Children's Hospital and Research Center of Oakland d/b/a Children's Hospital of Oakland *and* Service Employees International Union, United Healthcare Workers-West. Case 32–CA–086106

August 26, 2016

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA, AND MCFERRAN

On February 28, 2014, the National Labor Relations Board issued a decision and order, 360 NLRB No. 56 (2014), adopting Administrative Law Judge William G. Kocol's decision that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to arbitrate pending grievances with the Charging Party Union after the Union was superseded by a new union. The United States Court of Appeals for the District of Columbia Circuit denied enforcement of the decision and remanded the case to the Board to explain how imposing an obligation on the employer to arbitrate grievances with a superseded union can be reconciled with the exclusive representation rights of the newly certified union. *Children's Hospital & Research Center of Oakland, Inc. v. NLRB*, 793 F.3d 56 (D.C. Cir. 2015).

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. We have accepted the court's remand, and, after carefully considering the record and the Respondent's position statement, we reaffirm the conclusion that the Respondent violated Section 8(a)(5) and (1) because it had a continuing duty to arbitrate grievances that arose during its bargaining relationship with the Union.

Consistent with the court's remand decision, we conclude that Congress has not directly spoken to the precise question at issue in this case. Next, we find that the purposes of the Act are best effectuated by requiring employers to arbitrate pending grievances arising under a collective-bargaining agreement with the union that was party to that agreement, even if the union has been superseded by another union. In reaching this conclusion, we emphasize that the duty to arbitrate only applies to disputes that arose at the time that the former union was the exclusive representative. The arbitration of pending grievances with the former union, then, is best understood not as an improper imposition on the newly-certified union's exclusivity, but rather as the fulfillment of a previously bargained-for obligation to use a statutorily favored dispute resolution mechanism. Holding that an employer could repudiate its contractual obligation to arbitrate pending disputes upon a change in representative would frustrate employees' ability to vindicate their contractual rights, threaten new labor disputes, and create an undesirable impediment to employees' exercise of their Section 7 right to freely change union representatives. Accordingly, we reaffirm the Board's prior finding that the Respondent violated Section 8(a)(5) and (1) when it refused to arbitrate pending grievances with the Union subsequent to the Union's replacement, and we will issue an appropriate supplemental Order.

I.

The Respondent operates a pediatric hospital in Oakland, California. Until May 23, 2012, Service Employees International Union, United Healthcare Workers-West (SEIU or Union) was the exclusive bargaining representative for a bargaining unit consisting of most of the Respondent's service, maintenance, and technical employees. The Respondent and the Union negotiated a series of collective-bargaining agreements, the most recent of which was to be effective from December 8, 2010, to April 30, 2014, and contained a two-step grievance procedure, after which either party could request arbitration.

In early 2009, the National Union of Healthcare Workers (NUHW) filed a petition seeking to represent the unit employees. On May 16, 2012, after a protracted and contested organizing effort, the bargaining unit employees elected NUHW as their bargaining representative. At the time, the Union and the Respondent had three outstanding grievances based on incidents that had occurred under their collective-bargaining agreement.[1] On May 23, 2012, the Union requested that all three grievances be submitted to arbitration. The next day, May 24, 2012, the Board certified NUHW. On July 16, 2012, the Respondent declined to arbitrate the grievances on the

[1] The first grievance involved a part-time employee who applied for a full-time position in April 2011. The Respondent awarded her the position effective June 12, 2011, but before she started the new role, the Respondent reassigned the work to a more senior employee. On December 1, 2011, pursuant to an agreement with the Union, the Respondent awarded her the next available full-time position. The Union sought backpay for her for the period of June 12 to December 1, 2011. In September or October 2011, the Union filed a second grievance, alleging that the Respondent should pay five respiratory therapists at a higher step level. The parties resolved the matter with respect to three of those employees, but the Respondent maintained that the remaining two were not entitled to higher pay because they had not received training for transport duties. Several months later, the two therapists began that training, and the Respondent began paying them a "transport differential." The Union alleged that the Respondent owed them additional pay. The third grievance involved the April 24, 2012 discharge of an employee, which the Respondent contended was due to her failure to comply with the terms of a "Last Chance Agreement."

grounds that NUHW had replaced the Union as the exclusive bargaining representative. On July 26, 2012, the Union filed an unfair labor practice charge. The General Counsel issued a complaint that alleged that the Respondent violated Section 8(a)(5) and (1) by refusing to arbitrate the grievances with the Union.

II.

Adopting the decision of the administrative law judge, the Board found that the Respondent violated Section 8(a)(5) and (1) by refusing to arbitrate the grievances with the Union, notwithstanding the fact that NUHW had superseded the Union. The Board began from the established propositions that an employer must arbitrate grievances that arose under an expired contract even if arbitration of new disputes cannot be compelled[2] and that this duty survives even if the union no longer represents employees[3]—although the employer cannot be compelled to arbitrate old grievances with a *new* union.[4] 360 NLRB No. 56, slip op. at 3. The Board viewed these case law holdings, taken together, as "compelling signals" that an employer must arbitrate old grievances with the old union. Id. at 3–4. In turn, the Board rejected the Respondent's argument that it had no duty to arbitrate with the Union because it could "only negotiate with the exclusive bargaining representative of the unit employees and the Union [was] no longer that representative." Id. at 4.

