

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AFSCME COUNCIL 5, LOCAL 3558

and

Case 18-CB-149410

ST LUKE'S HOSPITAL OF DULUTH, INC. D/B/A
ST LUKE'S HOME CARE

JOINT MOTION AND STIPULATION OF FACTS

This is a joint motion by the parties to the above-captioned case, AFSCME Council 5, Local 3558 (Respondent or Union); St. Luke's Hospital of Duluth, Inc. d/b/a St. Luke's Homecare (Charging Party or Employer); and the General Counsel, to waive a hearing before an administrative law judge and submit this case directly to the Board pursuant to Section 102.35(a)(9) of the National Labor Relations Board's Rules and Regulations for a decision based on the record of this case as defined herein. The granting of the motion will effectuate the purposes of the Act and avoid unnecessary costs and delays.

If the motion is granted, the parties agree to the following:

1. The record in this case consists of the Charge, Complaint and Notice of Hearing, Answer, Order Correcting Hearing Date, Order Rescheduling Hearing, Order Postponing Hearing Indefinitely, and the Joint Motion and Stipulation of Facts (and its attachments), and each party's Statement of Position.
2. The case is submitted directly to the Board for issuance of findings of fact, conclusions of law, and an Order.

3. The parties waive a hearing, findings of fact, and conclusions of law, and order by an Administrative Law Judge.

4. The Board should set a time for the filing of briefs.

STIPULATION OF FACTS

1. The Charge in this proceeding was filed by the Employer on April 3, 2015, and a copy was served by regular mail on Respondent on that same date. Respondent acknowledges receipt of the charge. A copy of the Charge and its service sheet are attached as Exhibit A.

2. On May 28, 2015, the Regional Director for Region Eighteen of the National Labor Relations Board (Board) issued a Complaint and Notice of Hearing in this proceeding alleging Respondent violated the National Labor Relations Act (the Act). Respondent and the Employer each acknowledge receipt of a copy of the Complaint and Notice of Hearing, which was served to both by mail on the same date. A copy of the Complaint and Notice of Hearing and its service sheet are attached as Exhibit B.

3. On June 9, 2015, the Regional Director for Region Eighteen of the Board issued an Order Correcting Hearing date. Respondent and the Employer each acknowledge receipt of a copy of the Order Correcting Hearing Date, which was served to both by certified mail on the same date. A copy of the Order Correcting Hearing Date and its service sheet are attached as Exhibit C.

4. Respondent filed an Answer to Complaint on June 10, 2015. A copy of Respondent's Answer with Certificate of Service is attached as Exhibit D. Counsel for the General Counsel and the Employer each acknowledge receipt of a copy of the Answer, which was served on both by e-mail on the same date. Respondent hereby

agrees to amend its Answer to admit Complaint paragraphs 1, 2(a), 2(b), and 6(a), insofar as it admits that since about March 11, 2015, Respondent has insisted to impasse on bargaining with the Employer over the inclusion of an interest arbitration provision in the successive collective-bargaining agreement.

5. On June 29, 2015, the Acting Regional Director for Region Eighteen of the Board issued an Order Rescheduling Hearing. Respondent and the Employer each acknowledge receipt of a copy of the Order Rescheduling Hearing, which was served to both by mail on the same date. A copy of the Order Rescheduling Hearing and its service sheet are attached as Exhibit E.

6. On August 19, 2015, the Regional Director for Region Eighteen of the Board issued an Order Postponing Hearing Indefinitely, a copy of which, along with its service sheet, is attached as Exhibit F. Respondent and the Employer each acknowledge receipt of the Order Postponing Hearing Indefinitely, which was served on both by e-mail on that same date.

7. (a) At all material times, the Employer has been a corporation with an office and place of business in Duluth, Minnesota (Employer's facility), has been engaged in the operation of an acute care hospital, and has provided a variety of other health care services, including home health care.

(b) During the calendar year ending December 31, 2014, the Employer in conducting its operations described above in subparagraph (a) purchased and received at its Duluth, Minnesota facility goods and services valued in excess of \$50,000 directly from points outside the State of Minnesota.

(c) During the calendar year ending December 31, 2014, the Employer in conducting its operations described above in subparagraph (a) derived gross revenues in excess of \$250,000.

(d) At all material times, the Employer has been 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.

8. At all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

9. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Kenneth Loeffler-Kemp	-	Field Representative
Amanda Prince	-	Field Representative

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

All homemakers and technicians employed by the Employer at or out of its 810 East 4th Street, Duluth, Minnesota facility who work an average or are anticipated to work an average of four or more hours per week over a 13 week period; excluding RNs and LPNs, Office Clerical Employees, Therapists, Therapist Assistants, Guards and Supervisors, as defined in the National Labor Relations Act.

(b) At all material times, the Employer has recognized Respondent as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which

was effective from January 1, 2012, to December 31, 2014 (the Agreement). The Agreement is attached as Exhibit G.

(c) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

11. (a) The Agreement includes Article 21, "Arbitration of Contracts." Article 21, Section 21.1 of the Agreement contemplates the use of interest arbitration in the event that the parties are unable to reach agreement as to the terms of a succeeding labor agreement. Article 21, Section 21.2 of the Agreement addresses the selection of arbitrators.

(b) Article 21, Section 21.3 of the Agreement relates to the "Continuation of Interest Arbitration" and provides:

The provisions of this Article (XXI) shall be in full force and effect during the entire term of this agreement and shall apply and be utilized by the parties to reach agreement as to the terms of a succeeding Labor Agreement in the event the parties are otherwise unable to reach agreement through negotiations. The arbitration panel in rendering its decision shall incorporate therein a provision that this arbitration clause (Article XXI) shall be a part of the succeeding contract, unmodified, except the arbitration panel may impose an expiration date on the provisions of this Article XXI for any Labor Agreement expiring during or after the calendar year 2005.

12. (a) In negotiating for a successor collective-bargaining agreement, Respondent and the Employer met for contract negotiations on four occasions: January 28, 2015; February 2, 2015; February 25, 2015; and March 11, 2015. During the negotiations, the parties exchanged written proposals and counterproposals.

(b) The Employer's January 28, 2015 proposal included Article 21 regarding interest arbitration. However, at the February 2, 2015 bargaining session and thereafter, the Employer changed its position and withdrew its proposal to include

interest arbitration in the successor contract. Throughout contract negotiations, Respondent consistently maintained the position that the interest arbitration provision should be included in the successor contract and insisted on continued bargaining over only that issue.

(c) At the March 11, 2015 bargaining session, Respondent and the Employer reached agreement on all open contract issues except for the inclusion of Article 21 regarding interest arbitration. While Respondent sought to include Article 21 in the successor contract, the Employer maintained that it did not want to include interest arbitration in the successor contract, and would not negotiate further regarding the provision.

(d) Following the March 11, 2015 bargaining session, Respondent sought to invoke Article 21 of the contract and submit the continuation of the interest arbitration clause to an arbitrator. In an email dated March 31, 2015, Respondent's agent, Kenneth Loeffler-Kemp confirms that the only outstanding issue is that of Article 21 – Arbitration, and further notes that the Employer has proposed removing the provision while the Union has not agreed to the Employer's proposal. The March 31, 2015 email correspondence is attached as Exhibit H.

13. (a) Since about March 11, 2015, Respondent has insisted to impasse on bargaining with the Employer over the inclusion of an interest arbitration provision in the successive collective-bargaining agreement. The Employer consistently maintained that this issue is a permissive subject of bargaining and that the Employer is, therefore, not required to bargain over its inclusion.

(b) By engaging in the conduct described above in paragraph 12(a) through (d), the General Counsel and the Employer contend that Respondent has insisted to impasse that the Employer agree to include the interest arbitration provision, including in particular Article 21, Section 21.3, a permissive subject for the purposes of collective bargaining, in any successive collective-bargaining agreement.

(c) Respondent contends that by signing the previous collective bargaining agreement the Employer has agreed to bargain over the inclusion of an interest arbitration provision in the immediately successive collective-bargaining agreement. Respondent further contends that the language for Article 21, Section 21.3 allows it to insist to impasse over this subject. Respondent also does not believe that Article 21, Section 21.3 requires the Employer to agree to an interest arbitration provision in every successive collective-bargaining agreement, but only requires that the Employer bargain over the inclusion of such a provision until the parties agree to a contract without a similar provision, or until and in the event that the parties submit this issue to interest arbitration and the arbitration panel places an expiration on the provisions of Article 21, per the terms of Article 21, Section 21.3.

14. The issue presented in this matter is whether the Respondent has been failing and refusing to bargain collectively and in good faith with the Employer, in violation of Section 8(b)(3) of the Act.

15. Counsel for the General Counsel's Statement of Position is attached as Exhibit I.

16. Respondent's Statement of Position is attached as Exhibit J.

17. The Employer's Statement of Position is attached as Exhibit K.

18. This Stipulation is made without prejudice to any objection that any party may have as to the relevancy of any facts stated herein.

Dated: August 26, 2015

Respectfully submitted,

COUNSEL FOR THE GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
REGION 18

By: Rachael M Simon-Miller

Rachael M. Simon-Miller
Counsel for the General Counsel
212 3rd Avenue South, Suite 200,
Minneapolis, MN 55401
rachael.simon-miller@nrlrb.gov

FOR AFSCME COUNCIL 5, LOCAL 3558

By: John Westmoreland

FOR ST LUKE'S HOSPITAL OF DULUTH, INC.
D/B/A/ ST LUKE'S HOME CARE

By: _____

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

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14. The issue presented in this matter is whether the Respondent has been *failing and refusing to bargain collectively and in good faith with the Employer*, in violation of Section 8(b)(3) of the Act.

