documents relating to a nursing agency's providing nurses was relevant to the union's grievance that too many agency nurses had been used. Such information deemed relevant included the names of the agencies, the amount paid by the employer to the agency, the compensation paid to agency nurses, a list of each occasion in which the employer used agency personnel, the reasons why unit employees were not used, and information concerning the agency nurses used.

Similarly, in *Castle Hill Healthcare Center*, 355 NLRB 1156, 1181–1182 (2010), the Board held that the employer was required to furnish information to the union which included the names of agencies used by it to provide temporary staff, and the names, number of hours worked, rates billed and job title for each agency employee. In *St. George Warehouse*, 341 NLRB 904, 910 (2004), and *United Graphics,* 281 NLRB 463, 465 (1986), the Board found that information relating to temporary workers who performed unit work was relevant to the unions' role as bargaining agent.

All the information sought by the Union in the present case was either presumptively relevant or the Union met its burden of establishing some relevance with respect to the information sought. I find that all the documents requested by the Union are relevant to the Union's grievance and to its fiduciary obligation to represent unit employees.

Rodgers appropriately answered Sweeney's replies to the Union's requests that its demands for information were irrelevant. He responded that Sweeney could not determine the relevance of the Union's requests. In *Castle Hill,* above at 1181, the Board affirmed the judge's decision which stated that "Respondent is not empowered to make a unilateral determination that presumptively or otherwise relevant information sought by the Union is unnecessary or irrelevant to . . . the performance of the Union's statutory duties."

Accordingly, all the information requested by the Union, except the pricing information in the contracts, must be provided to the Union.

IV. THE EMPLOYER'S AFFIRMATIVE DEFENSES

The Respondent correctly argues that the statute's provision

that it does not "diminish or waive any rights or obligations" of an employer pursuant to any other law, regulation, or collective-bargaining agreement means that its arguments concerning confidentiality, burdensomeness and irrelevance of 1 year's documentation are properly considered. I have rejected the Employer's confidentiality argument, above. I will now discuss the Employer's other assertions.

A. The Allegedly Burdensome Requests

The Union requested that certain information be provided for the past 12 months. Such annual data included dates and times calls were made to nursing agencies, the number of agency nurses used, the number of times the Employer used agency nurses, and documentation showing the Employer's attempts to prevent mandating over the last 12 months.

The Respondent argued that the requests for information for the past 12 months was burdensome. Sweeney testified that it took the nursing department 10 days to gather the documents that she provided relating to the three dates in which the Employer mandated nurses. However, she did not know if her request for the number of nurses mandated required the nursing department to review voluminous documents. Nor did she know what records that department reviewed to report that number. Based on this I cannot find that the Respondent credibly supported its claim of burdensomeness in the Union's request for 12 months of documents.

Sweeney did advise Bishop that the request was "voluminous," but did not say that it was unduly burdensome to produce. In fact, she said that it would be available the following week, and it was provided to Bishop on March 31, 10 days after it was requested.

"If an employer declines to supply relevant information on the grounds that it would be unduly burdensome to do so, the employer must not only timely raise this objection with the union, but also must substantiate its defense. Respondent has done neither. Respondent never advised the union that its request was unduly burdensome, and never sought clarification from the union in order to narrow the request." *Pulaski Construction Co.,* 345 NLRB 931, 937 (2005). "There is no doubt that production of the information may impose strains on an employer, but that consideration does not outweigh the union's right to the information requested. *H. J. Scheirich Co.,* 300 NLRB 687, 689 (1990)." *Conditioned Air Systems, Inc*., 360 NLRB No. 97, slip op. at 4 (2014).

The Respondent has not introduced any evidence to show that this information was particularly complex, voluminous or burdensome to provide. *Comar, Inc.*, 349 NLRB 352, 353–354 (2007). I therefore cannot find that the Respondent was justified in failing to produce the information for that reason.

A. The Grievance Filing Requirements

As noted above, the Union requested documents relating to the mandation of unit nurses for a period of 12 months. The Respondent asserts that, inasmuch as a grievance must be filed within 10 days of the event giving rise to the grievance, the documents were irrelevant and untimely as to the grievance which had been filed.