As explained, the court of appeals granted the Respondent's petition for review and denied the Board's cross-petition for enforcement. The court recognized that Section "8(a)(5) requires an employer to arbitrate unfinished business with an old union even after their collective bargaining agreement expires," but noted that, "[o]n the other hand, [S]ection 9(a) requires an employer to 'treat with no other' union once a new union is certified." 793 F.3d at 58–59 (quoting *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 684 (1944)). The court stated that the Act "does not identify where the duty to resolve unfinished business with the old union ends and the duty to bargain exclusively with the new union begins." Id. at 59. The court observed that the "interplay of section 8(a)(5) and section 9(a) is a question of statutory interpretation . . . that the [Act] does not unambiguously resolve." Id. Under the Supreme Court's *Chevron* decision,[5] the court explained, this was a task for the Board—but the Board had failed to complete that task. The Board's decision "discussed only section 8(a) of the Act," and "[n]one of the precedent it cited dealt with the precise situation here"; instead, the Board "relied on cases that did not implicate the exclusivity principle of section 9(a)." Id. "[W]e are left wondering," the court said, "how the Board in these circumstances interprets section 9(a)." Id. "[B]ecause the Board failed to address the relevant statutory provisions," the court remanded the case to the Board for further proceedings. Id.

We have accepted the court's remand decision as the law of the case.

III.

We now take up the task that the court of appeals has set for us in remanding the case: to address the "interplay of [S]ection 8(a)(5) and [S]ection 9(a)" (in the court's words) and to explain why interpreting Section 8(a)(5) to require employers to arbitrate pending grievances with a superseded union, notwithstanding the exclusivity principle of Section 9(a), represents the best resolution of the statutory ambiguity presented here. Section 8(a)(5) makes it an unfair labor practice for an employer to "refuse to bargain collectively with the representatives of his employees, *subject to the provisions of [S]ection 9(a)*." 29 U.S.C. § 158(a)(5) (emphasis added). Section 9(a), in turn, provides that unions chosen by the majority of employees in a bargaining unit "shall be the *exclusive representatives* of all the employees in such unit for the purposes of collective bargaining." 29 U.S.C. § 159(a) (emphasis added). The Act's text frames the issue in this case but does not resolve it. Certainly, the statutory language suggests that if requiring an employer to arbitrate pending grievances with the old union violated the exclusivity principle of Section 9(a), then the duty to bargain under Section 8(a)(5)—which is "subject to" Section 9(a)—could not encompass such an obligation. But, as we will explain, the rule we reaffirm today both is consistent with the exclusivity principle and promotes important statutory policies.

A.

To show why this is so, we first consider how the present case fits into the legal landscape described in the Board's original decision. Under existing Board precedent applying the Act, an employer is required to arbi-

[2] *Indiana & Michigan Electric Co.*, 284 NLRB 53 (1987). See also *Nolde Bros., Inc. v. Local No. 358, Bakery & Confectionary Workers Union*, 430 U.S. 243 (1977) (addressing contractual duty to arbitrate grievances following contract expiration).

[3] *Missouri Portland Cement Co.*, 291 NLRB 1043 (1988).

[4] *Arizona Portland Cement Co.*, 302 NLRB 36 (1991).

[5] *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984). As the court noted, "[t]he resolution of any statutory ambiguity latent in the [National Labor Relations Act] is a task that the Congress, in the first instance, has entrusted to the Board," subject to deferential judicial review. 793 F.3d at 59, citing *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 536 (1992).

trate grievances arising under the expired contract with a decertified union, as distinguished from a union that has been superseded by a new union.[6] The decisions of the Federal appellate courts involving an employer's *contractual* duty to arbitrate (enforceable by the union in Federal court under Section 301 of the Labor Management Relations Act) are in accord. They, too, hold that the employer has a duty to arbitrate, even though the union has been decertified.[7]

The Supreme Court, meanwhile, held in *John Wiley & Sons* that an employer may be required to arbitrate grievances arising under a collective-bargaining agreement between a union and a company with which the employer merged, even though the union that represented the merged company's employees was not the majority representative of any bargaining unit comprising the employer's employees.[8] The Court observed that the union did "not assert that it ha[d] any bargaining rights independent of the [prior] agreement; it [sought] to arbitrate claims based on that agreement, now expired, not to negotiate a new agreement."[9]

The question here, of course, is whether the employer's duty to arbitrate grievances arising under the prior collective-bargaining agreement survives if the old union has not simply been decertified but has been superseded by a new union that enjoys majority support among employees. In this situation, addressed by *Arizona Portland Cement*, supra, the Board has held that the employer cannot be required to arbitrate with the *new* union, absent the employer's "clear consent" to do so.[10] The Board relied on the well-established principle of Federal labor policy that, in the Supreme Court's words, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."[11] Thus, if we held today that the employer had no statutory duty to arbitrate with the *old* union, then the Act would provide no mechanism at all by which arbitration of employees' grievances arising under the old contract could be required. That result, as we will explain, runs counter to important statutory policies.

B.

The decisions we have examined did not explicitly discuss the exclusivity principle of Section 9(a), to which we turn now.

The relevant statutory language—that a union chosen by a majority of employees shall be their "exclusive representative[]"—originated with the Wagner Act of 1935, which, as enacted, rejected proposals that would have

[6] See, e.g., *Antioch Building Materials Co.*, 316 NLRB 647, 647 fn. 1 (1995) (citing *Missouri Portland Cement*, supra, and *Arizona Portland Cement*, supra); *Union Switch & Signal*, 316 NLRB 1025, 1025 fn. 1 (1995) (citing *Missouri Portland Cement*).

[7] See *Auto Workers Local 1369 v. Telex Computer Products*, 816 F.2d 519, 523–524 (10th Cir. 1987); *United States Gypsum Co. v. Steelworkers*, 384 F.2d 38, 44–46 (5th Cir. 1967), cert. denied 389 U.S. 1042 (1968).