15. Counsel for the General Counsel's Statement of Position is attached as Exhibit I.

16. Respondent's Statement of Position is attached as Exhibit J.

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Dated: August 26, 2015

Respectfully submitted,

COUNSEL FOR THE GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
REGION 18

By: Rachael M. Simon-Miller

Rachael M. Simon-Miller
Counsel for the General Counsel
212 3rd Avenue South, Suite 200
Minneapolis, MN 55401
rachael.simon-miller@nlrb.gov

FOR AFSCME COUNCIL 5, LOCAL 3558

By: _____

FOR ST LUKE'S HOSPITAL OF DULUTH, INC.
D/B/A/ ST LUKE'S HOME CARE

By: Jessica A. Buckley

EXHIBITS

- A Charge in Case 18-CB-149410
- B Complaint and Notice of Hearing and service sheet
- C Order Correcting Hearing Date and service sheet
- D Respondent's Answer
- E Order Rescheduling Hearing and service sheet
- F Order Postponing Hearing Indefinitely and service sheet
- G Collective-bargaining agreement
- H March 31, 2015 email correspondence
- I General Counsel's Statement of Position
- J Respondent's Statement of Position
- K Employer's Statement of Position

INTERNET
FORM NLRB-508
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE	
Case 18-CB-149410	Date Filed April 03, 2015

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
a. Name AFSCME Council 5, Local 3558		b. Union Representative to contact Ken Loeffler-Kemp	
c. Address (Street, city, state, and ZIP code) 211 West Second Street, Suite 205 Duluth, MN 55802		d. Tel. No. 218-340-8442	e. Cell No.
		f. Fax No.	g. e-Mail ken.loefflerkemp@afscmamn.org
h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) <u>8(b)(3)</u> of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) AFSCME Council 5, Local 3558 ("Union") and St. Luke's Hospital of Duluth, Inc. d/b/a St. Luke's Home Care ("St. Lukes") have recently negotiated over the terms of a reopened labor contract (the "Agreement"). The parties have agreed on all proposed changes and amendments to the Agreement, except for inclusion of an interest arbitration clause. Union wants the interest arbitration clause to remain in the new contract the parties execute ("New Agreement") and St. Luke's would like that provision removed. Union has insisted to impasse and demanded arbitration solely over the interest arbitration clause and will not execute the New Agreement until the interest arbitration matter is resolved. An interest arbitration provision is a permissive subject of bargaining and Union has refused to bargain collectively with St. Luke's in violation of section 8(b)(3) of the National Labor Relations Act.			
3. Name of Employer St. Luke's Hospital of Duluth, Inc. d/b/a St. Luke's Home Care		4a. Tel. No. (218) 249-6026	b. Cell No. (218) 390-4082
		c. Fax No. (218) 249-6094	d. e-Mail mhalvorson@slhduluth.com
5. Location of plant involved (street, city, state and ZIP code) 810 East 4th Street, Duluth, MN 55805		6. Employer representative to contact Maria Halvorson	
7. Type of establishment (factory, mine, wholesaler, etc.) Hospital	8. Identify principal product or service Home Care / Medical Care	9. Number of workers employed 4	
10. Full name of party filing charge St. Luke's Hospital of Duluth, Inc. d/b/a St. Luke's Home Care		11a. Tel. No. (218) 249-6026	b. Cell No. (218) 390-4082
		c. Fax No. (218) 249-6094	d. e-Mail mhalvorson@slhduluth.com
11. Address of party filing charge (street, city, state and ZIP code.) 915 East First Street Duluth, MN 55805			
12. DECLARATION I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief. By <u>Robert J. Zallar</u> Robert J. Zallar, Attorney-at-Law (signature of representative of person making charge) (Print type name and title or office, if any)		Tel. No. (218) 722-8331	
		Cell No. (218) 393-1270	
		Fax No. (218) 722-3031	
800 Wells Fargo Center, 230 West Superior Street Address Duluth, Minnesota 55802 (date) 04/02/2015		e-Mail rzallar@duluthlaw.com	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
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AFSCME COUNCIL 5, LOCAL 3558

and

Case 18-CB-149410

ST LUKE'S HOSPITAL OF DULUTH, INC. D/B/A
ST LUKE'S HOME CARE

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by ST LUKE'S HOSPITAL OF DULUTH, INC. D/B/A ST LUKE'S HOME CARE (the Employer). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges that AFSCME COUNCIL 5, LOCAL 3558 (Respondent) has violated the Act as described below.

1. The charge in this proceeding was filed by the Employer on April 3, 2015, and a copy was served by regular mail on Respondent on about that same date.

2.(a) At all material times, the Employer has been a corporation with an office and place of business in Duluth, Minnesota (Employer's facility), has been engaged in the operation of an acute care hospital, and has provided a variety of other health care services, including home health care.

Exhibit B

(b) During the calendar year ending December 31, 2014, the Employer in conducting its operations described above in subparagraph (a) purchased and received at its Duluth, Minnesota facility goods and services valued in excess of \$50,000 directly from points outside the State of Minnesota.

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3. At all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

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(b) At all material times, the Employer has recognized Respondent as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from January 1, 2012, to December 31, 2014.

(c) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.(a) Since about March 11, 2015, Respondent has insisted, as a condition of reaching any collective-bargaining agreement, that the Employer agree to the inclusion of an interest arbitration provision.

(b) The subject described above in subparagraph (a) is not a mandatory subject for the purposes of collective bargaining.

7 By the conduct described above in paragraph 6, Respondent, the exclusive collective-bargaining representative of the Unit, has been failing and refusing to bargain collectively and in good faith with the Employer, in violation of Section 8(b)(3) of the Act.

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

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before June 11, 2015, or postmarked on or before June 10, 2015.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **July 6, 2015**, at **9:00 a.m.**, in the Federal Office Building, NLRB Hearing Room, Suite 200, 212 3rd Avenue South, Minneapolis, Minnesota, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: May 28, 2015

/s/ Marlin O. Osthus

MARLIN O. OSTHUS, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 18
FEDERAL OFFICE BUILDING
212 THIRD AVENUE SOUTH, SUITE 200
MINNEAPOLIS, MN 55401

Attachments

(OVER)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

AFSCME COUNCIL 5, LOCAL 3558

and

**ST. LUKE'S HOSPITAL OF DULUTH, INC. D/B/A
ST. LUKE'S HOME CARE**

Case 18-CB-149410

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on , I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

KEN LOEFFLER-KEMP, FIELD
REPRESENTATIVE
AFSCME COUNCIL 5, LOCAL 3558
211 W 2ND ST, SUITE 200
DULUTH, MN 55802-1931

**CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

MARLA HALVORSON
ST. LUKE'S HOSPITAL OF DULUTH, INC.
D/B/A ST. LUKE'S HOME CARE
810 E 4TH ST
DULUTH, MN 55805-2147

CERTIFIED MAIL

ROBERT J. ZALLAR, ESQ.
JOHNSON, KILLEN & SEILER, P.A.
230 W SUPERIOR ST STE 800
DULUTH, MN 55802-1916

REGULAR MAIL

May 28, 2015

Date

Olga Bestilny, Designated Agent of NLRB

Name

/s/ Olga Bestilny

Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

AFSCME COUNCIL 5, LOCAL 3558

and

Case 18-CB-149410

ST LUKE'S HOSPITAL OF DULUTH, INC. D/B/A
ST LUKE'S HOME CARE

ORDER CORRECTING HEARING DATE

A Complaint and Notice of Hearing in this case issued on May 28, 2015. The Notice of Hearing incorrectly notified the parties that a hearing had been scheduled for July 6, 2015. The correct date as approved by the Division of Judges is **July 16, 2015**.

Accordingly, IT IS ORDERED that the Notice of Hearing is corrected and the hearing in this matter will begin on July 16, 2015. The Notice of Hearing previously issued otherwise remains outstanding.

Dated: June 9, 2015

/s/ Marlin O. Osthus

MARLIN O. OSTHUS, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 18
FEDERAL OFFICE BUILDING
212 3RD AVENUE S, STE 200
MINNEAPOLIS, MN 55401

Exhibit C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

AFSCME COUNCIL 5, LOCAL 3558

and

ST. LUKE'S HOSPITAL OF DULUTH, INC. D/B/A
ST. LUKE'S HOME CARE

Case 18-CB-149410

AFFIDAVIT OF SERVICE OF Order Correcting Hearing Date dated June 9, 2015

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 9, 2015, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

MARLA HALVORSON
ST. LUKE'S HOSPITAL OF DULUTH, INC. (Complaint and NOH re-sent)
D/B/A ST. LUKE'S HOME CARE
915 EAST 1st STREET
DULUTH, MN 55805

CERTIFIED MAIL

ROBERT J. ZALLAR, ESQ.
JOHNSON, KILLEN & SEILER, P.A.
230 W SUPERIOR ST STE 800
DULUTH, MN 55802-1916

KEN LOEFFLER-KEMP, FIELD
REPRESENTATIVE
AFSCME COUNCIL 5, LOCAL 3558
211 W 2ND ST, SUITE 205
DULUTH, MN 55802-1931

CERTIFIED MAIL, RETURN RECEIPT
REQUESTED

June 9, 2015

Date

Olga Bestilny, Designated Agent of NLRB

Name

/s/ Olga Bestilny

Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION EIGHTEEN

AFSCME COUNCIL 5, LOCAL 3558

and

Case No: 18-CB-149410

ST. LUKE'S HOSPITAL OF DULUTH, INC. d/b/a/
ST. LUKE'S HOME CARE

ANSWER

Pursuant to Board Rules and Regulations 102.20 and Section 102.21, The American Federation of State, County, and Municipal Employees Council 5, Local 3558 ("AFSCME" or "Respondent") files this Answer to the Complaint ("Complaint") filed in the above-captioned case by St. Luke's Hospital of Duluth, Inc. d/b/a St. Luke's Home Care ("Employer"). Respondent denies each and every allegation contained in the Complaint not herein admitted, controverted, or specifically denied.

1. Respondent admits that the charge 18-CB-126432 was dated April 12, 2014, but lacks sufficient knowledge to admit or deny the remaining allegations in Paragraph 1 of the Complaint.

2. (a) Respondent admits that at all material times Employer has been a corporation with an office and place of business in Duluth, Minnesota, and has been engaged in the operation of an acute care hospital which provides health care services including home health care. Respondent lacks sufficient knowledge to admit or deny that Employer "has provided a variety of other health care services" other than the service of home health care admitted to above.

Exhibit D

(b) Respondent lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 2(b) of the Complaint.

(c) Respondent admits the allegations contained in Paragraph 2(c) of the Complaint.

(d) Respondent admits the allegations contained in Paragraph 2(d) of the Complaint.

3. Respondent admits the allegations contained in Paragraph 3 of the Complaint.

4. Respondent admits the allegations contained in Paragraph 4(a) of the Complaint.

5. (a) Respondent admits the allegations contained in Paragraph 5(a) of the Complaint.

(b) Respondent admits the allegations contained in Paragraph 5(b) of the Complaint.

(c) Respondent admits the allegations contained in Paragraph 5(c) of the Complaint.

6. (a) Respondent denies the allegations contained in Paragraph 6(a) of the Complaint insofar as it states that Respondent has "insisted" on the inclusion of an interest arbitration provision. Respondent admits the allegations contained in Paragraph 6(a) of the Complaint insofar as it alleges that both Parties have negotiated over the inclusion of an interest arbitration provision in the collective-bargaining agreement that the Parties are currently negotiating. Specifically, Respondent admits that both Respondent and Employer have each submitted positions to the other which have included an interest arbitration clause. Conversely, Respondent also admits that both Respondent and Employer have each submitted positions to the other which have not included an interest arbitration clause. Respondent admits that since about

March 11, 2015, its position in negotiation has been in favor of the inclusion of an interest arbitration provision in the Parties' collective-bargaining agreement.

(b) Respondent admits the allegation contained in Paragraph 6(b) of the Complaint.

