

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO
Respondent

and

Cases 3-CB-154807
3-CB-162455

SISTERS OF CHARITY HOSPITAL
OF BUFFALO, NEW YORK
Charging Party

Alice E. Pender, Esq., and Eric Duryea, Esq.,
for the General Counsel.

Catherine Creighton, Esq., of Buffalo,
New York, for the Respondent.

Larry G. Hall, Esq., of Chicago, Illinois,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

Donna Dawson, Administrative Law Judge. This case was tried on February 29 and March 1, 2016, in Buffalo, New York. The complaint, as amended, alleges that Respondent violated Section 8(b)(3) of the Act by failing and refusing to meet at reasonable times for the negotiations of a successor bargaining agreement with the Charging Party (hereafter the Employer or the Hospital). The Respondent filed an answer denying the essential allegations in the complaint. All parties filed posthearing briefs, which I have read and considered. Based on those briefs and the entire record in the case, including the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. Jurisdiction

It is admitted that Respondent and its constituent locals, Local 1168 and Local 1133, are labor organizations within the meaning of Section 2(5) of the Act. It is also admitted that

the Charging Party, a corporation with an office and headquarters in Cheektowaga, New York, that operates a hospital providing inpatient and outpatient medical care, is an employer within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

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II. Alleged Unfair Labor Practices

A. The Facts

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Background

The Employer is a member of the Catholic Health System (CHS), a hospital system comprised of the Employer's facilities, as well as Mercy Hospital, Kenmore Mercy Hospital, and Mount St. Mary's Hospital. Respondent represents 6 bargaining units at 3 CHS hospitals. Local 1168 represents 2 units at the Employer's St. Joseph campus, an RN (registered nurses) unit and a service unit. Local 1133 represents 2 units at Mercy Hospital and 2 units at Kenmore Mercy Hospital.

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This case involves the following appropriate unit of about 200 of the Employer's RNs at its St. Joseph campus:

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[A]ll full-time, part-time and per diem registered nurses employed by the Employer at its 2605 Harlem Road, Cheektowaga, New York, 14225, facility, and its primary care centers, including all staff registered nurses, critical care nurses, dialysis nurses, charge nurses, team leaders, registered nurse perimees and the PAT nurse. (GC Exh. 2.)

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Recognition of the Respondent in the above unit has been embodied in successive collective-bargaining agreements between it and the Employer, the most recent of which was effective from September 1, 2012, through August 31, 2015.

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According to CHS Chief Negotiator Elisha Tomasello, she has bargained with Respondent's chief negotiator, Staff Director Erin Bowie, for past contracts between Respondent and the Employer. The standard practice, according to Tomasello, has been to begin meeting approximately 2 to 3 months before the expiration of the existing agreement. The parties would meet one time a week at first and add more dates in the weeks leading up to the expiration date, meeting at least twice a week, if not more, toward the end of bargaining. Tr. 3738.¹ The last contract was a difficult one from the standpoint of Respondent, according to Bowie, because of concessions asked of the employees. Nevertheless, a tentative agreement was reached several days after the old contract expired. (Tr. 97, 186.)

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¹ Tomasello's testimony is supported by that of CHS Human Resources Manager Dawn McDonald, who testified that the last two negotiations between Respondent and Kenmore Mercy Hospital, in which she participated, followed the same pattern. Tr. 135-136.

Initial Attempts to Begin Bargaining in 2015

On May 27, 2015, Respondent sent a letter to the Employer signifying its intent to negotiate a successor agreement to the one that expired on August 31, 2015. On June 8 and again on June 15, Tomasello sent email requests to Bowie asking for dates to begin bargaining in July and suggesting one day per week. She also wrote a letter to Bowie, dated June 17, which was also sent by email, pointing out that a section of the bargaining agreement provided that negotiations on a new agreement were to “commence no later than sixty (60) days prior to the termination date.” She offered specific dates from June 29 through July 29, as well as “all Tuesdays and Thursdays during the month of August.” On June 18, Bowie responded by email that she was checking with her employee bargaining committee, but that dates were difficult to arrange because of vacations and her own bargaining schedule on other matters. (GC Exh. 5). The next day, Bowie sent another email to Tomasello, listing available dates of June 29 and three dates in August. (GC Exh. 6.)²

