UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DHSC, LLC, d/b/a AFFINITY MEDICAL CENTER,
COMMUNITY HEALTH SYSTEMS, INC.,
HOSPITAL OF BARSTOW, INC., d/b/a
BARSTOW COMMUNITY HOSPITAL,
WATSONVILLE HOSPITAL CORPORATION d/b/a
WATSONVILLE COMMUNITY HOSPITAL,
and/or
COMMUNITY HEALTH SYSTEMS PROFESSIONAL
SERVICES CORPORATION, LLC,
a single employer and/or joint employers and
QUORUM HEALTH CORPORATION and QHCCS, LLC,
successor employers

and **CASE** **08-CA-167313**

NATIONAL NURSES ORGANIZING COMMITTEE
(NNOC), CALIFORNIA NURSES ASSOCIATION/NATIONAL
NURSES ORGANIZING COMMITTEE (CNA/NNOC)
and CALIFORNIA NURSES ASSOCIATION (CNA),
NATIONAL NURSES UNITED

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BLUEFIELD HOSPITAL COMPANY, LLC d/b/a
BLUEFIELD REGIONAL MEDICAL CENTER,
COMMUNITY HEALTH SYSTEMS, INC., and/or
COMMUNITY HEALTH SYSTEMS PROFESSIONAL
SERVICES CORPORATION, LLC,
a single employer and/or joint employers

and	**CASES**	**10-CA-168085**
		10-CA-151016
		10-CA-153544
		10-CA-174418
		10-CA-177532

NATIONAL NURSES ORGANIZING COMMITTEE
(NNOC), AFL-CIO

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Dismissal (ALJ's Order) in Cases 08-CA-167313, et al. (the Consolidated Action).[1] The ALJ's Order adopted a consent settlement agreement proposed by Respondent Community Health Systems, Inc. (CHSI) and Respondent Community Health Systems Professional Services Corporation, LLC (CHSPSC) (collectively, the Corporate Respondents). The consent settlement agreement provides that CHSPSC shall be the guarantor of any remedies that the Board may order with respect to the underlying unfair labor practices in the Consolidated Action, and dismisses the single/joint employer allegations against the Corporate Respondents.

The General Counsel respectfully requests special permission to appeal the ALJ's Order. As explained more fully below, permission should be granted because the ALJ abused his discretion by concluding that the consent settlement agreement is reasonable under all the circumstances under the standard set forth in Independent Stave Co., 287 NLRB 740, 743 (1987), and as enunciated in UPMC, 365 NLRB No. 153 *slip. op.* (Dec. 11, 2017). First, the consent settlement agreement is not reasonable in light of the nature of the violations alleged, because the named Corporate Respondents, among other entities, are not held responsible for any remedies ordered. Second, the consent settlement agreement is not reasonable because it does not provide for the corporate-wide remedy prayed for in the Consolidated Complaint, which notably ALJ Carter has limited the General Counsel from presenting evidence at the hearing to support this remedy. Finally, the ALJ's Order is not reasonable considering the risks inherent in litigation and the stage of litigation. The consent settlement agreement does not eliminate all risk of liability as the hearing is on-going and evidence relevant to the corporate-wide remedy sought could be entered into the record. Moreover, the ALJ's Order dismissing the allegations of single

[1] Transcript cites from the unfair labor practice hearing in 08-CA-167313 et al., will be referred to herein as Tr. ___ followed by the transcript page. Any of General Counsel's exhibits will be referred to herein as GC Exh. ___. The ALJ's Order is attached as Exhibit A.

and joint employer, without permitting the General Counsel to present his evidence, has far-reaching effects impacting the litigation in a related consolidated action concerning the Corporate Respondents.

Overall, the ALJ abused his discretion by adopting a consent settlement agreement that is not reasonable in light of the nature of the alleged violations, the risks inherent in litigation and the stage of the litigation, and which otherwise does not effectuate the purposes and policies of the National Labor Relations Act (the Act).

I. RELEVANT PROCEDURAL HISTORY AND BACKGROUND

A. The Consolidated Action in 08-CA-167313, et al. (CHS II)

1. Complaint Allegations

On September 26, 2016, the Regional Director for Region 8 issued an Order Further Consolidating Cases, Third Consolidated Complaint in Cases 08-CA-167313, et al. (Consolidated Complaint) against five Respondent Hospitals,[2] CHSI, and its wholly-owned management company, CHSPSC.[3] The Charging Parties National Nurses Organizing Committee (NNOC), California Nurses Association/National Nurses Organizing Committee (CNA/NNOC) and California Nurses Association, National Nurses United, (CNA) (collectively, the Union) filed the underlying charges.

The Consolidated Complaint alleges Section 8(a)(1), (3) and (5) violations of the Act. These allegations include:

[2] The term Respondent Hospitals shall refer to DHSC, LLC d/b/a Affinity Medical Center (Affinity), Hospital of Barstow, Inc., d/b/a Barstow Community Hospital (Barstow), Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center (Bluefield), Greenbrier, VMC d/b/a Greenbrier Valley Medical Center (Greenbrier) and Watsonville Hospital Corporation d/b/a Watsonville Community Hospital (Watsonville). About February 11, 2018, Affinity closed its facility.

[3] Since the commencement of litigation, ALJ Carter has granted numerous amendments to the Complaint. The most recently issued amended Consolidated Complaint is attached as Exhibit B (GC Ex. 1.1.51), and ALJ Carter has granted further amendments on the record.

- maintaining unlawful work rule requiring employees to sign a CHSI "Compliance Disclosure Upon Separation Form";
- coercively informing employees they could not be part of the unit if they performed charge nurse duties;
- coercively informing employees that they would not receive wage increases;
- instructing employees not to discuss an ongoing disciplinary investigation;
- discriminatorily and unilaterally discharging employees, subcontracting, delaying a wage increase, and suspending an employee;
- unilaterally changing terms and conditions of employment (paid time off, mandatory time off, staffing, disciplinary policies regarding overtime, removing relief charge nurses from the unit, bargaining over verbal/written warnings, implementation of QHC Benefits Plus and long-term care insurance, transferring 401(k) plan assets without notice or bargaining);
- direct dealing;
- bargaining in bad faith (through package proposals, conditioning bargaining on an indemnification agreement, etc…); and
- refusing to provide relevant and necessary information to the collective-bargaining representative.

Further, the Consolidated Complaint alleges that the Corporate Respondents are single and/or joint employers with the named Respondent Hospitals and in light of the extensive history of Respondents' unfair labor practices, seeks a corporate-wide cease and desist remedy against the Corporate Respondents.[4] The Consolidated Complaint prays for a corporate-wide cease-and-desist remedy to be applied on a corporate-wide basis to any and all locations where: (1) entities are single and/or joint employers with CHSI and/or CHSPSC; and (2) where such entities have engaged in conduct that violates the Act.[5] The Consolidated Complaint further names Respondent Quorum Health Corporation (QHC) and Respondent QHHCS, LLC (QHCCS)

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[4] *See* Exhibit B, ¶¶ 4-14.

[5] The Consolidated Complaint states:

> The General Counsel also seeks a broad remedial order applicable to Respondent CHSI, Respondent CHSPSC, Respondent Affinity, Respondent Barstow, Respondent Watsonville, Respondent Greenbrier and Respondent Bluefield, and Respondent Quorum Health Corporation, Respondent QHCCS, as successors to Respondent CHSI, Respondent Affinity, Respondent Barstow and Respondent Watsonville, on a corporate-wide basis, in any and all locations where they are an employer within the meaning of Section 2(2) of the Act, as part of a single integrated enterprise, as joint employers, or otherwise, to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act in the manner alleged, or in any other manner, together with any and all relief as may be just and proper to remedy the unfair labor practices alleged. (Exhibit B, at p. 56).

(collectively, Quorum Respondents) as Golden State successors to the Corporate Respondents, as well as Affinity, Barstow, and Watsonville.[6]

2. Background of Corporate Respondents

CHSI is a publicly-traded holding company. CHSPSC is a wholly-owned subsidiary of CHSI, providing management services by agreement to the various Respondent Hospitals. On April 29, 2016, CHSI established QHC, creating a company which included 38 hospitals, including Affinity, Barstow and Watsonville. Prior to April 29, 2016, the Corporate Respondents were affiliated with all of the named Respondent Hospitals; since that time, the Corporate Respondents remain affiliated with Greenbrier and Bluefield.[7] Since April 29, 2016, QHC's affiliate, QHCCS has replaced CHSPSC in providing management services to "divested Hospitals" (Affinity, Barstow and Watsonville).[8]

3. Litigation and Relevant Motions

To date, at various locations throughout the country, the ALJ has presided over 30 days of hearing focused solely on the substantive allegations against the Respondent Hospitals. It is anticipated that approximately 14 additional hearing days will be required to complete the presentation of evidence on the substantive unfair labor practice allegations. During the course of the proceedings, the ALJ limited the General Counsel from presenting any evidence to support the single and/or joint employer pleading and has permitted the Respondents to eschew the General Counsel's subpoenas seeking documents relevant to the relationships between the Respondent Hospitals and the Corporate Respondents.