7. Respondent denies the allegations contained in Paragraph 7 of the Complaint.

8. Respondent denies the allegations contained in Paragraph 8 of the Complaint.

AFFIRMATIVE DEFENSES

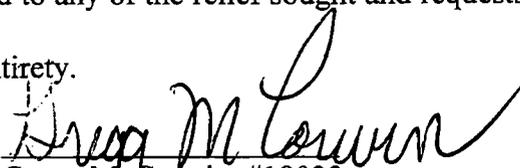
To the extent not already specifically addressed above, Respondent, denies each and every allegation directed toward it, demand strict proof thereof. As for additional defenses, Respondent alleges as follow on information and belief.

1. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

2. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted because, for example, the Parties previously agreed to submit any disputes arising out of the negotiations for this collective-bargaining agreement, including specifically agreeing to submit the issue of the inclusion of an interest arbitration clause, to interest arbitration.

WHEREFORE, having fully answered all allegations of the Complaint, Respondent respectfully submits that the Employer is not entitled to any of the relief sought and requests that the Complaint be dismissed, with prejudice, in its entirety.

Dated: June 10, 2015


Gregg M. Corwin, #19033
1660 South Highway 100, Suite 508E
St. Louis Park, MN 55416
Phone: 952-544-7774
Fax: 952-544-7151
gcorwin@gcorwin.com

RECEIVED
NLRB REGION 18

2015 JUN 11 PM 1:24

MINNEAPOLIS, MINN.



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

AFSCME COUNCIL 5, LOCAL 3558

and

Case 18-CB-149410

ST. LUKE'S HOSPITAL OF DULUTH, INC. D/B/A
ST. LUKE'S HOME CARE

ORDER RESCHEDULING HEARING

Pursuant to Section 102.16 of the National Labor Relations Board Rules and Regulations,

IT IS ORDERED that the hearing in the above-entitled matter is rescheduled from July 16, 2015 at 9:00 a.m. to **August 24, 2015 at 11:00 a.m.** in the NLRB Hearing Room, Suite 200, 212 3rd Avenue South, Minneapolis, Minnesota. The hearing will continue on consecutive days until concluded.

Dated: June 29, 2015

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 18
Federal Office Building
212 Third Avenue South, Suite 200
Minneapolis, MN 55401-2657

Exhibit E

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

AFSCME COUNCIL 5, LOCAL 3558

and

Case 18-CB-149410

ST. LUKE'S HOSPITAL OF DULUTH, INC. D/B/A
ST. LUKE'S HOME CARE

AFFIDAVIT OF SERVICE OF ORDER RESCHEDULING HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **June 29, 2015**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

MARLA HALVORSON
ST. LUKE'S HOSPITAL OF DULUTH, INC.
D/B/A ST. LUKE'S HOME CARE
915 E. 1ST STREET
DULUTH, MN 55805

KEN LOEFFLER-KEMP , FIELD
REPRESENTATIVE
AFSCME COUNCIL 5, LOCAL 3558
211 W 2ND ST
SUITE 205
DULUTH, MN 55802-1931

ROBERT J. ZALLAR , ESQ.
JOHNSON, KILLEN & SEILER, P.A.
230 W SUPERIOR ST STE 800
DULUTH, MN 55802-1916

GREGG M. CORWIN , ATTORNEY
GREGG M. CORWIN & ASSOCIATE LAW
OFFICE, PC
1660 SOUTH HIGHWAY 100, SUITE 508E
ST. LOUIS PARK, MN 55416

JESSICA L. DURBIN, ESQ.
JOHNSON, KILLEN & SEILER, P.A.
230 W SUPERIOR ST STE 800
DULUTH, MN 55802-1916

June 29, 2015

Connie Macek, Designated Agent of
NLRB

Date

Name

/s/ Connie S. Macek

Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

AFSCME COUNCIL 5, LOCAL 3558

and

Case 18-CB-149410

ST. LUKE'S HOSPITAL OF DULUTH, INC. D/B/A
ST. LUKE'S HOME CARE

ORDER POSTPONING HEARING INDEFINITELY

IT IS ORDERED that the hearing in the above matter set for August 24, 2015 is hereby postponed indefinitely.

Dated: August 19, 2015

/s/ Marlin O. Osthus

MARLIN O. OSTHUS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 18
FEDERAL OFFICE BUILDING
212 3RD AVENUE SOUTH, SUITE 200
MINNEAPOLIS, MN 55401-2657

Exhibit F

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

AFSCME COUNCIL 5, LOCAL 3558

and

ST. LUKE'S HOSPITAL OF DULUTH, INC. D/B/A
ST. LUKE'S HOME CARE

Case 18-CB-149410

AFFIDAVIT OF SERVICE OF: Order Postponing Hearing Indefinitely, dated August 19, 2015.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **August 19, 2015**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

MARLA HALVORSON
ST. LUKE'S HOSPITAL OF DULUTH, INC.
D/B/A ST. LUKE'S HOME CARE
915 E. 1ST STREET
DULUTH, MN 55805

GREGG M. CORWIN, ATTORNEY
GREGG M. CORWIN & ASSOCIATE LAW
OFFICE, PC
1660 SOUTH HIGHWAY 100, SUITE 500
ST. LOUIS PARK, MN 55416

JESSICA L. DURBIN, ATTORNEY
JOHNSON, KILLEN & SEILER, P.A.
800 WELLS FARGO CENTER
230 WEST SUPERIOR STREET
DULUTH, MN 55802-1983

KEN LOEFFLER-KEMP, FIELD
REPRESENTATIVE
AFSCME COUNCIL 5, LOCAL 3558
211 W 2ND ST, SUITE 205
DULUTH, MN 55802-1931

August 19, 2015

Date

Olga Bestilny, Designated Agent of NLRB

Name

/s/ Olga Bestilny

Signature

CONTRACT

**BETWEEN ST. LUKE'S HOME CARE AND
AFSCME COUNCIL 5, LOCAL 3558
JANUARY 1, 2012-DECEMBER 31, 2014**

1

Exhibit G

CONTRACT

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Article 9	Staffing
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**CONTRACT BETWEEN
ST. LUKE'S HOME CARE AND
AFSCME COUNCIL 5**

Preamble

This agreement is made and entered into this 1st day of January 2012, by and between St. Luke's Hospital, a Minnesota corporation, of Duluth, MN, hereinafter referred to as the "Employer," and the American Federation of State, County, and Municipal Employees, Council 5 of Duluth, Minnesota, representing employees in those classifications covered by this agreement, hereinafter referred to as the "Union." The parties agree to the following provisions covering wages, hours and working conditions, which express the full and complete understanding of the parties pertaining to all terms and conditions of employment during the period of this agreement.

Purpose

It is the intent and purpose of the parties hereto to set forth the basic agreement between them for the term of this agreement, covering the wages, hours, and other working conditions of employment to be observed and kept by the parties. It is further intended to advance friendly relations between the Employer and the employees.

**ARTICLE 1
Recognition**

Section 1.1. The Employer recognizes the union as the sole and exclusive bargaining agent of these employees:

All homemakers and technicians (HHTs) employed by the Employer at or out of its 810 East 4th St. Duluth, MN facility who work an average or are anticipated to work an average of four (4) or more hours per week over a 13 week period; excluding RNs and LPNs, Office Clerical Employees, Therapists, Therapist Assistants, Guards and Supervisors, as defined in the National Labor Relations Act.

Sections 1. 2 The Employer or its representatives shall not enter into any agreements or bargain collectively or individually with any employees covered by this Agreement in the absence of the Union.

Section 1.3. Supervisory personnel or other non-bargaining unit employees shall not perform bargaining unit work, except in the cases of emergencies, including absenteeism if replacement employees, including other employees working reasonable amounts of overtime, cannot be obtained; training or instruction; testing of equipment; starting of

new equipment; and unusual or complex jobs for which the employees lack the appropriate skill.

Section 1.4. Definitions. When used in this agreement the following words shall be understood as defined in this section, unless a term is specifically defined otherwise in another article of this Agreement.

Subd. a. "Employee" and "employees" shall mean only those persons covered by this recognition clause.

ARTICLE 2 **Management Rights**

Section 2.1. The management of St. Luke's Home Care, the direction of its working forces, the control of all its properties and equipment, the installation of new, improved, or changed methods of operations, and/or equipment, policy development and implementation, establishment of budgets, determination of the methods, means, organization and number of personnel by which such operations and services are to be conducted, and the hiring, promotion, discipline, layoff, suspension and discharge of its employees are reserved exclusively and solely as functions of the directors and supervisors of St. Luke's Home Care, except as those functions are expressly restricted, modified, or limited by this Agreement.

Any terms or conditions of employment not specifically established or modified by this Agreement shall remain exclusively within the discretion of the Employer to modify, establish, or eliminate.

ARTICLE 3 **Union Security**

Section 3.1. All employees covered by this Agreement who are, or hereafter become, members of the Union shall pay to the Union regular monthly union membership dues. No employee is required to be, become, or remain a member of the Union as a condition of employment. Each employee has the right to freely join or decline to join the Union, and each union member shall have the right to freely retain or discontinue his or her membership. No employee shall be discriminated against on account of her or his membership or non-membership in the Union.

Any employee of the bargaining unit who is not a member of the Union shall pay to the Union reduced maintenance of service fees equivalent to his or her proportionate share of union expenditures that are necessary to support solely representational activities in dealing with the employer on labor management issues. This provision requiring the payment of dues or maintenance of service fee shall be effective upon successful completion of the probationary period.

Section 3.2. Payroll deductions shall be made monthly from the salary of employees, upon presentation by the union of authorized certification from the Council 5 office, and said union dues shall be remitted to the Union office within fifteen (15) days.

Section 3.3. The Union agrees to indemnify and hold Employer harmless against any and all claims, suits, or judgments brought or issued against the Employer as a result of any action taken at the written request of the union pursuant to Sections 3.1 or 3.2 of this article.

Section 3.4. Union representatives shall have access to office premises during normal office business hours (8:00am-4:30p.m.) to meet and confer with bargaining unit employees, but the union agrees that its representatives shall not interfere with the normal operation of the Employer's facilities at any time. A bulletin board shall be established for the purpose of posting union notices and information at each St. Luke's Home Care office site. All postings by members on the Union bulletin board shall be approved by the Union.

Section 3.5 The provisions of this Article 3, shall be in full force and effect during the entire term of this Agreement. In the event the parties are unable to reach agreement on a new contract through negotiations, the arbitrator appointed pursuant to Article 21, in rendering their decision, shall incorporate therein a provision that this union security clause (Article 3) shall be a part of the succeeding contract, unmodified, except the arbitrator may impose an expiration date on the provisions of this Article 3 for any Labor Agreement expiring during or after the calendar year 2005.