On June 23, Tomasello responded that she could meet on all of the dates mentioned by Bowie. She also asked to meet at least one time per week each week in July and August. She stated that the Employer would be filing charges with the NLRB if Bowie could not provide additional dates. She also offered specific dates in July and August. That same day, Bowie responded, offering August 5 as an additional date in August; she also offered to reschedule an arbitration she had in a matter involving the Employer in order to free another date in August. Bowie also stated that, even though Respondent was not meeting with the Employer in negotiations, it was meeting with the employee bargaining committee to prepare bargaining proposals in advance of negotiations. (GC Exh. 6.)

Bowie elaborated on the deliberations of her employee bargaining committee for the Local 1168 RN negotiations. She testified that she typically works with the elected committee in advance of negotiations, which she did for these negotiations. Only 2 of the 5 committee members are employees of the Employer; the others are employees of a hospital that is not a member of CHS. The committee distributed surveys to Respondent’s members in order to obtain information about the important bargaining issues from their perspective. Respondent uses the results from these surveys to formulate its bargaining proposals. The surveys were distributed to the members in May 2015. Bowie testified that she first met with the bargaining committee to analyze the results of the surveys in the last week of July 2015. She did not schedule meetings earlier because of her own bargaining schedule involving other bargaining units. (Tr. 216-220, 288-289).³

² Bowie admitted that she did not ask her bargaining committee members to adjust their vacations to accommodate the upcoming bargaining involved in this case. Tr. 288. The year before, in the summer of 2014, Tomasello and Bowie were the chief negotiators for a successor contract for the Employer’s service unit. Although some of Respondent’s committee members had vacations during bargaining, the parties continued to meet and bargain. The parties reached a tentative agreement on August 8, 2014, within 3 weeks of the old contract’s expiration date. Tr. 107-108, 152-154.

³ Bowie’s calendar for May 2015 shows that she spent between 2 and 4 days each week that month bargaining for other contracts, often on successive days. In June and July, Bowie spent successive days bargaining other contracts. Tr. 306-311, CP Exh. 6.

In another email dated June 23, the Employer expressed disappointment at the Respondent's failure to offer bargaining dates in July. (GC Exh. 6.) Two days later, it filed a charge with the Board alleging a violation of the Act by refusing and failing to meet at reasonable times. (GC Exh. 1(a).)

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The Parties' Bargaining Sessions

The parties met for their first bargaining session on June 29 at the Double Tree Hotel in Amherst, New York. Tomasello and Bowie were the chief negotiators and they were each supported by a bargaining committee, with whom they caucused separately on this and other bargaining sessions. Despite not having met with her bargaining committee in advance, Bowie prepared contract proposals for the meeting, as did Tomasello. After the parties exchanged proposals, the parties discussed ground rules and reached tentative agreement on some minor matters. Bowie left the session at about 4:10 p.m., to catch a plane for another bargaining obligation, but she had earlier notified Tomasello that she would have to leave early. The other members of the bargaining teams continued negotiating after Bowie left, and the session ended shortly before 5 p.m. (Tr. 52-54, 138-141, 211-212, GC Exh. 7, R. Exhs. 1-3.)⁴

The parties next met on August 5. The parties discussed several proposals and came to some tentative agreements. The session ended at about 5 p.m. The parties also met on August 12 and August 19, again reaching some tentative agreements. On August 19, Tomasello, noting that the contract expiration date was approaching, asked Bowie for more bargaining dates, a request she repeated in an email to Bowie dated August 24. Bowie promised to get back to Tomasello after she learned her schedule on another matter. The next bargaining session was on August 26, at which point Tomasello again asked for more bargaining dates in September. Bowie was unable to respond with September dates at that time. The parties also met on August 31, the day that the contract expired. Until this point, neither of the parties had made what could be called significant economic proposals. The August bargaining sessions ended at about 5 pm, except for the one on August 31, which ended at 5:30 p.m. Tomasello testified that she offered to stay later, but Bowie declined the offer. (Tr. 58-62, GC Exh. 8, R. Exh. 3.)