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[6] *See* Golden State Bottling Co. v NLRB, 414 U.S. 168, 176 (1973). All of the named Respondent Hospitals in the Consolidated Complaint were at one time subsidiaries and/or affiliated with Respondent CHSI.
[7] *See* Exhibit C: GC Exh. 198, pp.2-3. GC Exh. 213, pp. 2-3; and GC Exh. 215. *See also* Corporate Respondents' Motion for Consent Order and Dismissal, attached as Exhibit D (GC Exh. 1.1.75), at affidavit of Ben Fordham (Exh. 1), ¶¶ 5, 7.
[8] *See* Exhibit E: Tr. 23-24.

Further, on July 19, 2017, the ALJ granted Quorum Respondents' Motion to Sever severing Respondent Quorum and its related entities from the litigation, indicating that the Quorum Respondents' role as successors could be litigated in a subsequent compliance proceeding.[9] On July 31, 2017, the Corporate Respondents filed a Motion for Consent Order and Dismissal, addressing the single and joint employer allegations, which was subsequently withdrawn.[10]

On March 1, 2018, the Corporate Respondents filed a Renewed Motion for Consent Order (Exhibit F), which incorporates by reference its prior Motion for Consent Order.[11] This Renewed Motion for Consent Order largely tracks the consent settlement agreement approved by the Board in UPMC, 365 NLRB No. 153 (Dec. 11, 2017). The Board's decision in UPMC overruled the standard enunciated in United States Postal Service and Branch 256 (USPS), 364 NLRB No. 116 (August 27, 2016) and returned to the "reasonableness" standard as set forth in Independent Stave, 287 NLRB 740, 743 (1987). Under Independent Stave, *supra*, the Board examines the circumstances surrounding the settlement agreement including, but not limited to:

> (1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement;
>
> (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation;
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> (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and,
>
> (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.

[9] *See* ALJ's Order, Exhibit A, at p.5, n.5.
[10] *See* Corporate Respondents' Motion for Consent Order and Dismissal, Exhibit D.
[11] *See* Exhibit F (GC Exh. 1.1.88).

Corporate Respondents' Renewed Motion for Consent Order (Exhibit F), proposed that:

(1) CHSPSC shall be the guarantor of any remedies that the Board may order with respect to the underlying unfair labor practices and shall ensure that the Respondent Hospitals take all steps necessary to comply with the remedies contained in a Board Order, including providing for any such remedies itself, if the Respondent Hospitals fail to do so;

(2) subject to CHSPSC's compliance rights to contest its ability to effectuate non-monetary remedies for divested Hospital Respondents (Affinity, Barstow and Watsonville);

(3) CHSI accepts the terms and has appointed CHSPSC to be its agent with respect to effectuating compliance; and,

(4) the allegations in the complaint that CHSPC and CHSI constitute a single/joint employer with Respondent Hospitals or with another are dismissed.[12]

The General Counsel and Charging Party opposed Respondents' Renewed Motion for Consent Order on the basis that the consent settlement agreement failed to meet the standards enunciated in Independent Stave, *supra*, and was clearly distinguishable from the consent settlement agreement approved in UPMC, *supra*.[13] The Charging Party also filed a request to supplement its Opposition to the Renewed Motion, which was later denied by the ALJ's Order.[14] Respondent Hospitals and the Corporate Respondents filed reply briefs to the General Counsel's and Charging Party's oppositions.[15]

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[12] *See* Exhibit F, at p.3.

[13] *See* General Counsel's March 20, 2018 Memorandum in Opposition to Respondents' Renewed Motion for Consent Order and For Partial Dismissal, attached as Exhibit G (GC Exh. 1.1.91). *See also* Charging Party's March 20, 2018 Opposition to the Renewed and Modified Motion for a Consent Order and Partial Dismissal, attached as Exhibit H (GC Exh. 1.1.90).

[14] *See* Charging Party's Request to Supplement Opposition, attached as Exhibit I, (GC Exh. 1.1.93). *See* ALJ's Order at pp.1-2, n.2.

[15] *See* Respondent Hospital's April 4, 2018 Reply to Oppositions to Renewed and Modified Motion by Respondent CHSPSC and CHSI for Consent Order and Partial Dismissal, attached as Exhibit J (GC Exh. 1.1.95); and CHSPSC and CHSI's April 4, 2018, Reply Memo Supporting Renewed and Modified Motion for Consent Order and for Partial Dismissal, attached as Exhibit K (GC Exh. 1.1.94).

B. The ALJ's Order Granting Renewed Motion for Consent Order and Partial Dismissal.

On April 19, 2018, the ALJ issued his Order granting the Corporate Respondents' Renewed Consent Order Motion finding that the consent settlement agreement comports with the reasonableness standard pursuant to Independent Stave.[16]

While recognizing that both the General Counsel and Charging Party opposed the proposed consent settlement agreement, the ALJ found this factor to be inconclusive. The ALJ found the second "reasonableness" factor favored approval of the proposed agreement because it removed the risks that the CHSI and CHSPSC might wind up with no liability for any unfair labor practices; expedited the resolution of the case by eliminating the need to litigate single/joint employer allegations concerning CHSI, CHSPSC and their relationships to each of the five Respondent Hospitals; and served as a reasonable alternative to the single/joint employer status under the circumstances of the case, particularly given that the complaint contains no allegation that CHSI or CHSPS committed any unfair labor practices. (ALJ's Order, pp. 6-7). In making this determination, the ALJ rejected the General Counsel's argument that the consent settlement agreement was not reasonable because it failed to provide for corporate-wide relief. (ALJ's Order, p.7). The ALJ reasoned that Independent Stave does not require a proposed settlement agreement to provide the full measure of relief, and the Consolidated Complaint does not allege that the Corporate Respondents were directly involved in any unfair labor practice. While the General Counsel and Charging Party have been prepared to present evidence of the Corporate Respondent's direct and corporate-wide involvement in violations of the Act, the ALJ has prevented the presentation of any evidence to support the single and/or joint employer

[16] Exhibit A.

allegations. The ALJ then concluded that the "proposition the General Counsel would actually succeed in demonstrating corporate-wide relief is appropriate" is "highly speculative." (ALJ's Order, p 7). The ALJ noted because "CHSI/CHSPC" are affiliated with over 100 facilities and the Consolidated Complaint only alleges violations at five facilities, the request for corporate-wide relief extends beyond the scope of the Consolidated Complaint allegations. (ALJ's Order, p.7, n. 6).

In consideration of Independent Stave's third factor, the ALJ found that it favored approval because there are no allegations or evidence of any fraud, coercion or duress by the Corporate Respondents in reaching the proposed consent settlement agreement.

Finally, despite evidence of the same or similar unfair labor practices at each of the Respondent Hospitals and a robust history of unlawful activity, the ALJ found that the fourth factor favored approval because there were no prior unfair labor practice findings against the Corporate Respondents concerning the Respondent Hospitals and there was no evidence that either entity had breached previous settlement agreements resolving unfair labor practices.

The ALJ concluded that in weighing the Independent Stave factors, the proposed consent agreement was reasonable:

> In exchange for avoiding the possibility (however likely or remote) of single/joint employer finding and corporate-wide relief, CHSPSC (with the consent and agreement of indirect owner CHSI) has stepped forward to guarantee any relief that the Board may order against Respondent Hospitals, subject to any appropriate compliance proceedings. CHSPSC' s offer to serve as guarantor in that fashion is significant (in terms of the nature of the commitment and the litigation resources that it will save, among other benefits), and also is in the spirit of a similar arrangement that the Board endorsed in its UPMC decision. (ALJ's Order, p. 8).

The ALJ issued the following Consent Order:

ORDER

The Respondent, CHSPSC, LLC shall be the guarantor of any remedies that the Board may order with respect to the underlying unfair labor practice allegations in this case. As the guarantor, Respondent CHSPSC, LLC must ensure that the Respondent Hospitals (Affinity, Barstow, Bluefield, Greenbrier and Watsonville) take all steps necessary to comply with any remedies that may be contained in the Board's Order, including providing for any such remedies itself, if the Respondent Hospitals fail to do so, subject to CHSPSC, LLC's compliance rights to contest its ability to effectuate non-monetary remedies for divested Respondent Hospitals. Respondent Community Health Systems, Inc. has accepted these terms and has appointed CHSPSC, LLC to be its agent with respect to effectuating compliance.