ARTICLE 4

Savings

Section 4.1. This Agreement is subject to the laws of the United States and the State of Minnesota. In the event any provision of this Agreement shall be held to be contrary to law by a court of competent jurisdiction from whose final judgment or decree no appeal has been taken within the time provided, such provisions shall be voided. All other provisions of this Agreement shall continue in full force and effect. The voided provisions may be renegotiated at the written request of either party.

ARTICLE 5

Notice

Section 5.1. Any notice required by this agreement to be given by one party to the other shall be sent by certified or registered mail to:

CEO
St. Luke's Hospital
915 E.1st St.
Duluth, MN 55805

or

American Federation of State, County, and Municipal Employees Council 5
211 West 2nd Street, Suite 205
Duluth, MN 55802

The notices shall be effective upon deposit in the United States mail in a properly addressed envelope, with postage pre-paid.

ARTICLE 6
Grievance Procedure

Section 6.1. Employee Rights of Presentation Every employee shall have the right to present his/her grievance to the Employer free from interference, coercion, restraint, discrimination, or reprisal and shall have the right to be represented at all stages thereof.

Section 6.2. Grievance Defined. A grievance shall be defined as a dispute or disagreement as to the interpretation or application of any term or terms of this Agreement.

Section 6.3. Grievance Procedure. In the event an employee covered by this agreement claims that his/her rights and privileges under this agreement have been violated, the matter shall be resolved in accordance with the following procedure:

- A. **Step 1.** Within ten (10) working days after an event giving rise to the claim of grievance, the employee and/or his/her representative shall meet with the employee's supervisor to try and settle the grievance. The supervisor will notify the employee within ten (10) days with a response, either oral or written.
- B. **Step 2.** If the grievance is not settled in Step 1, the employee and/or his/her representative shall present the matter in writing to the Director of Human Resources within ten (10) working days after receipt of the supervisor's answer. Within ten (10) working days of the receipt of such written grievance, the Director of Human Resources shall attempt to arrange a meeting at a mutually agreeable time to discuss the matter and attempt to resolve the grievance. Within

ten (10) working days after the meeting, the Director of Human Resources, or his/her designee will provide the union a decision in writing.

C. Mediation. The parties may mutually agree to defer a grievance matter to mediation with a mediator from the Federal Mediation and Conciliation Services, prior to its submission to arbitration.

D. Arbitration. If the grievance is not settled in accordance with the foregoing procedure, the Union may refer the grievance to arbitration within ten (10) working days of the meeting with the Director of Human Resources or his/her designee. The parties shall request from the Federal Mediation Conciliation Service a list of the names of seven (7) potential arbitrators. The arbitrator shall be selected by the Employer and the Union alternately striking names from the list until one (1) name remains. The striking order shall be decided by the flip of a coin. The arbitrator's fee and expenses and the cost of any hearing room jointly shall be shared equally by both parties.

Section 6.4, Timelines. All Timelines are as stated above. If the Employer does not respond within the stated period of time, the Union may move the grievance on to the next step. A timeline shall be considered to have been met if the response is postmarked within the specified time period. A grievance shall be considered resolved on the basis of the last answer of the Employer if not timely appealed to the next step. Timelines in this grievance/arbitration article may be extended by written agreement of the parties. For purposes of this Article, "working days" shall mean Monday through Friday, except designated holidays.

ARTICLE 7 Probation

Section 7.1. Newly hired full-time employees shall be probationary employees for the first ninety (90) days of employment; part-time employees shall be probationary employees for five hundred twenty (520) hours or six (6) months, whichever is less. Termination of an employee during this probationary period shall not be subject to the grievance procedures of Article VI or cause a breach of this Agreement.

Section 7.2. Probationary employees shall receive the wages provided by this agreement but none of the benefits. Upon successful completion of probation the employee's seniority shall relate back to the time of hire, and the employee shall be credited the time served on probation toward the accrual of PTO.

ARTICLE 8
Seniority

Section 8.1. Seniority for all purposes shall be determined by paid hours in a bargaining unit classification since the most recent date of hire. Employees shall retain their accrued seniority during an approved leave of absence. Upon ratification of this contract a seniority roster shall be developed consisting of all employees covered by this Agreement in descending order of cumulative paid hours. An updated Seniority List shall be posted on the employee bulletin board each year by the end of January.

Section 8.2 An employee's seniority shall be broken and terminated by:

- a. Voluntarily quitting employment;
- b. Discharge for cause;
- c. Layoff which continues for more than one (1) year;
- d. Absence from work for twelve (12) months due to illness or non-work related injury.

ARTICLE 9
Staffing

Section 9.1. New Work: Whenever a new patient becomes available, the work shall be offered within the appropriate job classification first to the employees with designated FTEs who have not been scheduled to their FTE. When assigning among employees with designated FTEs, assignments will be made to keep visits within geographical areas unless impractical due to patient need or staff availability. When utilizing unscheduled staff, assignments will be offered in order of seniority within the classification. An unscheduled employee may accept or refuse the work. The Employer need not offer new patient work to an employee which would result in the payment of overtime. An offer consists of placing a telephone call to the last provided telephone number. The Employer may leave a message, in which case, the shift shall be awarded to the employee who first accepts the shift. If all employees refuse the work, it shall be assigned to the least senior available employee.

The assignment of new work shall be assigned according to seniority, as outlined above, except under the following circumstances:

- a. When the most senior employee cannot perform the work because of a work restriction given by the employee's doctor, or as determined by St. Luke's Occupational Health Physician;
- b. When a client specifically requests a specific employee, or requests not to send a particular employee;

- c. When a client has a bona fide reason to request a specific gender of employee, in which case the most senior employee of the requested gender is offered the work first;
- d. If a less senior employee has lost six hours or more of time or has lost benefits as defined in Section 10.2;
- e. Geographical proximity to the assignment, with assignments offered by seniority to employees living within a fifteen (15) mile radius of the client; if no employee within this fifteen (15) mile radius is able to do the assignment, the assignment will be offered to employees living within the next ten (10) mile radius and so on until the assignment is filled.

Section 9.2. Employment Conditions. The employer may establish designated FTE positions from time to time as needed.

All employees hired for classifications covered by this Agreement, unless otherwise specified, shall be considered unscheduled employees with no guarantee of hours. In the event that an employee encounters intimidating, threatening, harassing or other potentially unsafe working conditions, that employee shall be covered by the Employer's "Employment Safety and Security Policy."

Section 9.3. Extra Work. An offer of extra work that arises during normal business hours (Monday - Friday 8:00 am-4:30 p.m.) because of last minute call-ins, emergencies, or to fill in for another employee because of sickness, vacation, or other reasons shall be assigned utilizing the same procedure for assignment of work as for new work, as provided in Section 9.1. After all designated FTE staff has been scheduled to their respective FTE, extra work shall be offered to unscheduled staff in order of seniority. If all unscheduled employees refuse the work, it shall be assigned to the least senior available employee, provided no employee shall be mandatorily assigned new work more than once per pay period. The Employer shall not change an employee's regular schedule in order to avoid paying overtime after that employee has accepted an extra assignment.

Extra work that arises outside of normal business hours shall be offered by seniority within the appropriate job classification according to a seniority list listing employees from most senior to least senior. This seniority list will be updated quarterly.

Section 9.4. Overtime. An employee shall be paid time and one-half (1-1/2) her/his regular rate of pay for all hours worked in excess of forty (40) hours per week.

Section 9.5. Evening and Weekend Differential Pay. For weekday hours (Monday through Friday) worked between 5:00p.m. and 7:00 a.m. an employee shall receive his or her regular rate of pay plus an additional \$.50 per hour. For hours worked on a weekend (5:00 p.m. Friday to 7:00 a.m. Monday) an employee shall receive his or her regular rate of pay plus an additional \$.50 per hour.

Section 9.6. No Pyramiding. Overtime pay shall not be duplicated for the same hours worked, and to the extent that hours are compensated as overtime hours under one provision of this Agreement they shall not be counted as hours worked in determining overtime under the same or any other provision of this Agreement.

Section 9.7. Conflict of Interest. No employee shall engage in outside work which conflicts with their employment with St. Luke's Home Care. A conflict of interest includes:

- a) Working for a different home care agency providing care and for the same client through St. Luke's and the other agency, or
- b) Providing private home care services to clients outside of St. Luke's Home Care that was introduced to the employee through St. Luke's Home Care. (Unless agreed to by the employer.)

ARTICLE 10

Reduction in Force

Section 10.1. Layoff/Recall List. In the event the Employer determines it is necessary to reduce the number of employees or hours of work within a given classification, employees within such classification shall be laid off with the least senior employee being laid off first. That employee's name shall be placed on a recall list and recall from layoff shall be on the basis of seniority. Employees placed on a recall list shall remain on such a list and be eligible for recall for a period of up to one (1) year.

Section 10.2. Lost Hours List. If an employee loses six (6) or more hours of work a week, that employee shall be placed on a Lost Hours List for the lost hours. When new assignments become available, employees whose names are on the Lost Hours List shall have the first opportunity for the assignment based on seniority, and in accordance with the process established in, Section 9.1. Employees whose names are on the Lost Hours List will be eligible for new assignments until they have recouped their lost hours. The Employer may not use substitute, temporary, provisional, probationary employees or any other employees outside the unit to do unit work while any senior, qualified employee remains on layoff and requests work.

ARTICLE 11
Resignation

Section 11.1. If an employee fails to report for work for forty-eight (48) consecutive hours without notifying the Employer, the employee shall be deemed to have voluntarily resigned. However, if thereafter the employee can furnish the Employer with reasonable proof that the employee was unable to report to work or notify the Employer due to illness, injury or some other unforeseen emergency, then the employee shall be reinstated without loss of seniority.

If an employee, who is not on an approved leave of absence, has refused to accept all work assignments during a sixty-day period, or has failed to respond to reasonable attempts by St. Luke's Home Care management to contact them for a sixty-day period, shall be considered to have voluntarily resigned and the employee will then be terminated.

Section 11.2. Employees electing to resign shall provide the Employer with a fourteen (14) day written notice, and continue working during this period; however, if the employee requests to be relieved sooner and a replacement can be provided by the Employer, the request shall be approved.

ARTICLE 12
Holidays

Section 12.1. The following shall be considered holidays: New Years Day, Memorial Day, July Fourth, Labor Day, Thanksgiving Day, Christmas Eve (only hours worked after 5:00 p.m.) and Christmas Day.

Section 12.2. Employees who work on a holiday will be paid at the rate of double time their normal rate of pay for all hours worked on the holiday. Home Care employees with usual Monday – Friday day schedules observe the above mentioned holidays on the Friday prior to such holiday when it is on a Saturday, and on the following Monday when it is on a Sunday.

ARTICLE 13
Personal Time Off

Section 13.1. Employees who average .6 F.T.E. and above during the immediately preceding consecutive thirteen (13) weeks calculated on a calendar year quarterly basis shall accrue personal time off (PTO) according to hours actually worked. PTO shall be

paid at the employee's normal straight time hourly rate and shall accrue according to the following schedule:

<u>Years of Service</u>	<u>Hours of PTO per paid Hour</u>
0-1	.039
1-5	.063
6-10	.078
11+	.093

Part-time employees working less than .6 shall earn pro-rated PTO hours according to the above schedule.