⁴ Tomasello and Bowie testified about this and subsequent bargaining sessions, as did another representative for the Employer, CHS Human Resources Manager Dawn McDonald. Although Tomasello did not attend one meeting and Bowie missed 2 meetings, McDonald attended all of them. My findings with respect to all of the bargaining meetings she attended are based primarily on Tomasello's testimony, which was more precise and reliable than that of the other witnesses, although there is really no serious conflict in the testimony. Because the substantive proposals are of marginal relevance in this type of case, my findings are based only to a limited extent on documentary evidence setting forth those proposals and discussions of them. R. Exh. 1 is a list of the proposals prepared and submitted by both parties from June 29, 2015, through January 2016. R. Exh. 2 is a summary of the proposals in R. Exh. 1, as well as the tentative agreements of the parties. R. Exh. 3 is a copy of the Union's bargaining notes prepared by an agent of Respondent who did not testify. GC Exh. 7 is a list of the dates and times, exclusive of the parties' internal caucuses, when the parties actually met across from each other at the bargaining table. That exhibit is, of course, of significance to the extent that it supports Tomasello's testimony, which was also supported to some extent by that of McDonald.

At the end of the August 31 session, Tomasello expressed concern that the parties had not scheduled bargaining sessions for September, in view of the now expired agreement. Bowie offered September 17 and 18 as her dates of availability. Tomasello agreed, but wanted to bargain more frequently and offered to email contract proposals to Bowie in
 5 advance of the September 17 meeting to save time. According to Tomasello, Bowie replied that she did not “even have any availability on her calendar to do that.” (Tr. 61-62.)

The parties next met on September 17 and 28 and again on October 13, exchanging additional proposals and reaching more tentative agreements. At this point, both parties
 10 finally submitted significant economic proposals. At all three sessions, Tomasello asked for more dates and more frequent dates. She also asked that the parties bargain beyond 5 p.m. or 5:30. At one point, during the September 17 session, Bowie responded that she had too many outstanding grievances to deal with, precluding more bargaining sessions. The parties did, however, agree to meet again for bargaining on October 30. (Tr. 63-66, 100, 143-144, 323 R.
 15 Exh. 3.)

On October 13, 2015, Tomasello received a copy of a flyer that Respondent had distributed at Kenmore Mercy Hospital, titled, “Negotiations Update.” The flyer made reference to the Employer’s unfair labor practice charge and stated: “Since then, the union has
 20 scheduled at least two sessions each month and will continue to do so until we reach a contract settlement that is good for employees and our patients.” (GC Exh. 9, Tr. 67-68.)

On October 16, Tomasello sent the following email to Bowie:

25 Given the union’s continued delay in making proposals, scheduling dates, and acting in any manner that would result in the parties reaching agreement, we are not optimistic that any progress will be made on October 30. As such, we are demanding dates to bargain, at least two times per week for the month of
 30 November. Please provide your available dates.

In the email, Tomasello also indicated that she would ask a Federal mediator to be present at the October 30 bargaining session. (GC Exh. 10.)

Bowie responded to the above email on October 20, stating that she would have to talk
 35 to her committee members before coming up with available dates beyond the one scheduled for October 30. She promised to get back to Tomasello after she talked to her committee members. (GC Exh. 10.) In another exchange of emails dated October 20, Tomasello offered more dates in October and November and Bowie responded that she was not available for the October dates and would “work on getting dates for November.” (GC Exh. 11.) In her
 40 response, Bowie mentioned the demands on her time due to other issues, including grievances and arbitrations, as well as dealing with NLRB charges. *Id.*⁵

⁵ Bowie’s own testimony confirms that her busy schedule on other matters affected her availability for more bargaining dates on the Local 1168 RN negotiations. She testified that, during the negotiations, she had to deal with “multiple Board charges,” a “very high level of grievances,” and arbitrations. Tr. 229-232. She also testified that she spoke about these conflicts with Respondent’s attorney and her superior, Debbie Hayes. Tr. 327-328.

