UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

DHSC, LLC, d/b/a AFFINITY MEDICAL CENTER,
COMMUNITY HEALTH SYSTEMS, INC., and/or
COMMUNITY HEALTH SYSTEMS PROFESSIONAL
SERVICES CORPORATION, LLC,
a single employer and/or joint employers, et. al.

and

Cases 08-CA-117890 et al.

CALIFORNIA NURSES ASSOCIATION/NATIONAL
NURSES ORGANIZING COMMITTEE (CNA/NNOC)

ORDER DENYING RESPONDENTS' MOTION FOR A CONSENT ORDER

On July 28, 2016, Respondents CHSPSC and CHSI filed a Motion to Adopt Consent Order and to Dismiss. On August 7, 2016, General Counsel filed its Opposition to that Motion. I withheld ruling, noting that the Board had asked for briefing on the matter, signaling a potential change in the law. This occurred when the Board issued *United States Postal Service and Branch 256 (USPS)*, 364 NLRB No. 116 (August 27, 2016). Accordingly, CHSPSC and CHSI filed a revised motion on October 7, 2016, the General Counsel submitted a response on October 21, 2016, and CHSPSC and CHSI submitted a reply on November 2, 2016.

Under *USPS*, any consent order must provide "a full remedy for all of the violations alleged in the complaint." Slip op. at 3. The Board elaborated:

> In evaluating the completeness of the remedy, we will ask whether the proposed order includes all the relief that the aggrieved party would receive under the Board's established remedial practices were the case successfully litigated by the General Counsel to conclusion before the Board.

Id. The Board's language is inclusive, not distinguishing among the various types of relief.

The General Counsel has requested a corporatewide cease-and-desist order, among other remedies. The Respondents assert that this is an extraordinary remedy, which is punitive and unavailable in this case. I must, at this juncture, assume that each allegation will be successfully litigated by the General Counsel. If the General Counsel proves each complaint allegation, I will need to consider whether a corporatewide cease and desist order is an appropriate and necessary remedy. As the Board noted in *Fresh & Easy Neighborhood Market*, Inc., 356 NLRB No. 145, slip op. at 1-2 (2011), enfd. 468 Fed. Appx. 1 (D.C. Cir. 2012), "corporatewide remedies are not reserved only for recidivists. Such a remedy is permissible and necessary to ensure that all

affected employees will be informed of the Respondent's violation and the nature of their rights under the Act." In *NLRB v. S.E. Nichols, Inc.*, 862 F.2d 952, 961 (2d Cir.1988), cert. denied, 490 U.S. 1108, 109 S.Ct. 3162, 104 L.Ed.2d 1025 (1989), Court, agreeing with the Board, found there was "substantial evidence in the record as a whole of a conscious corporate-wide policy to coerce company employees in the exercise of their right to join or form labor unions" to merit an expanded remedy.

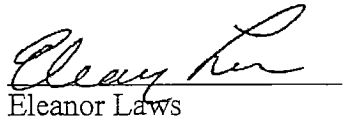
It is anticipated that much of the evidence the General Counsel seeks to adduce to prove its entitlement to the corporatewide cease-and-desist order will be elicited during the Nashville portion of the hearing. I cannot know, at this juncture, what evidence the General Counsel will introduce to prove its claim for a corporatewide remedy. Even if a corporatewide remedy proves to be inappropriate, however, I may still need to consider whether a limited expansion beyond the actual locations where any unfair labor practices occurred is appropriate. See *S.E. Nichols*, Inc., 284 NLRB 556 (1987) (remedy expanded to encompass all stores in the corporate division under a certain district supervisor).

I agree with the Respondents that a finding of joint/single employer is not a remedy. An order for an entity that is part of a joint/single employer to cease and desist from certain conduct is, however. Under *Independent Stave*, I may have come to a different conclusion about the merits of the Respondents' motion; Under *USPS*, it would be speculative to say "the proposed order includes all the relief that the [General Counsel] would receive under the Board's established remedial practices were the case successfully litigated by the General Counsel to conclusion before the Board." *USPS,* supra.

Accordingly, the motion is denied.

SO ORDERED.

Dated: November 15, 2016, San Francisco, California.



Eleanor Laws
Administrative Law Judge

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Subject: 08-CA-117890 - AFFINITY: ORDER DENYING RESPONDENTS' MOTION FOR A CONSENT ORDER
Attachments: Order denying Motion for Consent Order AFFINITY.pdf

Dear Counsel,

Please see the attached document.

Brian

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