IT IS FURTHER ORDERED that the allegations in the complaint that Respondent CHSPSC, LLC and Respondent Community Health Systems, Inc. constitute a single/joint employer with Respondent Hospitals or with one another are dismissed. Likewise, the General Counsel's request in the complaint for corporate-wide relief applicable to CHSI and/or CHSPSC is hereby denied in light of the consent settlement agreement concerning those parties. Under the circumstances, it would not effectuate the policies of the Act to continue to litigate and reach a decision regarding the single/joint employer allegations or the request for corporate-wide relief concerning CHSI and CHSPSC. CHSI and CHSPSC shall remain in the case as parties for the purpose of ensuring enforcement of CHSPSC's guarantee of the remedies, if any, ultimately ordered against Respondent Hospitals. (ALJ's Order, at p. 8).

C. Related Consolidated Action in Cases 08-CA-117890, et al. (CHS I)

In the ALJ's Order, the ALJ notes the instant Consolidated Action follows on the heels of another consolidated action against the same Respondent Hospitals and the Corporate Respondents in DHSC, LLC d/b/a Affinity Medical Center, Cases 08-CA-117890, et al. (referenced herein as CHS I), pending before Administrative Law Judge Eleanor Laws. The litigation in CHS I commenced on February 29, 2016 and has been litigated contemporaneously with the instant litigation. On May 24, 2018, after 54 hearing days, ALJ Laws closed the record on the substantive allegations in CHS I.

The CHS I Complaint alleges numerous 8(a)(1), (3) and (5) violations against the same Respondent Hospitals, and one additional Respondent Hospital (Fallbrook Hospital Corporation

d/b/a Fallbrook Hospital).[17] As with the instant Consolidated Action, the CHS I Complaint also alleges that the Corporate Respondents are single and/or joint employers with the named Hospitals. Likewise, the CHS I Complaint prays for the same corporate-wide cease-and-desist remedy as the instant Consolidated Action, to be applied where: (1) entities are single and/or joint employers with CHSI and/or CHSPSC; and (2) where such entities have engaged in conduct that violates the Act. Further, the CHS I Complaint alleges that Respondent CHSPSC violated Section 8(a)(1) and (5) of the Act, by directly participating in the failure to give the Union prior notice and an opportunity to bargain over the unilateral imposition of work rules, the unilateral implementation of electronic records systems and the unilateral discontinuation of merit wage increases at Affinity.[18]

On May 9, 2017, ALJ Laws granted a motion to bifurcate and sever the single and joint employer allegations in CHS I, but held a hearing on direct participation allegations. On April 9, 2018, Judge Laws deferred ruling on Corporate Respondents' motion for consent settlement agreement on the single/joint employer allegations until after her adjudication of the substantive merits.[19]

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[17] The CHS I Complaint (Exhibit L) alleges numerous Section 8(a)(1), (3), and (5) violations occurring at the Respondent Hospitals, including, but not limited to: maintaining unlawful work rules that infringe on employees' Section 7 rights; making coercive statements and other coercive conduct; denying employees' requests to be represented by union representatives; prohibiting employees from engaging in distribution; unlawfully observing employees' union activities; threatening employees for engaging in union activity; disciplining employees for protected concerted and union activities; denying access to off duty employees; implementing unilateral changes and revising work rules without giving notice to and bargaining with the respective exclusive collective bargaining representatives; failing and refusing to bargain over discipline and terminations; failing and refusing to bargain in good faith with exclusive collective-bargaining representatives at multiple facilities; failing and refusing to provide necessary and relevant information to collective-bargaining representatives at multiple facilities; and engaging in surface bargaining. Through the course of litigation, ALJ Laws granted numerous amendments to the CHS I Complaint, none of which amended the single/joint employer allegations or prayer for corporate-wide relief.

[18] *See* Exhibit L, ¶¶73(A), (C); ¶¶79(B),(D),(F),(G); ¶¶ 80(A),(D).

[19] *See* Exhibit A, ALJ's Order at p.3, n.3; *see also* ALJ Laws' Order Regarding Renewed Motion for Consent Order on Single/Joint Employer Allegations, attached as Exhibit M.

II. ARGUMENT:

The ALJ abused his discretion by finding that the consent settlement agreement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation and the stage of litigation.

A. Legal standard and applicable analysis under UPMC, 365 NLRB No. 153, *slip op.* (Dec. 11, 2017)

The Board applies an abuse of discretion standard in examining requests for special permission to appeal, including the adoption of settlement agreements.[20] *See* Children's Law Center of Los Angeles, 21-CA-165280, 2016 WL 6441583 (October 25, 2016).

With regard to the ALJ's Order, the ALJ abused his discretion in finding that the consent settlement is reasonable in light of the nature of the violations alleged, because not all of the corporate entities, including the alleged single/joint employers, are responsible for any remedies ordered, and it does not provide for the necessary and appropriate corporate-wide remedy prayed for in the Complaint. The ALJ further abused his discretion by finding the consent settlement agreement was reasonable in light of the risks inherent in litigation and the stage of litigation where the parties are still adducing evidence relevant to the corporate-wide remedy, where the consent settlement agreement does not fully ensure the Corporate Respondents bear responsibility, and where the Order potentially impacts the related litigation in CHS I.

[20] *See* DHSC, LLC d/b/a Affinity Medical Center, 364 NLRB No. 67, *slip op* at 2 (August 10, 2016) (granting General Counsel's request for special permission to appeal, finding judge's rejection of amendment was an abuse of discretion). *See* McDonald's USA, LLC, 363 NLRB No. 92 (January 8, 2016) (granting respondents request for special permission to appeal case management order, but denying appeals on the merits under an abuse of discretion standard). *See also* Pacific 9 Transportation, Inc., 21-CA-116403, 2015 WL 3643583 (June 11, 2015) (granting General Counsel's request for special permission to appeal and granting the appeal of judge's ruling requiring General Counsel disclose to respondent prior to hearing identity of witnesses, and applying an abuse of discretion standard). *See* Consumers Distributing Co., 274 NLRB 346 (1985) (treating charging party's request and review of exceptions as an interim appeal under Section 102.26 of the Board's Rules and Regulation [concerning General Counsel's post-hearing motion for permission to withdraw complaint]; Board denied the appeal on the basis that the judge did not act arbitrarily or capriciously or otherwise abuse his discretion in granting General Counsel's motion). *See also* Pueblo Sheet Metal Workers, Inc., 292 NLRB 855, and 855 at n.3 (1989) (applying abuse of discretion standard and denying permission to appeal judge's granting of motion for withdrawal of complaint).

The instant case is clearly distinguishable from the consent settlement agreement approved by the Board in UPMC. In that case, the Board found the consent settlement agreement to be reasonable for several reasons. First, it concluded that remedial guarantee was as effective as a finding of single-employer, inasmuch as UPMC was responsible for guaranteeing any remedy ordered. Second, the corporate parent's remedial guarantee was reasonable in light of the circumstances that UPMC's subsidiary, Presbyterian Shadyside, was the alleged wrongdoer, noting there was no allegation that the corporate parent, as a separate entity, committed any unfair labor practices. Third, UPMC's remedial guarantee was reasonable in light of the risks inherent in litigating the issue of single employer status, and that rejecting the offer risked that the corporate parent would not face any liability for the unfair labor practices. The Board found that the consent settlement agreement ensured that the corporate parent was responsible for the performance of any Board-ordered remedies. Finally, the Board found that the consent settlement agreement was reasonable at that stage in litigation particularly as there was ongoing subpoena enforcement litigation significantly delaying the adjudication of the single employer allegation.

B. The ALJ abused his discretion by granting the Consent Settlement Agreement which is not reasonable in light of the nature of the alleged violations and because it fails to hold all of the corporate entities accountable for any remedies ordered.

Unlike UPMC, the instant consent settlement agreement is not reasonable in light of the nature of the alleged violations because the agreement is ineffective as a finding of single and/or joint employer status against the Corporate Respondents. In this case the consent settlement agreement allows Respondent CHSPSC to contest its role as guarantor for certain remedies; Respondent CHSI bears no responsibility to remedy any of the unfair labor practices; and, the

consent settlement agreement deprives the General Counsel from seeking compliance from the Quorum Respondents because they are not parties to the agreement.

1. The consent settlement agreement fails to fully provide a guarantee for the non-economic remedies for three Respondent Hospitals.

The ALJ's Order provides for no guarantee to remedy the unfair labor practice allegations at three of the five Respondent Hospitals in the Consolidated Action: Affinity, Barstow and Watsonville. The ALJ's Order does not provide the same type of guarantee as in UPMC, because CHSPSC retains the right to contest its role as guarantor for all of the non-monetary remedies against Affinity, Barstow and Watsonville, which since April 29, 2016, have been owned and operated by the Quorum Respondents. In the event that CHSPSC contests its ability to effectuate non-monetary remedies at particular Respondent Hospitals, the General Counsel has no ability to seek compliance directly from CHSI or the Quorum Respondents, who have no obligations under the Consent Order. Under the Consent Order, CHSPSC can contest its ability to effectuate non-monetary remedies for the Respondent Hospitals now operated under the Quorum umbrella. CHSPSC could be free of any liability with regard to the unfair labor practices committed at Affinity, Barstow and Watsonville.[21] While noting that CHSPSC's guarantee is subject to compliance proceedings, the ALJ does not squarely address that CHSPSC's guarantee may well be worthless as it relates to Affinity, Barstow and Watsonville. Such limiting language contained is not as effective as a finding of either single or joint employer.