The parties next met on October 30, with the participation of the mediator, who asked the parties for further available dates. The Respondent offered to meet on November 10 and 25, to which the Employer agreed. Respondent declined the Employer's offer to meet on
 5 additional dates in November. (Tr. 146.) Respondent also declined the Employer's offer to go later in the day, despite the mediator's request that the parties stay later. (Tr. 72.)

The parties met again on November 10 and 25. At the November 10 session, the Employer made a proposal on staffing that Bowie agreed was significant movement and "in
 10 the right direction." (Tr. 73.) Yet she did not agree to go late to review the proposal, as Tomasello had requested, but stated that Respondent would respond to the proposal at the next bargaining session. The session ended at 6 p.m. The November 25 session ended at 4 p.m., with apparently no counter-proposal or further movement on the staffing issue. (Tr. 73, 136.)

The parties next met on December 7, at which time the Respondent submitted a staffing issues and solutions document, apparently in response to the Employer's proposal on staffing made in early November. The parties also met on December 23, discussing staffing issues, among others. (Tr. 75-76.) In between the two meetings, on December 8, Tomasello
 20 emailed Bowie asking for additional dates in January and February of 2016, and received no response. (Tr. 76, G.C. Exh. 12, R. Exh. 3.)

At the December 23 meeting, the parties discussed the fact that Bowie was going to be out of the country for an extended period and another of Respondent's officials, District
 25 Director Debbie Hayes, would be replacing Bowie in the Local 1168 RN negotiations. (Tr. 77.) When Tomasello again asked for future bargaining dates, offering a number of specific dates in January and February, Bowie said she would have to talk to Hayes about her availability. Hayes and Tomasello later agreed to meet on January 6 and 28, 2016. (Tr. 78-80.)⁶

The parties next met on January 6 and 28, 2016, with Hayes as the chief negotiator for Respondent. Much time on January 6 was apparently spent on information requests from Respondent. (Tr. 8081.) The January 28 session resulted in some tentative agreements and ended at 6:30 p.m. (Tr. 81-82, R. Exh. 3.) In between the two January bargaining sessions,
 35 on January 11, 2016, Tomasello sent an email to Hayes, reiterating her dates of availability for bargaining in January and February that she had mentioned in earlier bargaining. Hayes confirmed her availability on January 28, February 11 and 23, but stated that any other dates would have to await Bowie's return. Tomasello responded that those were not enough dates and asked for more. (GC Exh. 14.)

⁶ Two months earlier, on October 31, 2015, Bowie had sent an internal memo to bargaining committee members and other officials of Respondent alerting them that she would not be available from December 25 to February 1 of the following year. At that point, she apparently had two immediate bargaining responsibilities, the ongoing Local 1168 RN bargaining and the upcoming Local 1133 bargaining in the Kenmore Mercy Hospital unit. She was also attempting to arrange meetings with her bargaining committees in December of 2015. CP Exh. 4.

In early February after she returned from her vacation, Bowie called Tomasello and arranged bargaining dates for 2 Mercy Hospital bargaining units represented by Local 1133, whose contracts would not expire until June 3, 2016. Bowie offered to meet 2 days a week for March, April, and May of 2016, with more dates nearer the expiration of those contracts.
 5 Bowie did not offer dates or even mention the ongoing Local 1168 negotiations. (Tr. 82-83, 102-103, 127-128, 247-248.)⁷

The parties met again on February 11 and 19, 2016, with no appreciable movement, although, on February 11, the Employer provided Respondent with some financial
 10 information the Respondent had requested. (Tr. 84, R. Exh. 3.) On February 19, Tomasello was not present and was replaced by another chief negotiator. Bowie had to leave the session early, at about 2:30 p.m. (Tr. 150-151.) At the end of the February 19 session, the parties agreed on four specific bargaining dates beginning on March 14 and ending on April 20, 2016. The Employer wanted more and earlier dates, but the Respondent did not agree. (Tr.
 15 150-152.)