Section 13.2. Carry-over of PTO. Employees may carry-over, each year, on the anniversary of their most recent date of hire, PTO in accordance with the following schedule:

- A. Less than three (3) years of service - - 80 hours of PTO
- B. From three (3) through seven (7) years - - 120 hours of PTO
- C. More than eight (8) years of service - - 160 hours

Section 13.3. PTO Requests. The Employer will endeavor to schedule employees at a time requested by the employee insofar as staffing needs of the work unit, as determined by the Employer, permit. If it is necessary to limit the number of employees on PTO at the same time that are within a classification, the PTO schedule shall be established on the basis of seniority as provided in the next paragraph.

PTO request schedules will be posted from January 15 to February 15 of each year. Employees shall, during that period, indicate their preference for PTO dates. By February 25 of each year, PTO requests shall be granted or denied, in writing, based upon job classification, seniority, scheduling, and client care requirements. Thereafter, employees shall have an additional period until February 28 to indicate their next preference in cases where their first preference was not granted. By March 15 of each year, final PTO requests shall be granted or denied in writing based upon job classification, seniority, scheduling, and client care requirements. Thereafter, further scheduling of PTO requests shall be in accordance with scheduling and client care requirements, and on a first-come first-served basis; all such PTO requests shall be approved or denied in writing.

Any PTO requests within a posted scheduling period shall be considered "short notice requests", and shall be approved or denied at the discretion of the Employer, based on the

ability to reasonably replace the employee, in accordance with scheduling and client care requirements. In no event shall the Employer be required to incur overtime to approve a PTO request.

Requests for PTO on short notice for illness shall be subject to the terms and conditions of Section 13.4.

Request for time off beyond the accrued hours of PTO will be unpaid time and will be granted at the discretion of the Employer.

Except with permission of the Employer, PTO requests shall not be scheduled for more than two consecutive weeks during the period of time from Memorial Day to Labor Day of each year.

All accrued, but unused PTO time will be paid at termination provided proper written notice has been provided to the Employer. For purposes of this article, proper notice of resignation shall require fourteen (14) days advanced written notice received by the immediate supervisor or department director.

Section 13.4. Sick Leave (Paid & Unpaid). Prompt notice shall be given the Employer when any absence from work is due to illness. Any employee who has more than five (5) occurrences of sick absences per calendar year will be required to furnish evidence of such illness (generally a physician's statement) which is satisfactory to the Medical Director of St. Luke's Occupational Health Service; failure to furnish such evidence as required will disqualify the employee from receiving PTO for the day(s) in question. Promptly following the fifth (5th) occurrence, the Employer shall meet with the employee to review this procedure and discuss any mitigating circumstances which may exist and are contributing to these absences.

Section 13.5. Conversion of Sick Leave. Vacation Leave to PTO. Upon the implementation of the PTO program, all employees who currently have accrued but unused sick leave shall have such unused sick leave converted to a "Medical Leave of Absence Bank." Such unused sick leave shall only be authorized for use or payment for the purpose of an approved medical leave of absence beyond seven (7) consecutive days. The Employer reserves the right to require a physician's documentation satisfactory to the Medical Director of St. Luke's Occupational Health Service for evidence of the need for such leave. Failure to furnish such evidence shall disqualify the employee from utilizing these accruals.

Upon the implementation of the PTO program all employees who currently have accrued vacation leave shall have such leave converted to PTO, and use of such accruals shall be subject to the other terms and conditions of this Article XIII.

Section 13.6. PTO Cash Out. On May 15 of each year, employees shall be allowed to cash out up to 25% of accrued PTO time, up to the following maximums. Employees desiring to use this cash out must notify the employer by May 1.

Earning Rate Maximum	Cash Out
0-1 Years of service (.039/81.12 hrs.)	20 hours
1-5 Years of service (.063/131.04 hrs.)	33 hours
6-10 Years of service (.078/162.24 hrs.)	41 hours
11+ Years of service (.093/193.44 hrs.)	48 hours

ARTICLE 14.
Leaves of Absence

Section 14.1. Family and Medical Leave (MLA - State and Federal) Under Family and Medical Leave Act of 1993. To the extent required by and in accordance with applicable law, a leave of absence without pay shall be granted to an employee for the following reasons:

- a. **Medical Leave.** In the case of a serious health condition of the employee or the employee's parent, spouse or child certified by a health provider as medically necessary.
- b. **Parenting Leave.** The birth of an employee's child or placement of an adopted or foster child or legal ward in the employee's home.

Section 14.2. Personal Illness or Injury. Employees shall be required to utilize PTO for any time away from work for personal illness or injury, other than work related workers compensation leave. Any unused PTO shall be paid to the employee in the pay period immediately following the ninetieth (90th) calendar day of absence.

Section 14.3. Jury and Witness Duty. An employee receiving notice of jury duty shall promptly notify Employer of such fact. Only employees who notify the Director of St. Luke's Home Care in writing two weeks in advance of the commencement of jury duty so as to allow changes in schedule will be eligible to receive jury duty pay. The Employer will pay an eligible employee called and serving on jury duty the difference between the total amount paid such employee by the judicial authority and the straight time, day shift rate of pay such employee would have earned. Time spent on jury duty and the pay received therefore, will count toward accrual of benefits. If an employee is released from

jury duty, she or he shall promptly call Employer, and, if requested, report for work. The Employer's obligation to pay an eligible employee for jury duty applies only to petit jury service and is limited to one two week period of any contract year.

The jury duty leave with pay above specified shall apply to and be available only to employees who have worked 0.6 F.T.E. time, or more, during the 13 weeks immediately preceding commencement of jury duty.

An employee subpoenaed to Court as a witness will be granted unpaid leave time for the purpose of testifying in Court. Under such circumstances, an employee may use accrued PTO if desired. Upon receipt of a subpoena, an employee shall immediately present such subpoena to her/his supervisor in order to facilitate staffing adjustments where necessary. After an employee has testified, she or he shall promptly call the Employer, and, if requested, report for work. In the event an employee is subpoenaed as a witness for the Employer as a result of a job related event, such employee will receive her or his regular straight time rate of pay for the time spent testifying.

Section 14.4. Employees on unpaid leaves of absence shall not accumulate hours for benefits other than those provided for by the Family and Medical Leave Act of 1993.

Section 14.5. Uniformed Services Employment and Reemployment Rights. As provided for under 38 U.S.C. S.4301 et seq., the Employer will provide military duty leave as defined by Federal law.

Section 14.6. School Conference and Activities Leave. The Employer shall accommodate requests for school conference and activities leave for up to 16 hours during any twelve (12) month period in accordance with the terms and conditions provided for in Minn. Statute Sec. 181.9412 School Conference and Activities Leave.

Section 14.7. Funeral Leave. Up to three (3) days PTO will be granted to eligible employees for the purpose of attending the funeral of an immediate family member. An immediate family member is defined as: husband, wife, children, step-children, son-in-law, daughter-in-law, brother, brother-in-law, sister, sister-in-law, grandparent, great grandparent, grandchild, great grandchild, father and mother (father and mother means either the natural or step parents of the employee or spouse of the employee) (grandparent and great grandparent means the grandparent of the employee or the spouse of the employee) for purposes of this benefit.

Two (2) days are allowed when the funeral is within one hundred (100) miles of the Employer's business office and three (3) days are allowed when the funeral is more than one hundred (100) miles away, providing they are normally scheduled work days. If an

employee has no accrued and unused PTO, unpaid leave will be granted in accordance with the above provisions.

Section 14.8. Time off to vote. The Employer shall accommodate requests for time off to vote in accordance with Minn. Stat. 204C.04.

Section 14.9. Union Leave. Upon thirty (30) calendar days advance written request from the Union, up to two (2) employees covered under this section who are elected or appointed to a Union Office, Committee, or as a Union Delegate shall be granted unpaid leave, provided the granting of such leave will not deprive clients of needed services. In determining whether the granting of such leave will deprive clients of needed services, the Employer shall act in good faith and not in an arbitrary or capricious manner.

Section 14.10. Snow Days. In the event that an employee is unable to report to work due to inclement weather, the employee will be allowed to use accrued PTO time for those hours that the Duluth Transit Authority (DTA) stops bus service due to inclement weather or if St. Luke's management allows on a case by case basis.

Section 14.11. Other Leaves of Absence. This type of leave is an unpaid leave of absence from work granted for reasons other than those specifically outlined in this Agreement. These leaves are granted at the sole discretion of management. The Employer shall reply to the request in writing in a timely manner.

ARTICLE 15

Health and Dental Insurance

Section 15.1. Health Insurance.

Effective the first day of the month following thirty (30) days of employment, an employee with a designated FTE of 0.6 or greater shall be eligible to participate in the Employer's health insurance programs then in effect, subject to the waiting periods, rules, and requirements of the carrier. An eligible employee who enrolls in the Employer's health insurance program shall contribute toward the payment of the monthly premium by means of payroll deduction. Coverage and eligibility are subject to the rules and regulations of the insurance carrier. Upon notice to and after consultation with the Union, Employer shall have the right to change the insurance carrier and plan provided no interruption or substantial diminution of benefits is effected.

The Employer shall make fixed monthly contributions toward the cost of such health insurance effective January 1, 2009 as follows:

Balanced Plan	Aware B
Single-\$370	Single- \$460
Single +1- \$585	Single+1- \$720
Family-\$590	Family-\$785

The Employer shall make fixed monthly contributions toward the cost of such health insurance effective January 1, 2010 as follows:

Balanced Plan	Aware B
Single-\$395	Single-\$480
Single+1-\$725	Single+1-\$885
Family-\$795	Family-\$960

Section 15.2. Dental Insurance. Effective on the first day of the month following 30 days of employment, an employee with a designated FTE of 0.6 or greater shall be eligible to participate in the Employer's group dental plan then in effect, subject to the definitions, exclusions, deductibles, and other terms of the group dental policy. The Employer shall pay the cost of single dental insurance coverage for eligible employees.

Upon notice to and after consultation with the Union, Employer shall have the right to change the insurance carrier provided no interruption or substantial diminution of benefit is effected.

ARTICLE 16
Mileage Reimbursement

Section 16.1. Mileage Reimbursement. An employee may be required by the Employer to use her/his own vehicle for client home visits and other business of the Employer. Subject to Employer's policy on determining reimbursable mileage, an employee shall be reimbursed for such mileage at the "optional business standard mileage rate" as determined by the Internal Revenue Service from time to time for such miles driven in rendering services to a client at the I.R.S. rate for such mileage.