[8] *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 550–551 (1964).

[9] Id. at 551 (footnote omitted). The Court noted:

> The fact that the Union does not represent a majority of an appropriate bargaining unit in Wiley [the employer] does not prevent it from representing those employees who are covered by the agreement which is in dispute and out of which Wiley's duty to arbitrate arises. . . . There is no problem of conflict with another union, cf. *L.B. Spear & Co.*, 106 NLRB 687 [(1953)], since Wiley had no contract with any union covering the unit of employees which received the former Interscience [merged company] employees.

Id. at 551 fn. 5.

The Court cited a Board decision, *L.B. Spear*, supra, holding that as the result of the merger between two companies, with employees represented by different unions, a particular bargaining unit had ceased to exist and that a collective-bargaining agreement covering that unit thus did not bar a representation petition for employees of the merged entity. 106 NLRB at 689. In that case, the Board had noted the employer's argument that it was difficult to bargain with two unions "represent[ing] identical categories of employees working in one group, at the same place" and to administer separate collective-bargaining agreements covering the one group. 106 NLRB at 689.

Here there is also "no problem of conflict with another union," in the words of the *John Wiley & Sons* Court, because the employer's duty to arbitrate grievances arising under the old contract runs only to the old union. The employer, in other words, does not have potentially conflicting contractual obligations to two unions.

[10] 302 NLRB at 37.

[11] *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). See also *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 201 (1991) ("[U]nder the [National Labor Relations Act] arbitration is a matter of consent, and . . . it will not be imposed upon parties beyond the scope of their agreement.").

Under the principle that arbitration is a matter of consent, the Board held in *Arizona Portland Cement* that an employer has no duty to arbitrate with a newly certified union grievances arising under the employer's collective-bargaining agreement with a prior bargaining representative. 302 NLRB at 37. Before reaching that conclusion, the Board observed in passing that "it would hardly be conducive to industrial peace to have two unions simultaneously representing the employees, albeit with respect to different time periods." Id. In a later decision, the Board correctly described this statement as "dictum." *Government Employees Local 888 (Bayley-Seton Hospital)*, 323 NLRB 717, 721 fn. 28 (1997). In *Arizona Portland Cement*, the issue of the employer's duty to arbitrate with the old union was not presented because that union had not filed an unfair labor practice charge (see 302 NLRB at 36), and the Board's rationale in any case was based on the consensual nature of arbitration, not on the potential for conflict between the old and the new unions.

For similar reasons, we give no weight to the statement in *Arizona Portland Cement* that the result there "did not mean that the employees ha[d] no recourse as to the unresolved earlier grievances" because those grievances might be resolved through collective bargaining between the new union and the employer. 302 NLRB at 37 fn. 6. We do not interpret that statement to suggest that the employer could not have been compelled to arbitrate with the old union had that union filed a charge. Such a suggestion would have been dictum in any case.

permitted employees to be represented by multiple unions even when there was a majority representative.[12] In endorsing the exclusivity principle, the Senate Report noted:

> The object of collective bargaining is the making of agreements that will stabilize business conditions and fix fair standards of working conditions. . . . [I]t is wellnigh universally recognized that it is practically impossible to apply two or more sets of agreements to one unit of workers at the same time[] . . . .
>
> Majority rule makes it clear that the guaranty of the right of employees to bargain collectively through representatives of their own choosing must not be misapplied so as to permit employers to interfere with the practical effectuation of that right by bargaining with individuals or minority groups in their own behalf after representatives have been picked by the majority to represent all.

S. Rep. No. 573, 74th Cong., 1st Sess., p. 13, reprinted in 2 Leg. Hist. of the NLRA 2313.[13]

The exclusive status of the chosen representative "exacts 'the negative duty [on the employer] to treat with no other,'" as the Supreme Court observed in *Medo Photo Supply*, a decision cited by the court of appeals in its remand decision.[14] This "negative duty" is also reflected in Section 8(a)(2) of the Act, which makes it an unfair labor practice for an employer to, among other things, "contribute . . . support"[15] to a labor organization, including (as interpreted by the Board and the courts) by recognizing and bargaining with a union that lacks majority support.[16] An employer violates Section 8(a)(2) when it recognizes and bargains with one union when it has a pre-existing duty to bargain with another instead.[17]

As we will explain, neither the exclusivity principle embodied in Section 9(a) nor the corresponding "negative duty" not to bypass the majority representative by dealing with another union in violation of Section 8(a)(2) preclude the rule that we adopt today.

C.

Requiring employers to arbitrate pending grievances arising under an expired collective-bargaining agreement with the union that was party to that agreement, even if the union has been superseded by another union, serves important statutory policies. This is especially clear in light of the Board's parallel rule, adopted in *Arizona Portland Cement*, that the new union may *not* compel the employer to arbitrate. "The object of the National Labor Relations Act," as the Supreme Court has observed, "is industrial peace and stability, fostered by collective-bargaining agreements providing for the orderly resolution of labor disputes between workers and employers."[18]

To begin, compelling arbitration at the behest of the old union vindicates the Section 7 right of employees to "bargain collectively through representatives of their own choosing."[19] A collective-bargaining agreement, the contractual terms and conditions of employment it creates, and the grievance-and-arbitration procedure it establishes to resolve contractual disputes are all products of employees' exercise of Section 7 rights in selecting a union to represent them. That the union, in cases like this one, was superseded by a different representative authorized to negotiate and enforce future agreements, does not diminish this fact.[20] Only the superseded union

[12] See 1 Leg. Hist. 1323 (NLRB 1935).

