

California Nurses Association, National Nurses Organizing Committee and Henry Mayo Newhall Memorial Hospital. Case 31–CB–012913

January 8, 2014

ORDER GRANTING MOTION FOR
RECONSIDERATION

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND SCHIFFER

On July 2, 2013, the National Labor Relations Board issued a Decision and Order in this proceeding.¹ The Board affirmed the judge’s finding that the Respondent violated Section 8(b)(3) of the Act by printing a *Weingarten*² statement on the back cover of its collective-bargaining agreement with the employer that was contrary to the parties’ settled understanding on the issue of cover text but reversed the judge’s finding that the Respondent’s conduct violated Section 8(b)(1)(A) of the Act. As part of its Order remedying the 8(b)(3) violation, the Board ordered that the Respondent cease and desist from “[i]n any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.”³

On July 29, 2013, the Respondent filed a motion for reconsideration asserting that the Board should remove the “like or related manner” language from the Order in light of the Board’s dismissal of the 8(b)(1)(A) allegation. Neither the Acting General Counsel nor the Charging Party opposed the motion.

The Board has long recognized that a violation of Section 8(b)(1)(A), which prohibits labor organizations from restraining or coercing employees in the exercise of their Section 7 rights, is not a derivative violation of an 8(b)(3) violation. *National Maritime Union (Texas Co.)*, 78 NLRB 971, 985 (1948), *enfd.* 175 F.2d 686 (2d Cir. 1949), *cert. denied* 338 U.S. 954 (1950). Accordingly, the Board’s general injunctive language for 8(b)(1)(A) violations—ordering a party to cease and desist from “[i]n any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act”—is not appropriate where a party has violated only Section 8(b)(3). See, e.g., *Demolition Workers Local 95*, 330 NLRB 352, 352 fn. 3 (1999); *California Nurses Assn.*, 326 NLRB 1362, 1362 fn. 1 (1998), *Painters (Northern California Drywall Contractors Assn.)*, 326 NLRB 1074, 1074 fn. 2 (1998); *Paperworkers Local 620 (International Paper Co.)*, 309 NLRB 44, 44 fn. 3 (1992).

¹ 359 NLRB 1391.

² *NLRB v. J. Weingarten*, 420 U.S. 251 (1975).

³ 359 NLRB 1391, 1394.

Because we find that the Board erred by including general injunctive language in the Order in the instant case, we grant the Respondent’s Motion for Reconsideration and we shall modify the Order and notice accordingly.

ORDER

The Respondent’s Motion for Reconsideration is granted. Accordingly, the National Labor Relations Board modifies its original Order and orders that the Respondent, California Nurses Association, National Nurses Organizing Committee, Oakland, California, its officers, agents, and representatives, shall

1. Cease and desist from printing and maintaining copies of the collective-bargaining agreement containing additional language contrary to the agreement of the parties (e.g., including on the back cover a statement entitled, “The *Weingarten* Rights”) without the consent of the hospital.

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

(a) Reprint and deliver to the Henry Mayo Newhall Memorial Hospital, at the Respondent’s sole expense, copies of the collective-bargaining agreement without “The *Weingarten* Rights” statement or any other additional language printed thereon or appended thereto, unless the hospital agrees to such language.

(b) Within 14 days after service by the Region, post at its union offices and meeting halls in Glendale, California copies of the attached notice marked “Appendix.”⁴ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members 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 members 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.

(c) Within 14 days after service by the Region, deliver to the Regional Director for Region 31 signed copies of the notice in sufficient number for posting by Henry

⁴ 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.”

Mayo Newhall Memorial Hospital at its Valencia, California facility, if it wishes, in all places where notices to employees are customarily posted.

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

APPENDIX
NOTICE TO EMPLOYEES AND MEMBERS
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 on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT print and maintain copies of the collective-bargaining agreement containing additional language contrary to the agreement of the parties (e.g., including on the back cover a statement entitled "The *Weingarten* Rights"), without the consent of the hospital.

WE WILL reprint and deliver to the Henry Mayo Newhall Memorial Hospital, at our sole expense, copies of the collective-bargaining agreement without "The *Weingarten* Rights" statement or any other additional language printed thereon or appended thereto, unless the hospital agrees to such language.

CALIFORNIA NURSES ASSN., NATIONAL NURSES
ORGANIZING COMMITTEE