2. CHSI is not held accountable for the performance of any Board-ordered remedies and the General Counsel is unable to seek compliance against CHSI.

[21] The language at issue is: "subject to CHSPSC, LLC's compliance rights to contest its ability to effectuate non-monetary remedies for divested Respondent Hospitals." *See* ALJ's Order, p. 9 (Exhibit A).

Further, the consent settlement agreement does not provide the same type of guarantee as in UPMC, because CHSI bears no responsibility to remedy any of the unfair labor practices or to execute any of the ordered remedies. Unlike UPMC, where the corporate parent was responsible for the performance of any Board-ordered remedy, CHSI, an alleged single and/or joint employer, will not be held accountable for the unfair labor practices alleged. As a result, the General Counsel has no ability to seek compliance against CHSI pursuant to the ALJ's Order.

The consent order states: "Community Health Systems, Inc. accepts these terms and has appointed CHSPSC, LLC to be its agent with respect to effectuating compliance." The ALJ notes that this is adequate particularly given that CHSPSC is a wholly-owned subsidiary of CHSI. (ALJ's Order, p. 6). However, the ALJ's Order, does not provide for CHSI to be the guarantor of any remedies that the Board may order, and it specifically does not state that CHSI must ensure that the Respondent Hospitals take all steps necessary to comply with Board-ordered remedies. While the consent settlement agreement states CHSI has accepted the "terms," nothing in the agreement binds CHSI. As alleged in the Consolidated Complaint, Respondent CHSI and Respondent CHSPSC are both single and/or joint employers with the Respondent Hospitals. The consent settlement agreement is deficient and unreasonable as it lets Respondent CHSI off the hook with no obligation to remedy anything.

3. General Counsel has no ability to seek enforcement against the Quorum Respondents.

Further, the ALJ's Order is unreasonable because General Counsel has no ability to seek compliance from the Quorum Respondents. Since April 2016, CHSI re-distributed its hospitals and moved Affinity, Barstow and Watsonville from CHSI's wholly-owned subsidiary Respondent CHSPSC to Respondents QHC and QHCCS. There is no guarantee by the Quorum Respondents in the consent settlement agreement. As discussed above, CHSPSC has the right

under the Order to contest its guarantee to remedy the unfair labor practices. In the event that CHSPSC successfully contests its ability to remedy the unlawful conduct at Affinity, Barstow and Watsonville, the General Counsel has no claim against the Quorum Respondents as successors to the Corporate Respondents and the Respondent Hospitals.

In UPMC, the relationship between the corporate parent and the subsidiary was undisputed. In contrast, the Corporate Respondents deny any single and/or joint employer relationships with the Respondent Hospitals. The General Counsel has been prohibited from adducing such evidence into the record and the collective Respondents have been permitted to skirt the General Counsel's trial subpoenas for documents proving these relationships. In UPMC, the parent UPMC and the subsidiary Shadyside stipulated to their relationship resulting in the Board's finding that the consent agreement in that case was reasonable as the stipulation itself was as effective as a single employer finding. Here, there is no stipulation establishing the relationships between and among the Respondent Hospitals, CHSPSC, CHSI, and the Quorum Respondents. Identifying CHSPSC as a guarantor, which itself is contestable, with no provision for liability or even a guarantee from CHSI or the Quorum Respondents is not as effective as a single and/or joint employer finding.

C. The consent settlement agreement is not reasonable in light of the nature of the alleged violations because it does not include the necessary and appropriate corporate-wide remedy and the General Counsel has not been afforded the opportunity to adduce evidence to support that remedy.

The ALJ's adoption of the consent settlement agreement is not reasonable in light of the nature of the alleged violations because the Order fails to include an appropriate and necessary corporate-wide remedy. Unlike in UPMC, the General Counsel seeks a corporate-wide cease and desist remedy based on, inter alia, the history of unfair labor practices at the Respondent

Hospitals and the similarity of the violations at each of the Respondent Hospitals.[22] The ALJ abused his discretion, by prematurely concluding that the General Counsel would likely not succeed in justifying the appropriateness of corporate-wide relief without even allowing the General Counsel to present such evidence into the record. In evaluating whether a corporate-wide remedy is warranted, the Board examines: whether there is evidence of a centralized source of the unlawful activity;[23] whether there is a clear pattern or practice of unlawful conduct;[24] and, whether there is a finding that the unlawful conduct impacts employees at other facilities.[25] Corporate-wide remedies have been ordered when the evidence supports that the unfair labor practices stem from a corporate-wide labor policy. *See* NLRB v. S.E. Nichols, Inc., 862 F.2d 952, 961 (2nd Cir. 1988).

The General Counsel has not been allowed to present evidence of the Corporate Repsondent's centralized control over labor relations and centralized management at the Respondent Hospitals. The General Counsel has evidence to support that CHSPSC directed the Respondent Hospitals to make similar, if not the same unlawful package proposal to the Union at the bargaining table, as well as evidence that the direction to make changes to employees' benefit plans at the Respondent Hospitals came from the Corporate Respondents.

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[22] *See* UPMC, 365 NLRB No. 153 *slip op.* at 11 and 26.

[23] *See, e.g.,* Tradesman Int'l Inc., 351 NLRB 399, 340-341(2007) (The Board found that a nationwide notice posting remedy was warranted because respondent, which had a history of unlawful conduct, set a corporate-wide tone encouraging its field offices to engage in unlawful activity.)

[24] *See* Miller Group, 310 NLRB 1235, 1235 n. 4 (1993) (The Board concluded that notices should have been posted at more than one facility, due to the recidivist nature of unfair labor practices, where there is a "clear pattern or practice of unlawful conduct," *citing* John J. Hudson, Inc., 275 NLRB 874 n.2 (1984)). *See also* J.P. Stevens & Co., 240 NLRB 33 (1979), *enf'd*, 612 F.2d 881 (4th Cir.), *cert. denied*, 449 U.S. 918 (1980) (the Board ordered a corporate-wide remedy against the respondent and its wholly-owned subsidiaries; the Board found similar violations throughout the respondent's corporate structure and found the entity to be a single employer given the evidence of control over labor relations).

[25] *See*, Overnite Transportation Co., 329 NLRB 990 (1999) (order requiring that the employer post at all its service centers a notice employees remedying unfair labor practices which the Board found had impacted employees on a nation-wide basis).

The General Counsel has evidence to support that there is a clear pattern and practice of unlawful conduct across the corporate structure. The striking similarities in the unlawful conduct at the Respondent Hospitals demonstrate the Corporate Respondents' control. The General Counsel has evidence to show that the Respondent Hospitals maintain and enforce nearly identical overbroad rules and codes of conduct; the identical unilateral changes to work rules and other terms and conditions of employment; the same refusals to bargain over discipline and terminations at the different facilities; the same failure to provide information about bargaining unit employees' disciplines and terminations; and, the same refusal to bargain in good faith.

In discussing the applicability of a corporate-wide remedy, the ALJ notes while there is only one unlawfully maintained work rule at Barstow, the work rule in-question is specific to the CHSI "Compliance Disclosure Upon Separation" policy, which, by its terms, references the corporate or "CHS" Compliance Program and CHS Code of Conduct.[26] (Order, at p.7, n.7). Therefore, the maintenance of that work rule is related to a corporate policy. General Counsel has not been afforded an opportunity to present evidence related to the implementation of this work rule at other CHSI-affiliated Respondent Hospitals.

The unfair labor practice history of Respondent Hospitals reflects a continued and persistent defiance of the Act, more pervasive than that of the entities in UPMC.[27] This

[26] *See* Exhibit B, ¶ 19.

[27] Multiple Board and Federal Court Orders, including in some cases, Section 10(j) temporary injunctions, have issued against Respondents Affinity and Barstow These hospitals are currently alleged to be single and/or joint employers with Respondents CHSPSC and CHSI. The prior Board decisions demonstrate a pervasive pattern of violations of Section 8(a)(1), (3), and (5) of the Act. *See*, e.g., Affinity Medical Center, 362 NLRB No. 78 (2015); Barstow Community Hospital, 361 NLRB No. 34 (2014). *See also* Fallbrook Hospital, 360 NLRB No. 73 (2014), which is a case involving a Respondent Hospital in the Consolidated Action in CHS I. On January 22, 2014, the General Counsel obtained a Section 10(j) injunction against Respondent Affinity in the District Court for the Northern District of Ohio, which ordered, among other things, that Respondent Affinity recognize and bargain in good faith with the Union. *See* Calatrello v. DHSC, LLC d/b/a Affinity Medical Center, 2014 WL 296634 (N.D. Ohio Jan. 24, 2014) (Adams, J.) (order granting injunctive relief). On August 2, 2013, the General Counsel obtained a Section 10(j) injunction against Respondent Barstow in Cases 31-CA-090049 and 31-CA-096140 from the United States District Court for the Central District of California. *See* Rubin v Hospital of Barstow, Inc., d/b/a/ Barstow Community Hospital, No. 5:15-CV-00933-CAS (DTBx) (Aug. 2, 2013).

recidivist history should also be evaluated as part of the surrounding circumstances militating against approval of the reasonableness of the instant consent settlement agreement.