[13] Similarly, Senator Wagner, the Act's chief sponsor, stated:

> Majority rule makes it clear that the guaranty of the right of employees to bargain collectively through representatives of their own choosing must not be misapplied so as to permit employers to interfere with the practical effectuation of that right by bargaining with individuals or minority groups in their own behalf after representatives have been picked by the majority to represent all.

79 Cong. Rec. at 7571 (statement of Sen. Wagner) (1935).

[14] 321 U.S. at 684 (quoting *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 44 (1937)). The situation presented in *Medo Photo Supply* was different from that presented here. In that case, the employer violated Sec. 8(a)(1) of the Act—which prohibits employers from interfering with employees' Sec. 7 right to bargain collectively through their chosen representative—when it bypassed the majority union, "negotiating with its employees concerning wages at a time when wage negotiations with the union were pending," as part of an effort to induce employees to abandon the union. 321 U.S. at 684.

The Supreme Court also has held that the exclusivity principle effectively applies to employees who seek to bypass the union, finding that an employer was free to discharge minority employees who, bypassing the collectively-bargained grievance procedure, sought to bargain separately with their employer over racially discriminatory employment practices. *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50 (1975).

[15] 29 U.S.C. § 158(a)(2).

[16] See, e.g., *International Ladies' Garment Workers' Union v. NLRB (Bernhard-Altmann Texas Corp.)*, 366 U.S. 731, 737–738 (1961).

[17] See, e.g., *Shortway Suburban Lines*, 286 NLRB 323, 329 (1987) (successor employer unlawfully recognized and bargained with outside union, refusing to recognize union representing predecessor's employees), enfd. 862 F.2d 309 (3d Cir. 1988).

[18] *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 785 (1996).

[19] 29 U.S.C. § 157. See generally *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822, 835–836 (1984) (Sec. 7 protects employee's invocation of grievance procedure to enforce collective-bargaining agreement).

[20] Cf. *Telex Computer Products*, supra, 816 F.2d at 523 ("[D]ecertification does not retroactively obliterate contract rights. Events which may change relations between and among employer, union, and employees may impact but do not destroy the right to redress arising under and relating to a valid preexisting contract."); *Unit-*

has the authority to compel arbitration, at least under Board precedent. Moreover, that union is more likely to be able to effectively pursue arbitration, based on its experience in negotiating and administering the agreement, than either individual employees or the new union (assuming, in contrast to the situation here, that the employer were to agree to arbitrate).[21]

Second, today's rule advances the strong Federal policy in favor of arbitration to resolve labor disputes and preserve industrial peace. That policy is reflected both in the decisions of the Supreme Court[22] and in the statute.[23] In cases like this one, an employer has agreed to arbitrate certain disputes with the superseded union. The new union, in turn, may not, under the Act, compel the employer to arbitrate. To hold that the employer lawfully may refuse to arbitrate disputes under the old agreement, with the old union, increases the odds that those disputes will not be resolved through arbitration—the preferred dispute-resolution mechanism—but instead through means such as strikes that disrupt industrial peace. Indeed, finding no duty to arbitrate in cases like this one threatens industrial peace more broadly. Where a rival union was on the scene and displacement of the incumbent seemed likely, employers would have an incentive to delay the processing of existing grievances, and even to breach the contract, in the hope of escaping liability imposed through arbitration. Such behavior would prolong existing disputes and create new ones.

Third, the rule adopted today promotes the Section 7 interest of employees in freely choosing a new union to represent them by ensuring that pending grievances will be resolved through arbitration with the old union and not left open to complicate forward-looking negotiations between the new union and the employer. Once employees replace one union with another, any existing collective-bargaining agreement is no longer in effect—but the employer must maintain the terms and conditions of employment established by the agreement until a new agreement (or a bargaining impasse) is reached with the new union.[24] The new union, in other words, is entitled to have the terms and conditions of the old agreement serve as the starting point for negotiations. If the employer has previously violated the agreement, and those violations have not been remedied, then the new union is unfairly handicapped in bargaining: existing terms and conditions are *not* those established by the old agreement but (at least in part) those unilaterally determined by the employer, forcing the new union to win back benefits to which employees were already entitled. That prospect might deter employees from choosing a new union. This is especially so for those employees who stood to benefit from the pending grievances under the old contract. For them, choosing a new union threatens the loss of vested rights and benefits, perhaps even the right to reinstatement if the grievance involved a discharge.[25]

D.

These policy arguments for adopting today's rule are strong, but we must carefully consider whether and to what extent the rule is inconsistent with the status of the new union as the exclusive representative of employees.

As already suggested, the exclusivity principle of Section 9(a) actually cuts both ways in this case. In finding a duty to arbitrate pursuant to Section 8(a)(5), we properly vindicate the role of the *old* union as the exclusive representative of employees during the period before it was superseded—which, of course, is when the grievances involved here arose. And under our precedent, the new union has no authority to compel the employer to arbitrate the pending grievances: in this very limited respect, the new union cannot represent employees at all, much less exclusively.

Given this fact, the Congressional concern underlying the exclusivity principle is largely absent here. As we

ed States Gypsum, supra, 384 F.2d at 45 ("[T]o take the easy, almost mechanical doctrinaire approach that loss of majority status extinguishes the union's power (duty) to act ignores other vital interests—indeed, interests which need protection and which will be lost unless an ardent advocate of them is available.").

[21] See *Telex Computer Products*, supra, 816 F.2d at 523–524; *United States Gypsum*, 384 F.2d at 45–46. The Tenth Circuit in *Telex Computer Products* and the Fifth Circuit in *United States Gypsum* each noted that the decertified union there had not been superseded by another union, and thus employees had no other representative to pursue arbitration. *Arizona Portland Cement*, decided afterwards, makes clear that even had employees chosen a new union, that union would have lacked the power to compel arbitration under the Act.