Employees working a minimum of 14 assignments per month may in lieu of claiming mileage reimbursement, submit a receipt for the purchase of a DTA bus pass, and the cost

of such bus pass shall be reimbursed to the employee as compensation for all mileage expenses for that month. In no circumstances may an employee claim a bus pass reimbursement and mileage reimbursement in the same month. Employees not working the required 14 assignments per month will be reimbursed for mileage expense either in accordance with the terms of this article for uses of personal vehicles or in accordance with the current per trip rate for utilizing public transportation.

Section 16.2. Travel Time. Travel time shall be compensated.

ARTICLE 17 Life Insurance

Section 17.1. Life Insurance. Effective on the first day of the month following thirty (30) days of employment, an employee with a designated FTE of 0.6 or greater shall be eligible to participate in the Employer's group life insurance plan then in effect, subject to the definitions, exclusions, rules and other requirements of the carrier. Employer shall provide at its cost a group term life insurance policy in the face amount of \$15,000.00 for eligible employees. Upon notice to and after consultation with the Union, Employer shall have the right to change the insurance carrier provided no interruption or substantial diminution of benefit is effected.

ARTICLE 18 Pension

Section 18.1. Pension. Employer will provide a pension plan for eligible employees who have been employed one year and have worked 1,000 hours. Once that initial eligibility requirement has been met, Employees will enter the pension plan on either January 1 or July 1 following eligibility, based on plan requirements. Upon notice to the Union and after consultation with the Union, Employer reserves the right to alter, amend, terminate or change the pension plan and administrator. To remain eligible for a contribution to the pension plan an employee must meet the plan requirements.

Section 18.2. Defined Contribution Pension Option. The Hospital has established a new Defined Pension Option. A current employee hired on or before January 1, 2006 who meets the requirements of the Plan may elect to participate in the new Defined Contribution Option during an "open enrollment" period in 2006. In which event such employee's benefits under the Hospital's Defined Benefit Pension Plan shall be "frozen" at current levels; employees who do not elect this option will remain in the current Defined Benefit Pension Plan. Employees hired or who become eligible after January 1, 2006 who meet Plan requirements will be eligible to participate in the Hospital's Defined Contribution option (fixed option only), but may not participate in the Hospital's Defined Benefit Pension Plan.

ARTICLE 19

Wages

Section 19.1. Wages.

- a. Effective the first day of the pay period closest to January 1, 2012 all employees covered by this Contract will be paid for the hours worked during the period of this contract in accordance with and as specifically provided in the wage schedules attached and marked Schedule "A" until the first day of the pay period closest to July 1, 2012, Schedule "B" effective the first day of the pay period closest to July 1, 2012 until the first day of the pay period closest to January 1, 2013, Schedule "C" effective the first day of the pay period closest January 1, 2013 until the first day of the pay period closest to July 1, 2013, Schedule "D" effective the first day of the pay period closest to July 1, 2013 until the first day of the pay period closest to January 1, 2014; Schedule "E" effective the first day of the pay period closest to January 1, 2014 until the first day of the pay period closest to July 1, 2014, Schedule "F" effective the first day of the pay period closest to July 1, 2014 until the first day of the pay period closest to January 1, 2015.
- b. Part-time employees shall receive the length-of-service increments as provided in Schedules "A" and "B" for continuous hours worked in the classification as follows:

One Year Rate	2,080 hours worked
Two Year Rate	4,160 hours worked
Three Year Rate	6,240 hours worked
Four Year Rate	8,320 hours worked
Five Year Rate	10,400 hours worked
Six Year Rate	12,480 hours worked
Seven Year Rate	14,560 hours worked
Ten Year Rate	20,800 hours worked
Fifteen Year Rate	31,200 hours worked

c. Eligible employees shall receive length-of-service increments based upon hours worked in the particular classification. At the Employer's discretion a new employee may be given credit on the length-of-service increment scale for prior relevant experience. An employee transferring from one classification to another may, at the Employer's discretion, be given credit for some or all prior relevant

work experience in determining such employee's placement on the length-of-service increment scale.

ARTICLE 20
No Strike - No Lockout

Section 20.1. No Strike. During the term of this Agreement, the Union agrees on behalf of itself and each of its members that there shall be no authorized strike of any kind (economic, unfair labor practices or otherwise), and there shall be no boycott, picketing, work stoppage, slow down, or any other type of organized interference, coercive or otherwise, with the Employer's business. Participation in any strike, slow down, sit down, stoppage of work or other similar activity brought about either by action of the Union or by action of individuals or groups without Union authority shall be just cause for discharge by the Employer.

Section 20.2. Unauthorized Strike. In the event any violation of the previous paragraph occurs, the Union agrees as follows:

- a. The Union shall declare publicly that such action is unauthorized by the Union, if requested to do so by the Employer.
- b. The Union shall promptly order its members to return to work, notwithstanding the existence of a picket line, if requested to do so by the Employer.
- c. The Union shall not question the unqualified right of the Employer to discharge employees engaging in, participating in, or encouraging such action. It is understood that such action on the part of the Employer shall be final and binding upon the Union and its members, and shall in no case be construed as a violation by the Employer of any provision of this Agreement. However, an issue of fact as to whether or not any particular employee has engaged in, participated in or encouraged any such violation may be subject to the grievance/arbitration procedure.

Section 20.3. No Lockout. There shall be no lockout by the Employer during the term of this Agreement

ARTICLE 21
Arbitration of Contracts

Section 21.1. Interest Arbitration. In the event the parties are unable to reach agreement as to the terms of a succeeding Labor Agreement, any unsettled issue shall, upon the request of either party, be submitted to the determination of a board of arbitrators, whose determination shall be final and binding upon the parties. The request for submission to arbitration may be made by either party at any time during collective bargaining, but the parties are free to continue to bargain during the period pending arbitration and the arbitrators' decision. The parties shall cooperate in selecting arbitrators and proceeding to hearing with dispatch, and either party may invoke the provisions of the Minnesota Arbitration Act if the other delays in selecting an arbitrator or proceeding with the arbitration process. The board of arbitrators shall be selected and proceed in the following manner unless otherwise agreed in writing between the parties:

Section 21.2. Selection of Arbitrators. Either party may request a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service or the Minnesota Bureau of Mediation Services. Within five (5) days after receipt of a panel of prospective arbitrators the parties shall meet and select the arbitrator by the process of elimination, with the parties taking turns at striking names from the list of seven (7) submitted until one name remains. If the parties are unable to agree with respect to which party shall take the first turn for the purpose of striking a name, it shall be decided by the flip of a coin. The parties will share equally the compensation paid to the arbitrator.

The parties recognize that by custom an arbitrator is not ordinarily given power to add to or vary from the previously written contract of the parties. In this case, however, the parties expect the arbitrator to supply agreement and language of agreement in a new contract in those areas where the parties themselves have been unable to come to express agreement.

The provisions of Article XX (No Strike No Lockout) shall apply during the extension periods of this contract, during periods of arbitration and during periods that this contract shall remain in force as amended by arbitration.

Section 21.3. Continuation of Interest Arbitration. The provisions of this Article (XXI) shall be in full force and effect during the entire term of this agreement and shall apply and be utilized by the parties to reach agreement as to the terms of a succeeding Labor Agreement in the event the parties are otherwise unable to reach agreement through negotiations. The arbitration panel in rendering its decision shall incorporate therein a provision that this arbitration clause (Article XXI) shall be a part of the succeeding contract, unmodified, except the arbitration panel may impose an expiration

date on the provisions of this Article XXI for any Labor Agreement expiring during or after the calendar year 2005.

ARTICLE 22

Duration

Section 22.1. This Agreement as to wages (current employees only) shall go into full force and effect and be binding upon the signatories hereto, from and after the 1st day of January, 2012, and in all other respects from and after the date of execution hereof by both parties and shall continue in full force and effect through December 31, 2014, and thereafter from year to year unless either party hereto shall at least sixty (60) days prior to the termination of the contract, notify the other party in writing of its intention to reopen or terminate this Agreement. It is agreed by both parties that if the notice is to reopen, this Agreement shall remain in full force and effect until there is agreement as to changes and amendments and the contract is signed.

In 2012, the new wage schedules will be applied the first full pay period after ratification.

In 2012, back pay will go back to 1-2-2012 and be paid on the first pay period possible after the contract is signed by both parties.

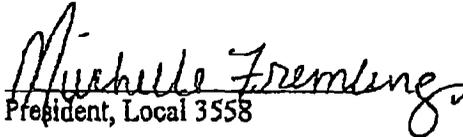
IN WITNESS WHEREOF, the parties hereto have caused their names to be subscribed by their duly authorized representatives the day and year first above written.

ST. LUKE'S HOME CARE

AFSCME COUNCIL 5


John Strange
President, CEO


John Westmoreland
Northern Field Director


Michelle Fremling
President, Local 3558


Amanda Prince, Field Representative

LETTER OF UNDERSTANDING - ASSIGNMENT OF NEW CLIENTS

During the course of negotiations leading to the first Collective Bargaining Agreement between Northland Extended Care and AFSCME, there was discussion as to the possibility of reassigning existing clients to different employees in the event a new client is obtained and both the new client and the existing clients could be more efficiently served by a reassignment. Under such circumstances, the parties have agreed to meet and discuss possible alternative assignments and if the Union, the Employer, and the affected employees reach agreement, an assignment or reassignment may be made in a manner different from that provided in Article 9, Section 9.1.

[Handwritten Signature]
Mason Stone, District Representative
AFSCME Council 96
Sarah Kewenig

10-17-06
Date

[Handwritten Signature]
John Strong, President, CEO
St. Luke's Hospital

10/17/06
Date

Date 10/17/08
 Joby Birming, President, OBO
 P.L. White's Education

Date 10-12-08
 [Signature]
 [Signature]
 [Signature]

During the course of negotiations of the 2001-2002 contract, the parties discussed and agreed to the following regarding Educational Expenses. By our signatures below we agree that the following language defines that agreement.

The Employer will provide educational expenses of tuition, required textbooks and examination fees to employees who wish to pursue certification as a Florida Health Aide.

Employees must apply, on a form provided by the Employer, and receive approval for educational expenses at least one (1) month prior to the beginning of the program. The employee must work for the Employer at least six (6) months following completion of the program.

Employees who complete the program, or transfer to maintain the employment of the Employer for the required six (6) month period, will result in the employee's having to reimburse the Employer for the expenses provided to the employee prior to the beginning of the program.

This is a non-refundable program. The Employer will not be reimbursed for any amount advanced by the Employer to the employee during the term of the agreement with a sixty (60) day notice to the Union.