The above shows that the parties met 18 times over a period of about 9 months until the hearing in this case (February 29 and March 1, 2016)—never, however, on consecutive days. At the time of the hearing, the parties were still very far apart on the major substantive
 20 issues, according to Tomasello. (Tr. 86-87.) Respondent does not dispute that testimony; indeed, Bowie testified that the parties were not close to reaching agreement. (Tr. 225.)

The Testimony of Nurse Manager Donofrio

The Charging Party offered testimony from Mercy Hospital Nurse Manager Margaret Donofrio that she overheard a conversation between Kathy Kelly, an RN at Mercy Hospital and an officer of Local 1133, and a mutual friend, which is allegedly related to this case. The conversation took place during off-duty hours on October 16, 2015, at a casino in Niagara Falls. According to Donofrio,⁸ Kelly spoke about the Respondent's bargaining, stating,
 30 "we're going to close down the city." (Tr. 172.) Donofrio apparently related the substance of the overheard conversation to her superiors. Subsequently, it came to the attention of Tomasello, who raised the matter during a bargaining session in the negotiations of a different contract, involving Mercy Hospital and Local 1133, in January of 2016. In the presence of Tomasello, Kelly, who was on the bargaining committee for Local 1133, and another
 35 representative for Respondent, Kelly denied that she had made the statement attributed to her by Donofrio. (Tr. 92-95.)

The Charging Party asserts that Donofrio's testimony shows that Kelly, who allegedly spoke for Respondent, reflected Respondent's motivation for delaying negotiations on the
 40 Local 1168 RN contract and supports its apparent view (see Tr. 17) that Respondent was bargaining in bad faith during those negotiations. The General Counsel's position is more circumspect. The General Counsel asserts that Kelly was an agent of Respondent when she

⁷ Bowie admitted that, for the Mercy Hospital negotiations, she meets with her bargaining committee once a week. Tr. 248.

⁸ Donofrio did not know who Kelly was before the overheard conversation, and was only told of Kelly's identity afterwards by her friend.

made the statement, contending that the statement “offers insight into Respondent’s intent.” But, in an apparent recognition that the theory of the complaint is not lack of good-faith motivation in bargaining, but rather the failure to meet at reasonable times, the General Counsel argues that Respondent’s actions violate the Act “even without such motivation.”
 5 (Br. 43.)

I have serious doubts about the reliability of Donofrio’s testimony concerning Kelly’s statement. According to Tomasello, Kelly denied making the statement in her presence. The General Counsel called Kelly as a witness only to establish her position in Local 1133 and in
 10 support of the allegation that she was an agent of Respondent. But neither the General Counsel nor the other parties questioned Kelly on the statement she allegedly made at the casino. Moreover, there is no evidence that Kelly was privy to the Respondent’s negotiating strategy in the Local 1168 RN negotiations. She was involved only in the Local 1133
 15 negotiations with a different CHS hospital—independent negotiations that began much later than those in this case. She was not involved in matters involving Local 1168. (Tr. 160, 163.) Indeed, Respondent’s chief negotiator in this case, Erin Bowie, confirmed that Kelly had nothing to do with the Local 1168 RN bargaining. (Tr. 184.) Nor is there any other evidence corroborating the notion, based only on Donofrio’s testimony, that Kelly’s isolated statement was part of Respondent’s bargaining plan, much less a plan to “close down the city,” or to
 20 delay these bargaining negotiations for that purpose.