[22] In *Warrior & Gulf Navigation*, supra, for example, the Supreme Court explained that:

> The present federal policy is to promote industrial stabilization through the collective bargaining agreement. . . . A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement.

363 U.S. at 578 (footnotes and citations omitted). See also *Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). The *John Wiley & Sons* Court cited *Warrior & Gulf Navigation* and similarly "recognized the central role of arbitration in effectuating national labor policy." 376 U.S. at 549.

[23] Sec. 203(d) of the Labor Management Relations Act provides that "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." 29 U.S.C. § 173(d).

[24] *More Truck Lines*, 336 NLRB 772, 772–773 (2001), enfd. 324 F.3d 735 (D.C. Cir. 2003).

[25] In this case, one of the pending grievances involved a dispute over whether two employees were entitled to several months' worth of a contractual pay differential for transportation duties.

have explained, the legislative history demonstrates that Section 9(a) was designed to prevent employers from interfering with employees' effectuation of their right to choose a majority representative and to preclude bargaining instability caused by the application of two or more contracts to one group of workers at the same time. There is no suggestion in the legislative history that Congress contemplated a situation like this one, involving the transition from one exclusive representative to another and the need to resolve pre-existing labor disputes in a manner consistent with Section 7 and the Federal labor policy favoring arbitration. Given the very limited representative role played by the old union in arbitrating grievances under the old agreement and the fact that the new union may not compel arbitration of those grievances in any case, requiring an employer to arbitrate grievances with the old union would not reasonably cause employees to believe that their choice of a new representative has been interfered with.[26] Indeed, as suggested, foreclosing the old union's role might even tend to inhibit employees from choosing a new union.

Meanwhile, the Supreme Court's decision in *John Wiley & Sons*, supra, helps demonstrate why the Congressional concern about the simultaneous application of multiple collective-bargaining agreements to a single employee unit is not genuinely implicated. In cases like this one, only the application of a single agreement is involved: the expired agreement upon which the employer's duty to arbitrate with the old union is predicated. SEIU here, like the union in *John Wiley & Sons*, "does not assert that it has any bargaining rights independent of the [prior] agreement; it seeks to arbitrate claims based on that agreement, now expired, not to negotiate a new agreement."[27] NUHW, the union that superseded SEIU, in turn has no authority under the Act to compel arbitration under the old agreement. To the extent that an arbitration award in a case like this one would alter existing terms and conditions of employment, that result would merely remedy the employer's violation of the prior collective-bargaining agreement and restore the lawful status quo, from which the new union would be entitled to bargain with the employer.[28] Securing the arbitration award, in other words, does not amount to bargaining over new terms and conditions of employment, but rather to effective restoration of the old.[29]

In sum, we conclude that any conflict with the exclusivity principle is more apparent than real and that the Act and its policies, as a whole, are best read to support finding a duty to bargain in the circumstances here.

IV.

We have carefully considered the issues raised by the court's remand decision, and we conclude that the result reached by the Board in its original decision was the correct one. Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) by refusing to arbitrate grievances with the Union, and we shall order the Respondent to arbitrate the grievances.[30]

[26] Indeed, in *Missouri Portland Cement*, the Board distinguished the resolution of past grievances from bargaining over the employees' current terms and conditions of employment, finding that the former, unlike the latter, did not amount to imposing a bargaining agent on employees who had not selected that agent. 291 NLRB at 1044. We further note that the distinction between the duty to arbitrate pursuant to a collective-bargaining agreement and the statutory duty to bargain is well established in Supreme Court cases that address the effects of successorship (a succession of employers) on each. Compare *John Wiley & Sons*, supra, and *Howard Johnson Co. v. Detroit Local Joint Executive Board*, 417 U.S. 249 (1974), with *NLRB v. Burns International Security Services*, 406 U.S. 272 (1972), and *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987). As the Fifth Circuit aptly explained, the Federal labor law policies concerning a successor's duty to bargain are "analytically distinct" from those involving a successor's duty to arbitrate under § 301. *Boeing Co. v. Machinists*, 504 F.2d 307, 320 (5th Cir. 1974). The court stated:

> The majority requirement in duty to bargain cases is premised upon notions of majority selection of organized employees' collective bargaining agents. In the duty to arbitrate cases under § 301, however, the incumbent employees fulfill no such representative function in the filing of their grievances.
>
> Id.

[27] 376 U.S. at 551 (footnote omitted).

[28] For the reasons stated above, we believe that requiring the employer to arbitrate grievances with the old union after a new union has been certified poses little or no risk to the new union's ability to effectively carry out its representative function. To the contrary, the resolution of outstanding grievances under the old union's collective-bargaining agreement would tend to restore the status quo and thus benefit the new union as it moves forward in collective bargaining with the employer. To the extent that such a risk materialized in any particular case, the Board could address it in that case. In this case, we do not perceive any risk of conflict, let alone a degree of risk that would outweigh the disadvantages discussed herein of failing to require the Respondent to arbitrate with the Union outstanding grievances that arose under their collective-bargaining agreement.

[29] For essentially the same reasons that we find no significant conflict with the exclusivity principle of Sec. 9(a), we also see no obstacle to today's rule in Sec. 8(a)(2). To arbitrate a dispute arising under a collective-bargaining agreement with the union that was party to the agreement and that was, at all relevant times, the majority representative does not amount to providing the union with prohibited support. With respect to Sec. 8(a)(2), notably, dealing with a decertified union is no different than dealing with a union that has been superseded by another union. In each situation, what matters is simply that the employer is dealing with a union that lacks majority status. But the Federal appellate courts have rejected the argument that requiring an employer to arbitrate grievances with a decertified union compels a violation of Sec. 8(a)(2), see, e.g., *Telex Computer Products*, supra, 816 F.2d at 524, and the Board's case law, as we have seen, is in accord.