LETTER OF UNDERSTANDING REGARDING EDUCATIONAL EXPENSES

AFSCME Home Care Wage Chart 2012 - 2014

Schedule A - 0%

Effective January 1, 2012

Title	Start	90 days (520 hrs)	8 months (1,400 hrs)	12 months (2,080 hrs)	2 Yrs	3 Yrs	4 Yrs	5 Yrs	6 Yrs	7 Yrs	10 Yrs	15 Yrs
Homemakers	\$8.97	\$10.18	\$10.37	\$10.57	\$10.65	\$10.84	\$11.22	\$11.51	\$11.91	\$11.51	\$12.11	\$12.23
Technicians	\$11.22	\$11.44	\$11.68	\$11.81	\$12.05	\$12.40	\$12.80	\$13.34	\$13.75	\$14.18	\$14.59	\$14.74

Schedule A - + \$1.00/hour to replace former Bonus (Sec. 78.1(d))
Effective May 7, 2012. First pay period following implementation

Title	Start	90 days (520 hrs)	8 months (1,400 hrs)	12 months (2,080 hrs)	2 Yrs	3 Yrs	4 Yrs	5 Yrs	6 Yrs	7 Yrs	10 Yrs	15 Yrs
Homemakers	\$10.07	\$10.28	\$10.47	\$10.67	\$10.75	\$11.04	\$11.32	\$11.61	\$11.61	\$11.61	\$12.21	\$12.33
Technicians	\$11.32	\$11.54	\$11.78	\$12.01	\$12.15	\$12.50	\$13.00	\$13.44	\$13.85	\$14.28	\$14.69	\$14.84

Schedule B - 0.5%

Effective July 1, 2012

Title	Start	90 days (520 hrs)	8 months (1,400 hrs)	12 months (2,080 hrs)	2 Yrs	3 Yrs	4 Yrs	5 Yrs	6 Yrs	7 Yrs	10 Yrs	15 Yrs
Homemakers	\$10.12	\$10.33	\$10.52	\$10.72	\$10.80	\$11.10	\$11.38	\$11.67	\$11.67	\$11.67	\$12.27	\$12.39
Technicians	\$11.38	\$11.60	\$11.84	\$12.07	\$12.21	\$12.65	\$13.07	\$13.51	\$13.92	\$14.35	\$14.78	\$14.91

Schedule C - 0.5%

Effective January 1, 2012

Title	Start	90 days (520 hrs)	8 months (1,400 hrs)	12 months (2,080 hrs)	2 Yrs	3 Yrs	4 Yrs	5 Yrs	6 Yrs	7 Yrs	10 Yrs	15 Yrs
Homemakers	\$10.17	\$10.38	\$10.57	\$10.77	\$10.85	\$11.16	\$11.44	\$11.73	\$11.73	\$11.73	\$12.33	\$12.58
Technicians	\$11.44	\$11.68	\$11.90	\$12.13	\$12.27	\$12.71	\$13.14	\$13.58	\$13.99	\$14.42	\$14.83	\$15.13

Schedule D - 0.75%												
Effective July 1, 2013												
Title	Start	30 days (\$20 hrs)	8 months (1,400 hrs)	12 months (2,080 hrs)	2 Yrs	3 Yrs	4 Yrs	5 Yrs	6 Yrs	7 Yrs	10 Yrs	15 Yrs
Homemakers	\$10.25	\$10.46	\$10.69	\$10.86	\$10.99	\$11.24	\$11.53	\$11.82	\$11.82	\$11.82	\$12.42	\$12.67
Technicians	\$11.53	\$11.75	\$11.99	\$12.22	\$12.35	\$12.81	\$13.24	\$13.68	\$14.09	\$14.63	\$14.94	\$15.24
Schedule E - 0.75%												
Effective January 1, 2014												
Title	Start	30 days (\$20 hrs)	8 months (1,400 hrs)	12 months (2,080 hrs)	2 Yrs	3 Yrs	4 Yrs	5 Yrs	6 Yrs	7 Yrs	10 Yrs	15 Yrs
Homemakers	\$10.33	\$10.54	\$10.73	\$10.83	\$11.01	\$11.32	\$11.82	\$11.91	\$11.91	\$11.91	\$12.51	\$12.89
Technicians	\$11.62	\$11.84	\$12.08	\$12.31	\$12.45	\$12.91	\$13.34	\$13.78	\$14.20	\$14.64	\$15.05	\$15.51
Schedule F - 1%												
Effective July 1, 2014												
Title	Start	90 days (\$20 hrs)	8 months (1,400 hrs)	12 months (2,080 hrs)	2 Yrs	3 Yrs	4 Yrs	5 Yrs	6 Yrs	7 Yrs	10 Yrs	15 Yrs
Homemakers	\$10.43	\$10.86	\$10.84	\$11.04	\$11.12	\$11.43	\$11.74	\$12.03	\$12.03	\$12.03	\$12.64	\$13.02
Technicians	\$11.74	\$11.96	\$12.20	\$12.43	\$12.57	\$13.04	\$13.47	\$13.92	\$14.34	\$14.78	\$15.20	\$15.67

Robert J Zallar

From: Halvorson, Marla <MHalvorson@slhduluth.com>
Sent: Tuesday, March 31, 2015 2:27 PM
To: Robert J Zallar
Subject: Fwd: Arbitrator

See below

Marla

Sent from my iPhone

Begin forwarded message:

From: Ken LoefflerKemp <Ken.LoefflerKemp@afscmemn.org>
Date: March 31, 2015 at 2:20:10 PM CDT
To: "Halvorson, Marla" <MHalvorson@slhduluth.com>
Cc: Ken LoefflerKemp <Ken.LoefflerKemp@afscmemn.org>, "knorton@fmcs.gov" <knorton@fmcs.gov>, John Westmoreland <John.Westmoreland@afscmemn.org>
Subject: Re: Arbitrator

Marla,

Thank you for your response.

I believe the only outstanding issue in contract negotiations is that of Article 21-Arbitration. As you know, the Employer has proposed removing that Article from the current Collective Bargaining Agreement. The Union has not agreed to the Employer's proposal to remove Article 21.

I hope this is helpful.

Again, I ask that you provide dates and times you are available to select an Arbitrator from the panel provided.

Sincerely,
Ken Loeffler-Kemp
340-8442

Sent from my iPhone

On Mar 31, 2015, at 2:01 PM, Halvorson, Marla <MHalvorson@slhduluth.com> wrote:

Thanks for reaching out – I was going to contact you as well.

I understand there was a vote – did the membership reject AFSCME's counterproposal (which was agreed to except for Interest Arbitration)? Or what are the issues you are proposing to submit to arbitration?

Marla

Exhibit H

From: Ken LoefflerKemp [<mailto:Ken.LoefflerKemp@afscmemn.org>]
Sent: Tuesday, March 31, 2015 1:33 PM
To: Halvorson, Marla
Cc: knorton@fmcs.gov; John Westmoreland
Subject: Arbitrator

Marla,

The FMCS has provided a list of arbitrators from which to chose (see attached) for interest arbitration regarding the collective bargaining agreement between AFSCME Council 5 and St. Luke's Home Care.

Please provide dates and times you are available to select an arbitrator from the panel provided.

I look forward to your response.

Sincerely,
Ken Loeffler-Kemp
340-8442

Sent from my iPhone>

This St. Lukes communication is intended for the use of the person or entity to whom it is addressed and may contain information that is privileged and confidential, the disclosure of which is governed by applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this information is prohibited. If you have received this message in error, please notify sender immediately.

GENERAL COUNSEL'S STATEMENT OF POSITION

Respondent violated Section 8(b)(3) of the National Labor Relations Act (the Act) by insisting to impasse upon the inclusion of an interest arbitration provision in a successor collective-bargaining agreement.

Section 8(d) of the Act requires employers and unions to bargain in good faith over mandatory subjects of bargaining, such as wages, hours, and other terms and conditions of employment. Subjects not related to these matters are nonmandatory, or permissive, subjects of bargaining. See, e.g., *Laidlaw Transit*, 323 NLRB 867, 869 (1997). While parties may lawfully insist on bargaining to impasse over mandatory subjects, the National Labor Relations Board (the Board) and the Supreme Court agree that a party violates the Act when it insists to impasse over a nonmandatory subject of bargaining. See *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1956); *Laidlaw Transit*, 323 NLRB at 869.

The Board has been unequivocal in its determination that interest arbitration is a nonmandatory subject of bargaining. See, e.g., *Columbus Printing Pressman Union No. 252 (R.W. Page Corp.)*, 218 NLRB 268, 287 (1975). In *Columbus Printing Pressman Union No. 252*, the Board affirmed a judge's conclusion that an interest arbitration clause is not a mandatory subject of bargaining because clauses of this type "do not regulate the terms and conditions of employment of the employees in the contract being negotiated, do not vitally affect such terms and conditions of employment, and are not an integral part of such terms and conditions of employment." 219 NLRB 268, 280 (1975). Again and again, the Board has found that interest arbitration is a nonmandatory subject. See, e.g., *Sheet Metal Workers Local 38 (Elmsford Sheet Metal*

Exhibit I

Works), 231 NLRB 699, 700 (1977); *Sheet Metal Workers Local 263 (Sheet Metal Contractors)*, 272 NLRB 43, 45 (1984); *Sheet Metal Workers Local 359 (Madison Industries)*, 319 NLRB 668, 670 (1995); *Laidlaw Transit*, 323 NLRB 867, 869 (1997); *In re Connecticut State Conference Board*, 339 NLRB 760, 767 (2003). Indeed, the question is so well-settled that in *Connecticut State Conference Board*, the Board affirmed that “there can no longer be any doubt that interest arbitration is a permissive subject of bargaining and, therefore, a party cannot insist upon it in negotiations to the point of impasse.” 339 NLRB at 767 Likewise, an employer may lawfully demand the exclusion of this nonmandatory subject. *Id.*

Moreover, the Board has consistently held that a party may not invoke an existing interest arbitration provision in order to perpetuate that clause in a successor contract, reasoning that “a party, having once agreed to that provision, may find itself locked into that procedure for as long as the bargaining relationship endures.” *Laidlaw Transit*, 323 NLRB at 869, quoting *NLRB v. Columbus Printing Pressman & Assistants’ Union No. 252*, 543 F.2d 1169-1170 (5th Cir. 1976), enfg. *Columbus Printing Pressman Local 252 (R.W. Page Corp.)*, 219 NLRB 268 (1975). The perpetual renewal of the interest arbitration provision is problematic in that it results in the parties’ “irretrievable surrender of economic weapons in support of their bargaining positions.” *Laidlaw Transit, Inc.*, 323 NLRB at 869. In addition, the invocation of an interest arbitration clause under these circumstances has the effect of substituting an arbitrator’s decision for bargaining by interested parties. *Id.* The Board has made clear that an interest arbitration clause is, therefore, unenforceable insofar as it applies to the inclusion of a similar clause in a new collective-bargaining agreement. *Id.* See also *Sheet Metal*

Workers Local 263 (Sheet Metal Contractors), 272 NLRB 43, 45 (1984), citing *Sheet Metal Workers v. Aldrich Air Conditioning, Inc.*, 717 F.2d 456, 459 (8th Cir. 1983).