A corporate-wide order against the Corporate Respondents would stem the tide of unfair labor practice conduct by Respondent Hospitals. There is a strong likelihood of remedial failure based on Respondent Hospitals' propensity to commit unfair labor practices, their flagrant violations and their disregard of past Board and Court Orders. A corporate-wide order would address this concern. The Board has the authority to order a corporate-wide remedy that is proportionate to the violations and warranted in the context of the Respondents' predilection to violate the Act. HTH Corp., 361 NLRB 709, 710-711 (2014). A corporate-wide order is appropriate and essential based on the pervasive pattern of unlawful conduct, given that as a single or joint employer entity, Respondent Hospitals, along with the Corporate Respondents, have a propensity for continued violations.

The Section 10(j) injunctions secured against Respondent Affinity and against Respondent Barstow demonstrate the immediate and deleterious impact of the unfair labor practice conduct on unit employees. The District Court for the Northern District of Ohio issued a temporary injunction against Affinity, based on its refusal and failure to provide information requested by the NNOC about the announced corporate spinoff involving the Quorum Respondents, and the unilateral changes related to employees' benefits and long-term care insurance. This unlawful conduct is also alleged to have occurred at Barstow and at Watsonville.[28] *See* Binstock v. DHSC, LLC d/b/a Affinity Medical Center, 5:16-CB-01060-BYP,

[28] For the allegations related to Respondent Hospitals failure and/or unreasonable delay in providing information related to the request for information concerning the QHC corporate spinoff, *see* Exhibit B, ¶ 30 (Affinity); ¶ 34 (Barstow); ¶ 36 (Watsonville)]; for the allegations related to the unilateral implementation and offering of an employee discount program, QHC Benefits Plus [Exhibit B, ¶ 29(B) (Affinity), ¶ 31(B (Barstow),¶ 35(A) (Watsonville)]; long term care insurance to employees in the Unit [Exhibit D, ¶ 29(B) (Affinity);]; and transferring employees into new 401(k) plans resulting in black out period in which employees are unable to make changes to investment options [Exhibit B, ¶29(C) (Affinity); ¶ 31(C)(Barstow)].

(N.D. Ohio Sept.5, 2017) (Pearson, B.). On August 29, 2016, the United States District Court for the Central District of California granted a Section 10(j) injunction at Barstow, in part, based on the same unlawful conduct. *See* Rubin v. Hospital of Barstow, Inc., No. EDCV 16-1600, 2016 WL 4547152 (C.D. Cal. August 29, 2016).

The ALJ rejects the appropriateness of corporate-wide relief because there are no allegations that the Corporate Respondents directly participated in the unfair labor practices. The General Counsel has evidence to show that the Corporate Respondents have directly participated in unlawful activity at the Respondent Hospitals. While the direct participation allegations are plead in the Complaint in the related CHS litigation, that is of no moment and does not render the evidence irrelevant in demonstrating that corporate-wide relief is warranted and justified.

A corporate-wide remedy would re-assure employees employed at a hospital found to be a single or joint employer with the Corporate Respondents that where there is similar conduct, such conduct has been remedied and will not be tolerated. Even if a corporate-wide remedy proves inappropriate, other remedies, such as a limited expansion beyond the actual location where unfair labor practices occurred, should be considered. The ALJ's adoption of the consent settlement agreement precludes from consideration such a remedy. Accordingly, the consent settlement agreement is not reasonable in light of the nature of the violations alleged because it does not include the corporate-wide remedy.

D. The ALJ's Order is not reasonable considering the risks inherent in litigation and the stage of litigation.

1. The consent settlement agreement does not completely eliminate the risk of liability, and the parties are still adducing evidence relevant to the need for corporate-wide relief.

In UPMC, the Board found that the corporate guarantee to remedy the unfair labor practices were reasonable in light of risks inherent in litigating the single employer allegations.

The Board concluded that to reject the consent settlement agreement, in which UPMC fully guaranteed the remedies, could result in absolving UPMC of any liability for Shadyside's unfair labor practices in the event the General Counsel was unsuccessful in his litigation of the single employer allegation.[29] As discussed above, the consent settlement agreement does not remove the risk that CHSI and CHSPSC might wind up with no liability. (ALJ's Order, p. 6). CHSI and the Quorum Respondents have no liability under the consent settlement agreement. Moreover, CHSPSC could be unburdened from having any liability related to non-economic remedies at Affinity, Barstow and Watsonville. The General Counsel takes no risk by litigating the single and/or joint employer allegations as the consent settlement agreement provides for nothing more than what would be ordered if the Consolidated Complaint contained no single and/or joint employer pleadings.

The ALJ prematurely adopted the consent settlement agreement where evidence yet to be presented could impact the need for corporate-wide relief. The General Counsel has not had the opportunity to present its entire case involving unfair labor practices at the Respondent Hospitals. Evidence adduced at those hearings may bolster the need for corporate-wide relief. Accordingly, the ALJ's adopted Order is not reasonable considering all the circumstances.

2. The ALJ's Order improperly impacts the General Counsel's litigation in the related Consolidated Action.

By adopting the consent settlement agreement, the ALJ's Order unreasonably impacts the litigation of any single/joint employer allegations in the related consolidated action. There are unlitigated and unremedied single/joint employer allegations against the Corporate Respondents

[29] UPMC *supra*, *slip op*. at 9.

in the related litigation. To dismiss those allegations in the instant matter clearly impacts the litigation of the same allegations in CHS I.

III. CONCLUSION

The ALJ's Order constitutes an abuse of discretion inasmuch as the adoption of the consent settlement agreement is not reasonable in light of the nature of the violations alleged because CHSPSC, CHSI and Quorum Respondents are not held responsible for any and all remedies ordered. Thus, the consent settlement agreement does not amount to a remedial guarantee as effective as a single/joint employer finding. In addition, the ALJ's Order is not reasonable because it does not include the necessary and appropriate corporate-wide remedy, which General Counsel has not yet had an opportunity to adduce evidence. Finally, the ALJ's Order is not reasonable considering the risks inherent in litigation and the stage of litigation, where the consent settlement agreement does not fully eliminate the risks of failing to find liability against Corporate Respondents, and where such an Order impacts litigation in a related consolidated action. Overall, the ALJ's Order does not effectuate the purposes and policies of the Act.

For the reasons stated above, the General Counsel respectfully requests that the Board grant its request for special permission to file this appeal, and reverse the ALJ's Order Granting Renewed Motion for Consent Order and Partial Dismissal.

DATED at Cleveland, Ohio this 18th day of July 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, was filed electronically with the National Labor Relations Board and served by electronic mail, as designated below, on the 18th day of July, 2018 on the Administrative Law Judge and on the following parties:

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DATED at Cleveland, Ohio this 18th day of July, 2018

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EXHIBIT A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DHSC, LLC, d/b/a AFFINITY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., HOSPITAL OF BARSTOW, INC., d/b/a BARSTOW COMMUNITY HOSPITAL, WATSONVILLE HOSPITAL CORPORATION d/b/a WATSONVILLE COMMUNITY HOSPITAL, and/or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and/or joint employers and QUORUM HEALTH CORPORATION and QHCCS, LLC, successor employers, et al.	
and	**Cases 08-CA-167313, et al.**[1]
NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), CALIFORNIA NURSES ASSOCIATION/NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC) and CALIFORNIA NURSES ASSOCIATION (CNA), NATIONAL NURSES UNITED, et al.	

ORDER GRANTING RENEWED MOTION FOR CONSENT ORDER AND PARTIAL DISMISSAL

On March 1, 2018, Respondents Community Health Systems Professional Services Corporation, LLC (CHSPSC) and Community Health Systems, Inc. (CHSI) filed a renewed and modified motion for consent order and partial dismissal of the single/joint employer allegations against them in this case. CHSPSC and CSHI rely, in part, on the arguments and information that they presented in a July 31, 2017 motion for consent order (withdrawn on January 8, 2018), and also rely, in part, on the Board's decision in *UPMC*, 365 NLRB No. 153 (2017). The General Counsel and Charging Party filed briefs opposing the motion on March 20, 2018, and CHSI, CHSPSC and Respondent Hospitals filed reply briefs on April 4, 2018.[2]

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[1] The following cases are covered by this order: Cases 08-CA-167313; 10-CA-168085, 10-CA-153544, 10-CA-174418, 10-CA-177532, 10-CA-167330, 10-CA-150997, 10-CA-153336; 31-CA-167522, 31-CA-174673 and 31-CA-189833.