[30] Member Miscimarra and Member McFerran express no views on the additional rationale articulated by our colleague in his concurrence

CONCLUSION OF LAW

By refusing to arbitrate the grievances that arose under the December 8, 2010 collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent unlawfully refused to arbitrate grievances with the Union, we shall order the Respondent to comply with the Union's request dated May 23, 2012 to process the grievances to arbitration under the terms of the December 8, 2010 collective-bargaining agreement with the Union.

ORDER

The Respondent, Children's Hospital and Research Center of Oakland d/b/a Children's Hospital of Oakland, Oakland, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to arbitrate the grievances that arose under the December 8, 2010 collective-bargaining agreement with Service Employees International Union, United Healthcare Workers-West.

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

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

(a) Comply with the Union's request dated May 23, 2012, to process the grievances to arbitration under the terms of the December 8, 2010 collective-bargaining agreement with the Union.

(b) Within 14 days after service by the Region, post at its facility in Oakland, California, copies of the attached notice marked "Appendix."[31] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 23, 2012.

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

Dated, Washington, D.C. August 26, 2016

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Philip A. Miscimarra, Member

_____

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER HIROZAWA, concurring.

In this decision, the Board interprets Section 8(a)(5) of the Act, which makes it unlawful for an employer to refuse to bargain with representatives of its employees, to explain that provision's reference to Section 9(a), which makes a representative selected by a majority of the unit employees the exclusive representative of the employees. The Board then applies its interpretation to find that the Respondent violated Section 8(a)(5) by refusing to arbitrate a grievance with a superseded representative of its employees that arose during the effective term of its collective-bargaining agreement with the superseded union. I concur in the Board's decision in all respects. I write separately to address a related issue that, in my view, provides additional support for the Board's conclusion.

Section 8(a)(5) provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of [its] employees, subject to the provisions of section 9(a)." Section 9(a), in turn, provides that "[r]epresentatives designated or selected for

and rely only on the analysis included in this opinion in deciding this case.

[31] 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."

the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit . . . . .” The Board’s decision in this case explains what the subject-to-Section-9(a) clause means and marshals powerful arguments in support of its interpretation of the statute. That holding alone fully justifies the result in this case.

I think it is also useful, however, to consider what the subject-to-Section-9(a) clause does *not* mean. It does not mean that for an employer to have a duty to bargain with a union on behalf of its employees, the union must be a Section 9(a) exclusive representative. This reading finds ample support in the text of the Act. I offer two examples.

First, the Section 8(a)(5) clause at issue here simply says, “subject to the provisions of section 9(a).” It does not say, if such representative is “the representative of the employees as provided in section 9(a).” Clearly, the Wagner Act Congress, which drafted the language of Section 8(a)(5), knew how to impose such a requirement if it so intended. It imposed precisely that requirement, using precisely that language, in a parallel subsection of the same section of the Act, Section 8(a)(3). The absence of such a requirement from Section 8(a)(5) is a strong indication that no such requirement was intended by Congress.

Second, the Act’s statement of the right enforced by Section 8(a)(5) is unencumbered by any requirement of Section 9(a) status. That statement appears, of course, in Section 7: “Employees shall have the right . . . to bargain collectively through representatives of their own choosing . . . .” Again, there is no requirement that the representatives through which employees exercise their right to bargain have attained Section 9(a) status or otherwise demonstrated majority support. In my view, these provisions, in the light they shed on the intended scope of Section 8(a)(5), reinforce the Board’s finding of a violation of that section for refusal to bargain with a superseded union, which by definition was no longer a Section 9(a) exclusive representative.

Dated, Washington, D.C. August 26, 2016

Kent Y. Hirozawa, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to arbitrate grievances that arose under the December 8, 2010 collective-bargaining agreement with the Service Employees International Union, United Healthcare Workers-West.

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

WE WILL comply with the request of the Service Employees International Union, United Healthcare Workers-West, dated May 23, 2012, to process the grievances to arbitration under the terms of the December 8, 2010 collective-bargaining agreement with that Union.

CHILDREN’S HOSPITAL AND RESEARCH CENTER OF OAKLAND D/B/A CHILDREN’S HOSPITAL OF OAKLAND

The Board’s decision can be found at www.nlrb.gov/case/32-CA-086106 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.

Jennifer D. Kaufman and *Fred B. Jacob, Esqs.*, for the General Counsel.
Bonnie Glatzer and *David A. Kolek, Esqs. (Nixon Peabody, LLP)*, of San Francisco, California, for the Respondent.
Manuel A. Boigues, Esq. (Weinberg, Roger & Rosenfeld), of Alameda, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM G. KOCOL, Administrative Law Judge. This case was presented to me based on a stipulated record that I approved on July 1, 2013. The Service Employees International Union, United Healthcare Workers-West (the Union) filed the charge on July 26, 2012, and the General Counsel issued the complaint on March 29, 2013. The complaint alleges that Children's Hospital and Research Center of Oakland d/b/a Children's Hospital of Oakland (the Hospital) violated Section 8(a)(5) and (1) by refusing to arbitrate grievances that arose under a collective-bargaining agreement between the Union and the Hospital. The Hospital filed a timely answer that admitted the allegations of the complaint concerning the filing and service of the charge, interstate commerce and jurisdiction, the Union's labor organization, as well as that of the National Union of Healthcare Workers (NUHW). The Hospital also admitted the agency status of Brenda Husband, the Hospital's employee and labor relations manager, the appropriate unit, and that the Union represented the employees in that unit until May 16, 2012, at which time the Union was decertified and replaced by the NUHW. The Hospital also admits that during the time that the Union represented the unit employees the Union had a collective-bargaining agreement with the Hospital that included grievance-arbitration procedures, that during that same time period three grievances were filed, and after the NUHW replaced the Union as the collective-bargaining representative the Union demanded that the Hospital arbitrate those grievances, but the Hospital refused to do so. The Hospital refused to do so even after the NUHW advised that it did not oppose the Union's demand to arbitrate. In its answer, the Hospital pleads a number of affirmative defenses; none of them are meritorious under Board law.