In the instant case, Respondent admits that it reached agreement with the Employer on all open contract issues except for the inclusion of the interest arbitration clause. Respondent further admits that it has insisted to impasse on bargaining with the Employer over the inclusion of the interest arbitration clause in the successor contract, while the Employer refused to include the provision and would not bargain any further over that issue. Respondent also admits that it invoked the interest arbitration clause from the expired contract in order to submit the continuation of the interest arbitration clause to an arbitrator. By engaging in the above-described conduct, Respondent is unlawfully insisting to impasse on the inclusion of a nonmandatory subject of bargaining. Respondent's conduct constitutes a refusal to bargain in violation of Section 8(b)(3) of the Act.

In its defense, Respondent suggests that extant Board law does not apply here because Article 21.3 of the expired collective-bargaining agreement allows an arbitration panel to impose an expiration date on the interest arbitration that must be included in the successor contract. This argument is unsupported by Board law. Though Article 21.3 states that an arbitration panel *may* impose an expiration date on the interest arbitration provision, it stands to reason that panel also may not impose an expiration date. Regardless, Article 21.3 is explicit in its requirement that interest arbitration must be incorporated into any successor collective-bargaining agreement. By definition, the interest arbitration clause at issue in this case is exactly the type of perpetual, self-renewing clause that the Board is concerned about.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AFSCME COUNCIL 5, LOCAL 3558

and

Case No: 18-CB-149410

ST. LUKE'S HOSPITAL OF DULUTH, INC. d/b/a

ST. LUKE'S HOME CARE

AFSCME COUNCIL 5, LOCAL 3558's STATEMENT OF POSITION

Pursuant to National Labor Relations Board's Rules and Regulations Section 102.35(a)(9), The American Federation of State, County, and Municipal Employees Council 5, Local 3558 ("AFSCME" or "Respondent") submits this Statement of Position in the above-captioned case. It is AFSCME's position that it did not commit an unfair labor practice by attempting to enforce a provision of the contract it entered into with the Employer in this dispute, St. Luke's Hospital of Duluth, Inc. d/b/a/ St. Luke's Home Care ("Employer").

Under Article 21 of the parties' previous collective bargaining agreement, in the event that they are unable to reach an agreement during negotiations the parties would submit to interest arbitration for resolution. Specifically, Article 21.3 of the predecessor agreement deals with the inclusion of an interest arbitration provision and states that:

the arbitration panel in rendering its decision shall incorporate therein a provision that this arbitration clause shall be part of the succeeding contract, unmodified, except the arbitration panel may impose an expiration date on the provisions of this Article XXI for any Labor Agreement expiring during or after the calendar year 2005.

(Emphasis added) It is AFSCME's position that this language, specifically the allowance of the arbitration panel to impose an expiration date on the subsequent agreement's interest arbitration clause causes this provision to be enforceable under the National Labor Relations Act.

Exhibit J

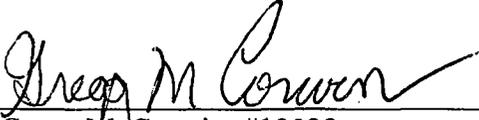
Although interest arbitration clauses are nonmandatory subject of bargaining, “once included in a collective bargaining agreement interest arbitration clauses generally are enforceable.” *Sheet Metal Workers’ Intern. Ass’n, Local 14 v. Aldrich Air Conditioning, Inc.*, 717 F.2d 456, 458 (8th Cir. 1983). The reasoning behind the enforceability of interest arbitration clauses is the fact that “nothing would be more out of step with our national labor polices than to refuse to enforce a voluntary agreement to arbitrate differences.” *See Chattanooga Mailers Union, Local No. 92 v. Chattanooga News-Free Press Co.*, 524 F.2d 1305, 1314 (6th Cir. 1975). However, interest arbitration provisions generally are not enforceable when the issue submitted to interest arbitration is the inclusion of an interest arbitration provision in a subsequent collective bargaining agreement. *See Sheet Metal Workers’ Intern. Ass, Local 14*, 717 F.2d at 459. The reasoning behind not allowing existing interest arbitration clauses to force the issue of the inclusion of a similar provision in a subsequent agreement is because a party may find itself locked into interest arbitration for as long as the bargaining relationship endures. *See NLRB v. Columbus Printing Pressmen & Assistants’ Union No. 252*, 543 F.2d 1161, 1169–70 (5th Cir. 1976). In other words, the Board will not “saddle [the parties with] a *perpetual* cycle of binding interest arbitration.” *Sheet Metal Workers Local 206 (Warrens Industrial)*, 298 NLRB 760, 762 n.4 (1990) (emphasis added).

It is AFSCME’s position that the language of Section 21.3 — specifically the provision that allows for the imposition of an expiration date on the subsequent clause — makes the provision permissible under the Act. The parties are not locked into having interest arbitration provisions into perpetuity; however the parties’ decision to include Article 21.3 in the previous agreement indicates their intent to submit to interest arbitration in the event they were unable to agreement on the inclusion of an interest arbitration provision in the subsequent contract.

Because the interest arbitration panel has the ability to impose an expiration date on the subsequent contract, the circumstances of this case do not run the risk of forcing the parties to operate under a series of self-perpetuating interest arbitration provisions in violation of the Act. *Cf. Laidlaw Transit, Inc.*, 323 NLRB 867, 868 (1997) (finding an interest arbitration clause unenforceable when continued into *perpetuity* i.e. with no expiration possibility).

The interest arbitration clause in the preceding contract does not have the ability to automatically continue into perpetuity, therefore there is no risk that the clause will cause the Employer to “relinquish economic weapons perpetually.” *See cf Parks v. Electrical Workers*, 314 F.2d 886, 910 (4th Cir. 1963). Additionally, it is important to note that the Employer has submitted proposals during negotiations that have included interest arbitration provision. *See* Joint Motion and Stipulation of Facts ¶ 12(b). This shows that the Employer does not *per se* have an objection to including an interest arbitration provision in the new agreement. AFSCME’s insistence on submitting this issue to interest arbitration per the terms of the agreement the Employer willingly and voluntarily entered into does not violate the Act and is fundamentally different than impermissibly forcing impasse over a perpetually renewed interest arbitration clause.

Dated: August 21, 2015


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ATTORNEYS FOR RESPONDENT

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AFSCME COUNCIL 5, LOCAL 3558

and

Case 18-CB-149410

ST. LUKE'S HOSPITAL OF DULUTH, INC. D/B/A
ST. LUKE'S HOME CARE

EMPLOYER'S STATEMENT OF POSITION

Introduction

St. Luke's Hospital of Duluth, Inc. d/b/a St. Luke's Home Care ("Employer") and AFSCME Council 5, Local 3558 ("Respondent") have been parties to successive collective bargaining agreements, the most recent of which was effective from January 1, 2012, to December 31, 2014 ("Agreement"). The Agreement contained an interest arbitration provision. During the negotiations for a successor collective bargaining agreement, the Employer's position was that the provision should be removed, and the Respondent's position was that the provision should be included. The parties reached agreement on all open issues except the inclusion of the provision. The Respondent bargained to impasse on the issue and then insisted that the issue be submitted to arbitration.

Issue

Whether, by insisting the interest arbitration provision be included in the successor collective bargaining agreement, the Respondent failed and refused to bargain collectively and in good faith with the Employer in violation of Section 8(b)(3) of the National Labor Relations Act ("Act").

Exhibit K

Analysis

- A. An interest arbitration provision is a permissive subject of bargaining, and the Respondent's insistence on inclusion of such a provision in the successor collective bargaining agreement is unlawful.

“It is well settled that an interest arbitration clause is a nonmandatory subject of bargaining.” *Sheet Metal Workers' International Assn., Local 14 v. Aldrich Air Conditioning, Inc.*, 717 F.2d 456, 458 (8th Cir. 1983). “[T]he Board, with court affirmance, consistently has held that [an interest arbitration] provision is a permissive subject of bargaining.” *Sheet Metal Workers Local Union No. 20*, 306 NLRB 834, 839 (1992). An interest arbitration clause is a permissive subject of bargaining because “it relates to the relationship between the parties rather than to wages, hours, or other terms and conditions of employment.” *Laidlaw Transit, Inc.*, 323 NLRB 867, 869 (1997). Many other Board decisions confirm such holdings. *See, e.g. Sheet Metal Workers Local 359 (Madison Industries)*, 319 NLRB 668, 670 (1995); *Sheet Metal Workers Local 162 (Dwight Lang's Enterprises)*, 314 NLRB 923, 927 (1994); *Greensboro Printing Pressmen, Union 319*, 222 NLRB 893, 896 (1976); *Columbus Printing Pressmen Union No. 252*, 219 NLRB 268, 280 (1975).

“As a general principle, neither party to a collective-bargaining relationship may insist to impasse that the other party bargain about a nonmandatory subject.” *Carey Salt Co.*, 360 NLRB No. 38, 2014 WL 495813, 25 (2014). “[I]t is unlawful to insist on ‘permissive’ subjects as a condition to reaching agreement.” *Toledo Blade Co.*, 295 NLRB 626, 627 (1989); *see also NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). For permissive subjects of bargaining, “each party is free to bargain or not to bargain, and to agree or not to agree.” *Borg-Warner Corp.*, 356 U.S. at 349.

The interest arbitration provision in the Agreement is a permissive subject of bargaining. As a result, the Respondent may not bargain to impasse over the provision and insist that the

provision be included in the successor collective bargaining agreement. Such bargaining and insistence violates the Act.

- B. The Respondent's insistence on proceeding to arbitration over the inclusion of the interest arbitration provision in the successor collective bargaining agreement is unlawful.

It is an unfair labor practice to insist on proceeding to arbitration over the issue of including an interest arbitration provision in a collective bargaining agreement. *See Aldrich Air Conditioning, Inc.* 717 F.2d at 459; *Laidlaw Transit, Inc.*, 323 NLRB at 869. In *In re Connecticut State Conference Board*, 339 NLRB 760 (2003), the union proposed that an interest arbitration clause be included in the successor collective bargaining agreement and insisted that the parties go to interest arbitration over the matter. *Id.* at 764-67. The Board affirmed the ALJ's decision that such insistence amounted to an impasse and that "insistence to impasse upon the inclusion of a permissive subject [in a collective bargaining agreement] violates the Act." *Id.* at 767.

The Respondent may not insist that the parties submit the inclusion of the interest arbitration provision to arbitration. Such insistence violates the Act.

Conclusion

By insisting to impasse that the Employer agree to include the interest arbitration provision in the successor collective bargaining agreement and by insisting on proceeding to arbitration over the issue, the Respondent violated Section 8(b)(3) of the Act.

Respectfully submitted,

Dated: August 26, 2015

Johnson, Killen & Seiler, P.A.

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