[2] On April 2, 2018, the Charging Party filed a request to supplement its opposition to CHSI/CHSPSC's motion, asserting that it wished to address evidence from recent trial proceedings (from March 25-29, 2018) that the Charging Party believes demonstrates that CHSI and CHSPSC directly committed unfair

Background

Overview of Complaint Allegations

The third consolidated complaint in this case includes various allegations against the following five hospitals, collectively referred to as Respondent Hospitals: Affinity Medical Center (Affinity); Barstow Community Hospital (Barstow); Bluefield Regional Medical Center (Bluefield); Greenbrier Valley Medical Center (Greenbrier); and Watsonville Community Hospital. Generally speaking, the complaint alleges that Respondent Hospitals engaged in the following types of unfair labor practices:

> Affinity: unilaterally changing employee working conditions without notifying the Charging Party and affording an opportunity to bargain about the change and/or its effects; and failing and refusing to provide information requested by the Charging Party;
>
> Barstow: maintaining an unlawful work rule requiring employees to sign a "Compliance Disclosure Upon Separation" form; unilaterally changing employee working conditions without notifying the Charging Party and affording an opportunity to bargain about the change and/or its effects; refusing to bargain with the Charging Party after imposing discipline; and failing and refusing to provide, or unreasonably delaying in providing, information requested by the Charging Party;
>
> Bluefield: making unlawful statements to employees; unlawfully disciplining and/or discharging employees; subcontracting bargaining unit work in the anesthesia department; unilaterally changing employee working conditions without notifying the Charging Party and affording an opportunity to bargain about the change and/or its effects; refusing to bargain with the Charging Party after disciplining an employee; failing and refusing to provide, or unreasonably delaying in providing, information requested by the Charging Party; conditioning providing information requested by the Charging Party on the Charging Party executing an indemnification agreement; and failing and refusing to bargain in good faith for a period of time in 2015;
>
> Greenbrier: making unlawful statements to employees; bypassing the Charging Party and dealing directly with bargaining unit employees about working conditions; unilaterally changing employee working conditions without notifying the Charging Party and affording an opportunity to bargain about the change and/or its effects; refusing to bargain with the Charging Party after disciplining and discharging an employee; failing and refusing to provide information requested by the Charging Party; conditioning bargaining and providing information requested by the Charging Party on the Charging Party executing an

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labor practices. I hereby deny the Charging Party's request to supplement its opposition brief – the renewed motion for consent order has been fully briefed by all parties and is ready for me to decide.

indemnification agreement; and failing and refusing to bargain in good faith for a period of time in 2015;

Watsonville: unilaterally changing employee working conditions without notifying the Charging Party and affording an opportunity to bargain about the change and/or its effects; and failing and refusing to provide, or unreasonably delaying in providing, information requested by the Charging Party.

Regarding CHSI and CHSPSC, the complaint alleges that they each are single and/or joint employers with each other and with each of the Respondent Hospitals. There are no complaint allegations in this case that CHSI or CHSPSC directly committed any unfair labor practices. The General Counsel did, however, request a broad remedial order applicable to CHSI and CHSPSC (among other Respondents) on a corporate-wide basis.

Summary of Litigation

We began trial in this case on March 27, 2017, and thus far have completed 27 days of trial proceedings devoted to addressing the complaint allegations at each of the Respondent Hospitals. I would estimate that we will need a minimum of 14 additional trial days (and probably more than that) to finish presenting all evidence concerning those complaint allegations, including 2 days for Barstow (scheduled for May 3-4, 2018), 5 days for Bluefield (2 days scheduled for June 12-13 and an additional 3 days tentatively scheduled for August 7-9, 2018), and 7 days for Greenbrier (two days scheduled for August 1-2, 2018 (to complete the General Counsel's case in chief for that location), and an estimated 5 additional trial days to be scheduled for Greenbrier's presentation).

Notably, we have not yet devoted any trial time to litigating whether CHSI or CHSPSC are single/joint employers with each other or with any of the Respondent Hospitals.[3] Similarly, the parties have tabled, or temporarily refrained from issuing, any subpoena requests for information related to the single/joint employer complaint allegations.

Applicable Legal Standard – Consent Settlement Agreements

In *UPMC*, the General Counsel alleged that respondent UPMC was a single employer with Presbyterian Shadyside, one of UPMC's subsidiaries. To resolve the single employer allegation against it (via proposed partial dismissal), respondent UPMC offered to guarantee any remedy that the Board ultimately ordered against Presbyterian Shadyside for alleged unfair labor practices. The administrative law judge (ALJ)

[3] This case follows on the heels of "CHS 1," 08-CA-117900, et al., a case pending before Judge Eleanor Laws that, for the most part, involves the same parties. In CHS 1, Judge Laws granted a motion to sever the single/joint employer allegations from the case, thereby focusing the first stage of litigation on the complaint allegations against the individual hospitals. By contrast, in this case I have not severed the single/joint employer allegations. The single/joint employer allegations therefore remain part of this case and may be resolved by the proposed consent settlement agreement.

accepted UPMC's offer as a consent settlement agreement, and the Board upheld the ALJ's decision. See *UPMC*, 365 NLRB No. 153, slip op. at 1 (2017).

In upholding the ALJ's decision to accept the consent settlement agreement, the Board in *UPMC* announced that it was returning to the practice of analyzing all settlement agreements, including consent settlement agreements[4] proffered by a respondent, under the reasonableness standard set forth in *Independent Stave*, 287 NLRB 740 (1987). The *Independent Stave* standard requires the judge to examine all the surrounding circumstances to determine whether a proposed consent settlement agreement is reasonable, including considering the following factors:

> (1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement;
>
> (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of litigation;
>
> (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and
>
> (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.

UPMC, 365 NLRB No. 153, slip op. at 7 (quoting *Independent Stave*).

<u>CHSI's and CHSPSC's Proposed Consent Settlement Agreement</u>

Relying on the Board's decision in *UPMC*, Respondents CHSI and CHSPSC have offered to resolve the single/joint employer allegations against them in this case by proposing the following consent settlement agreement:

> ORDER
> The Respondent, CHSPSC, LLC shall be the guarantor of any remedies that the Board may order with respect to the underlying unfair labor practice allegations in this case. As the guarantor, Respondent CHSPSC, LLC must ensure that the Hospital Respondents take all steps necessary to comply with any remedies that may be contained in the Board's Order, including providing for any such remedies itself, if the Hospital Respondents fail to do so, subject to CHSPSC, LLC's compliance rights to contest its ability to effectuate non-monetary

[4] The Board used the term "consent settlement agreement" to refer to settlement terms that the respondent has agreed to but the General Counsel and charging party have not. I will use the Board's terminology, which is synonymous with "consent order" or "unilateral settlement by consent order." See *UPMC*, 365 NLRB No. 153, slip op. at 1, fn. 2.

> remedies for divested Hospital Respondents.[5] Community Health Systems, Inc., accepts these terms and has appointed CHSPSC, LLC to be its agent with respect to effectuating compliance.
>
> IT IS FURTHER ORDERED that the allegations in the complaint that Respondent CHSPSC, LLC and Respondent Community Health Systems, Inc. constitute a single/joint employer with the Hospital Respondents or with one another are dismissed as, under the circumstances, it would not effectuate the policies of the Act to continue to litigate and reach a decision regarding these allegations.

Renewed Motion for Consent Order and Partial Dismissal, page 3.

It is important to note that all parties agree that the proposed consent settlement agreement does not provide for or permit any corporate-wide relief against CHSI and CHSPSC. The General Counsel and the Charging Party maintain that the omission of corporate-wide relief is unreasonable and provides grounds for rejecting the proposed consent settlement agreement. (See GC Opposition at 2.) By contrast, CHSPSC, CHSI and Respondent Hospitals maintain that the proposed consent settlement agreement is reasonable, notwithstanding the omission of corporate-wide relief. I will address this issue below when I consider factor two of the *Independent Stave* standard.

Discussion and Analysis – Is CHSI's and CHSPSC's Proposed Consent Settlement Agreement Reasonable under *Independent Stave*?

Independent Stave Factor One

In this case, CHSI and CHSPSC have agreed to be bound by the proposed consent settlement agreement, with CHSPSC agreeing to be the guarantor of any remedies that the Board may order, and CHSI accepting the terms of the consent settlement agreement and designating CHSPSC as its agent regarding effectuating compliance. The General Counsel and Charging Party oppose resolving the single/joint employer allegations via the proposed consent settlement agreement, and there is no evidence that either the Charging Party or any of the individual alleged discriminatees have agreed to be bound by the proposed consent settlement agreement. (See General Counsel Opposition at 1; Charging Party Opposition at 3.)