In these circumstances, I cannot make a finding that Kelly’s statement, even if made, could be imputed to Respondent. It seems isolated and speculative—more in the nature of an uninformed and clumsy boast. Moreover, it seems outside the orbit of the complaint in this
 25 case. The complaint does not allege surface bargaining—that the Respondent did not bargain in good faith with intent not to reach agreement—which would bring into play Respondent’s subjective motivation. Rather, the complaint alleges only that the Respondent did not meet at reasonable times, requiring an analysis of objective evidence. Accordingly, Donofrio’s testimony does not have either the reliability or the relevance to support a useful finding of
 30 fact in this case. To the extent that the General Counsel and the Charging Party seek to make it so, I reject their contentions.

II. Discussion and Analysis

It is well settled that Section 8(b)(3) imposes upon unions the same duty to bargain that governs employers under Section 8(a)(5) of the Act. See *Local Union #612, Teamsters*, 215 NLRB 789, 791 (1974); and *Food & Commercial Workers Local 1439*, 268 NLRB 780, 784 (1984), citing and quoting from *NLRB v. Insurance Agents*, 361 U.S. 477, 487 (1960). Section 8(d) makes clear that one of the requirements of good faith bargaining is to “meet at
 35 reasonable times.” Failure to do so has repeatedly been found to be unlawful. See *Eastern Maine Medical Center*, 253 NLRB 224, 246-247 (1980), enfd. 658 F.2d. 1 (1st Cir.1981); *Garden Ridge Mgmt.*, 347 NLRB 131, 143 (2006); *Cable Vision*, 249 NLRB 412 (1980), enfd. 660 F.2d. 1 (1st Cir. 1981); and *Crispus Attucks Children’s Center*, 299 NLRB 815, 838 (1990). The Board has also made it clear that a busy schedule does not excuse a party from
 40 its obligation to meet and bargain at reasonable times. See cases cited above, as well as *First*
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Student, Inc., 359 NLRB No. 12, slip op. 12-13 (2012); and *Caribe Staple Co.*, 313 NLRB 877, 893 (1994).

5 Applying the principles set forth above, I have no difficulty in concluding that the facts in this case show an unlawful failure by Respondent to meet at reasonable times. The record shows that, essentially because of other commitments of its chief negotiator, Bowie, Respondent was unwilling or unable to meet at all in the month of July, and was only available to meet thereafter on an average of only two times a month, and never on consecutive days, over a period of 9 months. This despite the fact that, as Bowie admitted
10 (Tr. 318-319), the Employer asked for more dates at virtually every bargaining session. This schedule was contrary to past practice, which showed that the parties bargained at least once a week, and sometimes twice. It was also contrary to past practice where the parties reached agreement either prior to or shortly after the expiration date of the old contract. Indeed, during the May-July 2015 time period, Bowie was meeting regularly and more often during
15 other negotiations.

At the time of the hearing, the parties were nowhere close to an overall agreement. The record shows a pattern of delay that was unexplained except by Bowie's other commitments, which, as the case law cited above shows, is not an excuse for failing to meet at
20 reasonable times. It was Respondent's responsibility to make arrangements to give these negotiations the importance and time they deserved, despite the busy schedule of its chosen chief negotiator. And, if that meant providing relief to the chosen negotiator or finding a replacement who was not as busy, then that is what was required of Respondent. Accordingly, I find that Respondent's failure to meet more often in the circumstances of this
25 case was not reasonable, impeded the progress of negotiations, and violated the Act.

Bowie's failure to meet at all in July was inexcusable. One of the reasons Bowie gave for not meeting in July was that she had to gather information from her bargaining committee. The internal surveys she utilized for drafting bargaining proposals were distributed in May,
30 but she did not schedule any meetings with her committee to analyze the survey results until the last week in July. Moreover, her calendar for the relevant period shows that she was bargaining in other units 2 and 4 days per week in May and on successive days throughout May, June, and July. Her other responsibilities do not excuse Respondent from giving these negotiations the attention they deserved. Even more disturbing is that Bowie's calendar for
35 the period shows dramatically that she was unwilling to give these negotiations the same time and attention that she gave other negotiations.