On the entire record and after considering the briefs filed by the General Counsel[1] and the Hospital, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Hospital, a corporation, operates a "non-profit" pediatric hospital at its facility in Oakland, California, where it annually derives gross revenues in excess of $250,000 and purchases and receives at its facility goods and services valued in excess of $5000. The Hospital admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union and the NUHW are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

As indicated, the Hospital operates a pediatric hospital and research center whose main facility is located in Oakland, California, where it employs more than 2800 people. Until May 23, 2012, the Union was the exclusive bargaining representative for a bargaining unit consisting of most of Respondent's service, maintenance, and technical employees. The Hospital and the Union negotiated a series of collective-bargaining agreements that governed the terms and conditions of employment for the employees in the Hospital's bargaining unit represented by the Union. The most recent contract was to be effective from December 8, 2010 to April 30, 2014; it contained a two-step grievance procedure, after which either party could request arbitration.

The NUHW was formed in or about early 2009. On February 2, 2009, NUHW filed a representation petition with Region 32, which sought an election to have NUHW certified as the exclusive bargaining representative of the Respondent employees who were then represented by the Union. The NLRB conducted an election on August 16, 2011, but the results of the August 16, 2011 election were set aside after an administrative law judge found that certain conduct of NUHW interfered with the employees' exercise of a free and reasoned choice. The NLRB conducted a second election on May 16, 2012. A majority of the voting employees selected the NUHW as their bargaining representative. On May 24, 2012, Region 32 certified NUHW as the winner of the representation election. As a result, NUHW is now the certified and exclusive bargaining representative for the Hospital's employees in the unit previously represented by the Union.

On April 24, 2012,[2] the Hospital terminated Sharon Brown's employment. It contended that Brown failed to comply with the terms of a Last Chance Agreement mandated by a Joint Adjustment Board, which consisted of an equal number of Hospital and Union representatives. Thereafter, the Union continued to pursue a grievance over Brown's termination. On May 23, Brown also filed an unfair labor practice charge with Region 32 in Case 32–CA–081636 alleging that her termination and the failure to reinstate her were for discriminatory reasons. On May 30, the Union also filed an unfair labor practice charge with Region 32 in Case 32–CA–082033 alleging that Brown's termination was because of her protected concerted activities. Following an investigation, the Region dismissed all charges related to Brown on July 30. On November 6, the Region's dismissals of the Brown charges were affirmed following an appeal to the NLRB's General Counsel.

In April 2011, Yolanda Montoya, a part-time patient care assistant, applied for a full-time patient care assistant position. The Hospital initially awarded the full-time position to Montoya effective June 12, 2011, but subsequently learned that the position should have been awarded to a more senior employee under the terms of the contract. Before Montoya started in the new position, the Hospital rectified the error, and the more senior employee received the position. On December 1, 2011, pursuant to an agreement with the Union, the Hospital awarded Montoya the next available full-time position. The Union continued to pursue a grievance seeking back-

[1] The Union adopted the brief of the General Counsel as its own.

[2] All dates are in 2012, unless otherwise indicated.

pay for Montoya from June 12, 2011 until December 2011, when Montoya started in her full-time position.

In or about September or October 2011, the Union filed a grievance alleging that five respiratory therapists should have been paid at a higher step level under the terms of the contract. The parties resolved all of the individual cases, except for two. The two unresolved cases concerned two therapists who the Hospital alleged were not entitled to higher pay because they had not yet begun their training for transport duties. Several months later, when the therapists began their transport training, the Hospital began paying them the transport differential pay per the contract. The Union continued pursuing its grievance alleging these employees are still owed additional pay per the terms of the contract.

On May 23, 2012, Union Business Agent Sharrion Marshall emailed the Hospital's Labor Relations Manager, Brenda Husband. Marshall requested that all three of the grievances described above be moved to arbitration in accordance with the contract's grievance procedures. On June 19, the Union renewed its request for arbitration of the grievances.

On July 16, the Hospital declined to arbitrate the grievances because NUHW had replaced the Union as the exclusive bargaining representative. The Hospital also requested that the Union withdraw its request to arbitrate the grievances no later than the close of business on July 20. The Hospital stated that if the Union did not withdraw its request to arbitrate the grievances by the close of business on July 20 it would seek injunctive relief. The Union did not communicate with the Hospital's counsel before the close of business on July 20 indicating intent to withdraw its arbitration request or in any other manner. On July 24, the Union declined the Hospital's request to withdraw arbitration demands regarding the grievances.