Consistent with the Board's analysis in *UPMC*, I find that the first *Independent Stave* factor is inconclusive. While the General Counsel's and Charging Party's opposition to

[5] The complaint alleges that, on or about April 29, 2016, CHSI and CHSPSC spun off 38 hospitals to Quorum Health Corporation (QHC), including Respondents Affinity Medical Center, Barstow Community Hospital and Watsonville Community Hospital. The complaint also alleges that QHC and QHCCS are successors to CHSI and CHSPSC at those facilities. On July 19, 2017, I granted a motion to sever QHC and QHCCS from this phase of the case, since their status as alleged successors under *Golden State Bottling Co., Inc. v. NLRB*, 414 U.S. 168 (1973) can be litigated in any compliance proceedings that follow the liability phase of this case.

the proposed consent settlement agreement are important considerations weighing against approval, their opposition is not decisive or determinative under *Independent Stave*. See *UPMC*, 365 NLRB No. 153, slip op. at 7 (finding that the General Counsel's and charging party's opposition to a proposed consent settlement agreement was not conclusive under the first factor of *Independent Stave*).

Independent Stave Factor Two

In *UPMC*, the Board found that *Independent Stave* factor two favored approving the proposed consent settlement agreement because the agreement was reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation. Specifically, the Board agreed with the ALJ that UPMC's remedial guarantee: (1) was as effective as a finding of single-employer status, because under the agreement, UPMC would be responsible for any remedy alongside its subsidiary, Presbyterian Shadyside, just as UPMC would be if the ALJ made a finding of single-employer status; (2) was reasonable in light of the circumstance that Presbyterian Shadyside, not UPMC, was the alleged wrongdoer, as indicated by the fact that the General Counsel had not alleged that UPMC violated the Act in any way, and the fact that no evidence from the hearing demonstrated that UPMC independently committed a single unfair labor practice; (3) removed the risk that UPMC might wind up with no liability for Presbyterian Shadyside's unfair labor practices if UPMC was not found to be a single employer; and (4) greatly expedited the resolution of the case by eliminating the delay and uncertainty that would result if the parties litigated the single-employer allegation to a final resolution. *UPMC*, 365 NLRB No. 153, slip op. at 8-9.

Much of the Board's analysis of the settlement agreement in *UPMC* directly applies to the proposed consent settlement agreement at issue here. I find that CHSI and CHSPSC's proposed settlement agreement clearly removes the risk that those entities might wind up with no liability for any unfair labor practices that Respondent Hospitals may have committed. Similarly, I find that the proposed agreement clearly would expedite the resolution of this case by eliminating the need to litigate the single/joint employer allegations concerning CHSI, CHSPSC and their relationships to each of the five Respondent Hospitals. I also find, contrary to the objections raised by the General Counsel and the Charging Party, that CHSI and CHSPSC's proposed remedial guarantee will serve as a reasonable alternative to a finding of single/joint employer status, and that the proposed remedial guarantee is reasonable under the circumstances of this case (including the lack of any complaint allegations that CHSI or CHSPSC committed any unfair labor practices).

The General Counsel maintains that the proposed consent settlement agreement is inadequate because it does not sufficiently bind CHSI, QHC or QHCCS. (See GC Opposition at 10-11.) I disagree. CHSI has agreed to be bound by the settlement agreement, and has designated CHSPSC as its agent for purposes of compliance. That arrangement is sufficient, particularly given the General Counsel's assertion in the complaint that CHSPSC is a wholly owned subsidiary of CHSI (and CHSI's admission that CHSPSC is an "indirect subsidiary" of CHSI). Further, there is no basis for

requiring QHC and QHCCS to be included in the consent settlement agreement. QHC and QHCCS were severed from the case in July 2017 (since they only were pled in as alleged *Golden State* successors), and any liability that those entities ultimately may or should have can be litigated, to the extent necessary, in a compliance proceeding.

I also am not persuaded by the General Counsel's argument that the proposed consent settlement agreement is not reasonable because it does not provide for corporate-wide relief. (See GC Opposition at 12-17; see also Charging Party Opposition at 4 (asserting that evidence in a single/joint employer phase of this case will show that CHSI and CHSPSC are directly liable for having participated in violating the Act).) There is no requirement under *Independent Stave* that a proposed settlement agreement provide the full measure of relief sought in the complaint (let alone the specific remedy of corporate-wide relief). Instead, *Independent Stave* requires the settlement to be "reasonable." Moreover, I note that there are no allegations in the complaint that charge CHSI or CHSPSC with any direct involvement in unfair labor practices. Although the General Counsel and the Charging Party maintain that evidence of CHSI's or CHSPSC's direct and corporate-wide involvement in violations of the Act may be presented if we litigate the single/joint employer allegations in the complaint, the proposition that the General Counsel would actually succeed in demonstrating that corporate-wide relief is appropriate (as opposed to the more traditional remedy of relief at the facilities where specific violations occurred) is highly speculative.[6] See *Consolidated Edison Co. of New York*, 323 NLRB 910, 911–912 (1997) (noting that the Board's usual practice is to confine injunctive and notice-posting requirements "to the facilities at which the violations were committed").[7]

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[6] In this connection, I note that CHSI/CHSPSC have represented (without contradiction) that they are affiliated with over 100 facilities. Since the complaint in this case only alleges violations at five facilities, the General Counsel's request for corporate-wide relief extends well beyond the specific allegations in the complaint.

[7] I recognize that in the past, the Board has been willing to grant a corporate-wide remedy if the General Counsel demonstrated that a facially neutral work rule is unlawfully overbroad, and the respondent maintained that work rule companywide. See *Guardsmark, LLC*, 344 NLRB 809, 812 (2005) (noting that "we have consistently held that, where an employer's overbroad rule is maintained as a companywide policy, we will generally order the employer to post an appropriate notice at all of its facilities where the unlawful policy has been or is in effect," and ordering a nationwide notice posting because the respondent's work rules applied to all of its employees nationwide), enfd. in pertinent part, 475 F.3d 369 (D.C. Cir. 2007); see also *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 10–11 (2014) (ordering a nationwide notice posting to address an unlawful confidentiality work rule that had been or was in effect at each of the respondent's facilities).

Although there is one work rule at issue in this case (at Barstow), the General Counsel has not alleged that CHSI and/or CHSPSC maintained that rule corporate-wide. Perhaps more important, in *The Boeing Company*, the Board announced a new framework for evaluating whether facially neutral policies, rules or handbooks violate the Act. 365 NLRB No. 154 (2017). Under the new framework, the Board will evaluate both the nature and extent of the potential impact on NLRA rights and legitimate justifications associated with the rule (including particular facts that may be relevant in a given case). Id., slip op. at 3-4. At a minimum, the Board's new legal framework for evaluating facially neutral work rules raises some significant questions about what the Board will require to justify awarding a corporate-wide remedy based on an unlawful work rule.

In light of the foregoing analysis, I find that *Independent Stave* factor two favors approving the proposed consent settlement because the proposed agreement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of litigation.

Independent Stave Factor Three

I find that *Independent Stave* factor three favors approval of the proposed consent settlement agreement. There are no allegations or evidence of any fraud, coercion or duress by CHSI and/or CHSPSC in reaching the proposed consent settlement agreement. See *UPMC*, 365 NLRB No. 153, slip op. at 7 (finding that, given the absence of any allegations of fraud, coercion or duress, factor three of *Independent Stave* favored approval of UPMC's proposed remedial guarantee).

Independent Stave Factor Four

The General Counsel concedes that there are no prior unfair labor practice findings against CHSI or CHSPSC concerning Respondent Hospitals. (GC Opposition at 19.) To the extent that the Board has issued adverse rulings directly against some of Respondent Hospitals, I do not have a basis for relying on those rulings to find that either CHSI or CHSPSC has engaged in a history of violations of the Act. I also note that there is no evidence that either CHSI or CHSPSC has breached previous settlement agreements resolving unfair labor practices. Accordingly, I find that *Independent Stave* factor four favors approving the proposed consent settlement agreement.

Conclusion

After considering the parties' arguments, the surrounding circumstances, and each of the *Independent Stave* factors, I find that the consent settlement agreement that CHSI and CHSPSC have proposed is reasonable and meets the *Independent Stave* standard for approval. In exchange for avoiding the possibility (however likely or remote) of a single/joint employer finding and corporate-wide relief, CHSPSC (with the consent and agreement of indirect owner CHSI) has stepped forward to guarantee any relief that the Board may order against Respondent Hospitals, subject to any appropriate compliance proceedings. CHSPSC's offer to serve as guarantor in that fashion is significant (both in terms of the nature of the commitment and the litigation resources that it will save, among other benefits), and also is in the spirit of a similar arrangement that the Board endorsed in its *UPMC* decision. Accordingly, I hereby approve CHSI/CHSPSC's proposed consent settlement agreement and enter the following:

ORDER

The Respondent, CHSPSC, LLC shall be the guarantor of any remedies that the Board may order with respect to the underlying unfair labor practice allegations in this case. As the guarantor, Respondent CHSPSC, LLC must ensure that the Respondent Hospitals (Affinity, Barstow, Bluefield, Greenbrier and Watsonville) take all steps necessary to

comply with any remedies that may be contained in the Board's Order, including providing for any such remedies itself, if the Respondent Hospitals fail to do so, subject to CHSPSC, LLC's compliance rights to contest its ability to effectuate non-monetary remedies for divested Respondent Hospitals. Respondent Community Health Systems, Inc. has accepted these terms and has appointed CHSPSC, LLC to be its agent with respect to effectuating compliance.