The contract's grievance procedure requires that the Union file a grievance within 10 days of the event giving rise to the grievance, or when the employee becomes aware of the event. Bishop conceded that if a grievance is not filed within that period of time it is waived, and also admitted that she could not file a grievance for information she requested for a 1-year period. Thus, when she learned from Sweeney that there were 14 occasions in the past year in which nurses were mandated, she chose to file the charge in the instant matter, and not a grievance.

The Employer argues that since the employees knew immediately when they were mandated, the 10-day grievance filing period began when they were required to work overtime. Accordingly, the 10-day grievance period started to run at the time of mandation for the 14 nurses who were mandated in the prior year. The Employer concluded that, inasmuch as the time for filling a grievance as to those mandations had expired, the documents sought for one year were irrelevant and untimely.

Although a grievance claiming a contractual violation 1 year after a mandation could not be filed because it was untimely, that does not preclude a charge from being filed asserting the Employer's failure to furnish information covering that period of time. Separate rights are vindicated in the two proceedings. "While it is true that a breach of contract is not *ipso facto* an unfair labor practice, it does not follow from this that where given conduct is of a kind otherwise condemned by the Act, it must be ruled out as an unfair labor practice simply because it happens also to be a breach of contract*." C & S Industries,* 158 NLRB 454, 458 (1966). In addition, the Board affirmed the judge's statement that "if the information is relevant, disclosure should not depend on the procedural state of the grievance arbitration process." *National Broadcasting Co.*, 352 NLRB 90, 101 (2008).

In seeking the documents for a 1-year period, the Union properly sought to investigate whether the contract was violated by the Employer in mandating nurses in the prior year. Bishop knew that the Employer had required overtime for several nurses in a 7 month period. However, until Sweeney advised it, the Union was apparently unaware that such mandations had occurred 14 times in the previous year.

Accordingly, the Union sought to police and enforce its contract which requires the Employer to exhaust all efforts to obtain needed staff before requiring its nurses to work overtime. Although a grievance may not have been timely filed based on its discovery of instances of mandating, such information may be of help to the Union in discovering evidence of a pattern of conduct which would cause it to monitor more carefully the Employer's practice of mandating the nurses.

In requesting the information, having been advised by the Employer that it mandated its nurses 14 times in the past year, the Union possessed a reasonable belief that the Employer had not used agency nurses as much as was required. That belief certainly supported its request for one year's documentation of such efforts to obtain alternate sources of nurses before requiring mandation.

Part of that effort required the Union to obtain the facts concerning whether the Employer satisfied its obligation to use all means to supply replacement nurses. The data sought specific details directly related to the use of agency nurses by the Em-

ployer—the dates the agencies were called, the number of agency nurses used, the number of times the Employer used agency nurses, and the documentation showing the Employer's attempt to prevent mandating over the last 12 months.

I therefore reject the Respondent's contention that because the Union could not file a grievance as to mandations which occurred in the prior 1-year period, it was not entitled to such documents. The information requested was related to its obligation to represent the unit employees and to police its contract.

CONCLUSIONS OF LAW

1. Columbia Memorial Hospital is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

2. The 1199 SEIU United Healthcare Workers East has been a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time Registered Professional Nurses licensed to practice in the State of New York including per diem Registered Professional Nurses, Pharmacists, Physical Therapists, Medical Technologists, Histology Technologist employed by the Employer at Columbia Division of Columbia Memorial Hospital located at 71 Prospect Avenue, Hudson, NY and its surrounding clinics in accordance with the National Labor Relations Board Certification of Representative, Case No. 3-RC-8323, dated December 9, 1982.

4. At all times material herein the Union has been the exclusive collective-bargaining representative of the employees in the above unit.