Another reason Bowie gave for the failure to bargain in July—and perhaps more often in August and September—was that her bargaining committee members had vacations. That
40 explanation does not hold water. She did not even ask the bargaining committee members to adjust their vacations. And the year before, during bargaining for the Employer's service unit, she and Tomasello bargained an agreement despite the fact that some bargaining committee members had vacations during the bargaining. In the end, the parties reached a tentative agreement shortly after the expiration date of the old contract.
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The most blatant example of Respondent's unreasonable failure to meet is shown by Bowie's February 2016 phone call to Tomasello to arrange bargaining dates for upcoming negotiations dealing with 2 Mercy Hospital units, whose contracts would not expire until June of 2016. At that point, the parties had been bargaining sporadically—due to Bowie's unavailability—for 5 months after the expiration of the Local 1168 RN contract. Yet Bowie readily proposed to bargain 2 days a week for the next few months, with more dates near the expiration of the Mercy Hospital contracts. These were similar to schedules she and Tomasello had utilized in previous Local 1168 RN negotiations, but schedules she refused to apply to the ongoing Local 1168 RN negotiations. Remarkably, Bowie never even mentioned the Local 1168 RN negotiations in that February 2016 call to Tomasello.

The parties' briefs are heavy with citations and discussion of cases whose factual patterns are represented as being closely similar to, or clearly distinguishable from, the situation here. Respondent even cited 2 advice memoranda—opinions of the General Counsel—which have no precedential value because they do not bind the Board. But this case cannot be decided by comparisons of dueling fact situations in other cases. The result here is uniquely based on the facts of this case and those facts speak for themselves. The most important measuring stick for those facts is the Board's repeated admonition that, in bargaining, a party's busy schedule is no excuse for not meeting because bargaining negotiations must be given the priority and importance they deserve. To the extent that the factual pattern in this case can be compared to other fact patterns, the cases I have cited above are sufficiently close to the facts in this case to support finding a violation here. More importantly, however, assessed by the measuring stick mentioned above, the facts here clearly show that Respondent failed to meet at reasonable times in violation of Section 8(b)(3) of the Act.

Conclusions of Law

1. By failing to meet and bargain at reasonable times, Respondent has violated Section 8(b)(3) of the Act.
2. The above violation is an unfair labor practice affecting commerce.

Remedy

Having found that Respondent engaged in an unfair labor practice, I shall order it to cease and desist from such conduct and to take certain affirmative action, including the posting of an appropriate notice, designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law, and on the entire record herein, I issue the following recommended⁹

⁹ If no exceptions are filed, as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.

ORDER

Respondent, Communications Workers of America, AFL-CIO, its officers, agents, successors, and assigns shall

1. Cease and desist from:

(a) Failing and refusing to meet with the Employer at reasonable times for purposes of collective bargaining.

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

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

(a) Upon request, meet and bargain collectively with the Employer with reasonable frequency concerning the negotiation of a contract.

(b) Within 14 days after service by the Region, post at its business office and meeting places copies of the attached notice marked as "Appendix".¹⁰ Copies of the notice, on forms provided by the Regional Director of Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

Dated, Washington, D.C., June 30, 2016



Donna N. Dawson
Administrative Law Judge

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT refuse to meet and negotiate with Sisters of Charity Hospital St. Joseph's Campus (the Employer) for our employees in the bargaining unit described below with promptness and at reasonable times concerning the negotiation of a contract.

All full-time, part-time and per diem registered nurses employed by the Employer at it 2605 Harlem Road, Cheektowaga, New York 14225, facility and its primary care centers, including all staff registered nurses, critical care nurses, dialysis nurses, charge nurses, team leaders, registered nurse permittees and the PAT nurse.

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

WE WILL, upon request, meet and bargain with the Employer with reasonable frequency concerning the negotiation of a contract for our employees in the above bargaining unit.

**COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO**

(Employer)

Dated _____¹ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices of

employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

Niagara Center Building., 130 S. Elmwood Avenue, Suite 630, Buffalo, NY 14202-2465
(716) 551-4931, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/03-CB-154807 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (716) 551-4946.