On July 24, the Hospital filed a complaint against the Union in the U.S. District Court, Northern District of California, Case No. C 12–03862 Sl. The Hospital's complaint sought an injunction permanently restraining the Union from requesting or compelling it to arbitrate the grievances and a declaratory judgment that the Union had no legal right to compel it to arbitrate the grievances. On August 23, the Union filed an opposition to the Hospital's motion for injunctive relief. On August 29, the Union filed a cross-petition to compel the Hospital to arbitrate the grievances. On October 5, the Honorable U.S. District Judge Susan Illston held a hearing on the Hospital's motion for preliminary injunction and the Union's cross- petition to compel arbitration. On October 12, the Court denied the Union's motion to compel arbitration of the grievances and, in light of this denial, denied the Hospital's motion for preliminary injunction and declaratory judgment as moot. See *Children's Hosp. & Research Ctr. Oakland v. SEIU* (N.D. Cal. Oct. 12, 2012), 2012 U.S. Dist. LEXIS 17461. The Court entered judgment consistent with its October 12 order on October 31. The parties did not appeal the Court's judgment.

On July 26, the Union filed the instant unfair labor practice charge with the Region. As a part of its investigation of the charge, the Region solicited positions from the Hospital and NUHW regarding the Union arbitrating the grievances. The Hospital informed the Region that it declined to arbitrate the grievances with the Union. On January 17, 2013, NUHW, by its counsel, informed the Region that it did not oppose the Union's arbitrating the grievances. On February 13, 2013, the Region informed the Hospital that NUHW's counsel had advised the Region that NUHW did not oppose the Union's arbitrating the grievances. On February 19, 2013, the Hospital informed the Region that it still declined to arbitrate the grievances with the Union. Between February 13 and 19, 2013, NUHW Business Agent Faye Roe informed the Hospital's Employee and Labor Relations Manager Brenda Husband that NUHW has never given the Union any indication that NUHW wishes the Hospital to bargain or arbitrate with the Union with respect to any of the Hospital's workers, given that it no longer represents these workers.

III. ANALYSIS

The issue is whether the Hospital violated Section 8(a)(5) by refusing to arbitrate grievances that arose under an expired contract under circumstances where the union that was a party to the contract is no longer the representative of the employees *and has been replaced by another union* as the representative of the employees. The starting point is that the settled proposition that an employer must arbitrate grievances that arose under an expired contract. *Nolde Bros., Inc., v. Bakery Workers*, 430 U.S. 243 (1977). If it refuses to do so, it violates Section 8(a)(5). *Indiana & Michigan Electric Co.,* 284 NLRB 53 (1987). An employer must arbitrate such grievances even if the union no longer represents any employees of the employer. *Missouri Portland Cement Co.*, 291 NLRB 1043 (1988). And it is clear that a replacement union may not seek to arbitrate grievances that arose under the contract between its predecessor union and the employer. *Arizona Portland Cement Co.*, 302 NLRB 36 (1991). These cases, taken together, are compelling signals that the Hospital's conduct here also violated the Act.

The Hospital, however, makes several arguments as to why those decisions should not dictate the result in this case. First, the Hospital argues that it may only negotiate with the exclusive bargaining representative of the unit employees and the Union no longer is that representative. But this argument has been rejected by the Board. *Missouri Portland Cement,* supra. Next, it argues that if it processes the grievance under the expired agreement with the Union it may be charged with an 8(a)(2) unfair labor practice. But this fear is unfounded, at least on the facts of this case. The grievances in this case involve nothing more that reinstatement and backpay. All that the Hospital is required to do is complete the unfinished business arising from the expired contract and expired collective-bargaining relationship. Nothing need spill over into determining current conditions of employment for the unit employees; that must be done exclusively with the NUHW. The Hospital then argues that processing the grievances with the Union would destabilize its relationship with the NUHW. I see no merit in this argument. However, the grievances are resolved, whether through negotiation and settlement or in arbitration their resolution merely becomes part of the history of the Hospital's past relationship with the Union. The Hospital is required to do nothing more than sew up the loose ends of its past relationship with the

Union. The Hospital and the NUHW are free to chart their own course. Next, as the Hospital points out, there is some language in the prior cases that seems to indicate that those holdings might not apply when a predecessor union has been replaced, but the Board has made clear that such language is dicta and should not be interpreted in that manner. *Local 888, American Fed. Of Gov't Employees (Bayley-Seton Hosp.)* 323 NLRB 717, 721 (1997). Finally, the General Counsel and the Hospital disagree as to the significance of the statements made by the NUHW regarding the grievances. I find that those statements are irrelevant. NUHW has no say whatsoever concerning the processing of those grievances just as the Union can play no part in determining conditions of employment since its decertification. By refusing to arbitrate the grievances that arose under the expired collective-bargaining agreement, the Hospital violated Section 8(a)(5) and (1).

CONCLUSIONS OF LAW

By refusing to arbitrate the grievances that arose under the December 8, 2010, collective-bargaining agreement with the Union, the Hospital has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Children's Hospital and Research Center of Oakland d/b/a Children's Hospital of Oakland, Oakland, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to arbitrate the grievances that arose under the December 8, 2010 collective-bargaining agreement with the Union.

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

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

(a) Comply with the Union's request dated May 23, 2012, to process the grievances to arbitration under the terms of the December 8, 2010 collective-bargaining agreement with the Union.

(b) Within 14 days after service by the Region, post at its facility in Oakland, California, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 23, 2012.

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

Dated, Washington, D.C. August 1, 2013

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to arbitrate grievances that arose under the December 8, 2010 collective-bargaining agreement with the Service Employees International Union, United Healthcare Workers-West.

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

WE WILL process grievances to arbitration under the terms of the December 8, 2010 collective-bargaining agreement with the Service Employees International Union, United Healthcare

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

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

Workers-West.

CHILDREN'S HOSPITAL AND RESEARCH CENTER OF OAKLAND D/B/A CHILDREN'S HOSPITAL OF OAKLAND