5. The Respondent has violated Section 8(a)(1) and (5) of the Act by failing and refusing to supply the following information:

> 1. Copies of contracts of any and all agencies used by the Employer to cover vacancies in order to avoid the use of mandatory overtime.
>
> 2. Dates and times of all calls made to agencies over the last 12 months to avoid the use of mandatory overtime.
>
> 3. Number of agency nurses used by the hospital over the past 12 months, to include date, shift, and unit worked.
>
> 4. Copies of any and all nursing agency contracts utilized by the Employer over the last 12 months.
>
> 5. Number of times the Employer used and/or attempted to use agency nurses over the last 12 months, including dates and agencies. Name, shift, and detailed explanation of emergency for each time a nurse was mandated over the last 12 months.
>
> 6. Any and all documentation showing the employer's attempt to prevent mandating over the last 12 months.
>
> 7. The unfair labor practices of the Respondent, found above affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

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

I shall recommend that the Respondent supply the requested information, set forth above, to the Union. However, any pricing information set forth in the contracts with the nursing agencies the Respondent has used in the prior 1-year period shall be redacted from such contracts.

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

ORDER

The Respondent, Columbia Memorial Hospital, Hudson, New York, its officers, agents, and representatives, shall

1. Cease and desist from:

(a) Failing and refusing to timely and completely supply information to the Union that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of its unit employees.

(b) 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.

(a) Furnish to the Union, in a timely and complete manner, the following information:

> 1. Copies of contracts of any and all agencies used by the Employer to cover vacancies in order to avoid the use of mandatory overtime. However, any pricing information set forth in the contracts with the nursing employment agencies the Respondent has used in the prior 1-year period shall be redacted from the contracts.
>
> 2. Dates and times of all calls made to agencies over the last 12 months to avoid the use of mandatory overtime.
>
> 3. Number of agency nurses used by the hospital over the past 12 months, to include date, shift, and unit worked.
>
> 4. Copies of any and all nursing agency contracts utilized by the Employer over the last 12 months. However, any pricing information set forth in the contracts with the nursing employment agencies the Respondent has used in the prior 1-year period shall be redacted from the contracts.
>
> 5. Number of times the Employer used and/or attempted to use agency nurses over the last 12 months, including dates and agencies. Name, shift, and detailed explanation of emergency for each time a nurse was mandated over the last 12 months.
>
> 6. Any and all documentation showing the employer's attempt to prevent mandating over the last 12 months.

(b) Within 14 days after service by the Region, post at its facility in Hudson, New York, copies of the attached notice

[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.

marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 3, 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 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 March 19, 2014.

(c) 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. February 20, 2015

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 timely and completely supply information to 1199 SEIU United Healthcare Workers East (the Union) that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of those of you in the following unit:

> All full-time and regular part-time Registered Professional Nurses licensed to practice in the State of New York including per diem Registered Professional Nurses, Pharmacists, Physical Therapists, Medical Technologists, Histology Technologist employed by the Employer at Columbia Division of Columbia Memorial Hospital located at 71 Prospect Avenue, Hudson, NY and its surrounding clinics in accordance with the National Labor Relations Board Certification of Representative, Case No. 3-RC-8323, dated December 9, 1982.

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 to the Union, in a timely and complete manner, the following information:

1. Copies of contracts of any and all agencies used by the Employer to cover vacancies in order to avoid the use of mandatory overtime. However, any pricing information set forth in the contracts with the nursing employment agencies the Respondent has used in the prior 1 year period shall be redacted from the contracts.
2. Dates and times of all calls made to agencies over the last 12 months to avoid the use of mandatory overtime.
3. Number of agency nurses used by the hospital over the past 12 months, to include date, shift, and unit worked.
4. Copies of any and all nursing agency contracts utilized by the Employer over the last 12 months. However, any pricing information set forth in the contracts with the nursing employment agencies the Respondent has used in the prior 1 year period shall be redacted from the contracts.
5. Number of times the Employer used and/or attempted to use agency nurses over the last 12 months, including dates and agencies. Name, shift, and detailed explanation of emergency for each time a nurse was mandated over the last 12 months.
6. Any and all documentation showing the employer's attempt to prevent mandating over the last 12 months.

The Administrative Law Judge's decision can be found at – www.nlrb.gov/case/03-CA–132367 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

[8] I f 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."