IT IS FURTHER ORDERED that the allegations in the complaint that Respondent CHSPSC, LLC and Respondent Community Health Systems, Inc. constitute a single/joint employer with Respondent Hospitals or with one another are dismissed. Likewise, the General Counsel's request in the complaint for corporate-wide relief applicable to CHSI and/or CHSPSC is hereby denied in light of the consent settlement agreement concerning those parties.[8] Under the circumstances, it would not effectuate the policies of the Act to continue to litigate and reach a decision regarding the single/joint employer allegations or the request for corporate-wide relief concerning CHSI and CHSPSC. CHSI and CHSPSC shall remain in the case as parties for the purpose of ensuring enforcement of CHSPSC's guarantee of the remedies, if any, ultimately ordered against Respondent Hospitals.

IT IS SO ORDERED.

Dated: April 19, 2018
Washington, D.C.

Geoffrey Carter
Administrative Law Judge

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[8] The General Counsel misses the mark with its argument that I should interpret CHSI/CHSPSC's motion for proposed consent order as a traditional motion to dismiss complaint allegations. (See GC Opposition at 21-22.) The standard in *Independent Stave* controls the analysis here, and to the extent that I have ordered that certain complaint allegations and relief demands be dismissed, the dismissal is pursuant to the consent settlement agreement that I have approved in this order. See *UPMC*, 365 NLRB No. 153, slip op. at 11 (ordering that the single-employer allegation against UPMC be dismissed in exchange for UPMC's remedial guarantee in its consent settlement agreement).

EXHIBIT B

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

DHSC, LLC, d/b/a AFFINITY MEDICAL CENTER,
COMMUNITY HEALTH SYSTEMS, INC.,
HOSPITAL OF BARSTOW, INC., d/b/a
BARSTOW COMMUNITY HOSPITAL,
WATSONVILLE HOSPITAL CORPORATION d/b/a
WATSONVILLE COMMUNITY HOSPITAL,
and/or
COMMUNITY HEALTH SYSTEMS PROFESSIONAL
SERVICES CORPORATION, LLC,
a single employer and/or joint employers and
QUORUM HEALTH CORPORATION and QHCCS, LLC,
successor employers

and **CASE** **08-CA-167313**

NATIONAL NURSES ORGANIZING COMMITTEE
(NNOC), CALIFORNIA NURSES ASSOCIATION/NATIONAL
NURSES ORGANIZING COMMITTEE (CNA/NNOC)
and CALIFORNIA NURSES ASSOCIATION (CNA),
NATIONAL NURSES UNITED

- - - -

BLUEFIELD HOSPITAL COMPANY, LLC d/b/a
BLUEFIELD REGIONAL MEDICAL CENTER,
COMMUNITY HEALTH SYSTEMS, INC., and/or
COMMUNITY HEALTH SYSTEMS PROFESSIONAL
SERVICES CORPORATION, LLC,
a single employer and/or joint employers

and	**CASES**	**10-CA-168085**
		10-CA-151016
		10-CA-153544
		10-CA-174418
		10-CA-177532

NATIONAL NURSES ORGANIZING COMMITTEE
(NNOC), AFL-CIO

- - - -

Watsonville Hospital Corporation d/b/a Watsonville Community Hospital (Respondent Watsonville) and its single and/or joint employer Community Health Systems, Inc., (Respondent CHSI) and/or its single and/or joint employer Community Health Systems Professional Services Corp., LLC, also known as Community Health Systems Professional Services Corporation prior to January 1, 2015 (Respondent CHSPSC) has engaged in unfair labor practices that violate the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq.

On March 10, 2016, a Consolidated Complaint and Notice of Hearing issued in Case 10-CA-167330 alleging that Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center (Respondent Greenbrier) and its single and/or joint employer Respondent CHSI and/or its single and/or joint employer Respondent CHSPSC, and in Case 10-CA-168085 alleging that Bluefield Hospital Company d/b/a Bluefield Regional Medical Center (Respondent Bluefield) and its single and/or joint employer Respondent CHSI and/or its single and/or joint employer CHSPSC has engaged in unfair labor practices that violate the Act.

On April 8, 2016, a Complaint and Notice of Hearing issued in Case 31-CA-167522 alleging that Respondent Barstow and its single and/or joint employer Respondent CHSI and/or its single and/or joint employer Respondent CHSPSC has engaged in unfair labor practices that violate the Act.

On July 12, 2016, a Consolidated Complaint and Notice of Hearing issued in Cases 10-CA-150997 and 10-CA-153336 alleging that Respondent Greenbrier and its single and/or joint employer Respondent CHSI and/or its single and/or joint employer Respondent CHSPSC, and in Cases 10-CA-151016 and 10-CA-153544 alleging that Respondent Bluefield and its single

and/or joint employer Respondent CHSI and/or its single and/or joint employer Respondent CHSPSC has engaged in unfair labor practices that violate the Act.

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (Board) and to avoid unnecessary costs or delay, **IT IS ORDERED** that Cases 08-CA-167313, 31-CA-167522, 10-CA-168085, 10-CA-151016, 10-CA-153544, 10-CA-167330, 10-CA-150997, and 10-CA-153336 are consolidated with Case 31-CA-174673, filed by the California Nurses Association/National Nurses Organizing Committee, AFL-CIO (CNA/NNOC) which alleges that Respondent Barstow and its single and/or joint employer Respondent CHSI and/or its single and/or joint employer Respondent CHSPSC has engaged in further unfair labor practices within the meaning of the Act and also with Cases 10-CA-174418 and 10-CA-177532, filed by the National Nurses Organizing Committee, AFL-CIO (NNOC) which allege that Respondent Bluefield and its single and/or joint employer Respondent CHSI and/or its single and/or joint employer Respondent CHSPSC has engaged in further unfair labor practices within the meaning of the Act. On September 26, 2016, an Order Further Consolidating Cases, Third Consolidated Complaint issued in Cases 08-CA-167313, 31-CA-167522, 31-CA-174673, 10-CA-168085, 10-CA-151016, 10-CA-153544, 10-CA-174418, 10-CA-177532, 10-CA-167330, 10-CA-150997, and 10-CA-153336.

This Order Consolidating Cases, Amended Third Consolidated Complaint, issued pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, by direction of the Administrative Law Judge hearing these proceedings, is based on these

consolidated cases and alleges that Respondent has violated the Act as described below[1]:

1. (A) The charge in Case 08-CA-167313 was filed by the NNOC and the CNA/NNOC against Respondent Affinity, Respondent Barstow, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on January 11, 2016, and a copy was served on Respondent Affinity, Respondent Barstow, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC by U.S. mail on January 13, 2016.

(B) (1) The charge in Case 10-CA-167330 was filed by the NNOC on January 11, 2016, and a copy was served on Respondent Greenbrier, Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on January 11, 2016.

(2) The first amended charge in Case 10-CA-167330 was filed by the NNOC on January 20, 2016, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by U.S. mail on January 21, 2016.

(C) The charge in Case 10-CA-168085 was filed by the NNOC on January 20, 2016, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on January 21, 2016.

(D) The charge in Case 31-CA-167522 was filed by the CNA/NNOC on January 8, 2016, a copy was served on Respondent Barstow by personal service on January 8, 2016, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on January 13, 2016.

[1] Pursuant to Section 102.17 of the Rules and Regulations of the Board, this Order Consolidating Cases, Amended Third Consolidated Complaint in Cases 08-CA-167313, 31-CA-167522, 31-CA-174673, 10-CA-168085, 10-CA-151016, 10-CA-153544, 10-CA-174418, 10-CA-177532, 10-CA-167330, 10-CA-150997, and 10-CA-153336 supercedes and amends the Order Further Consolidating Cases, Third Consolidated Complaint, which issued on September 26, 2016, to include amendments granted by the Administrative Law Judge upon motion by General Counsel at a hearing held on June 5, 2017.

(E) The charge in Case 31-CA-174673 was filed by the CNA/NNOC on April 18, 2016, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on April 26, 2016.

(F) (1) The charge in Case 10–CA–150997 was filed by the NNOC on April 27, 2015, and a copy was served on Respondent Greenbrier by U.S. mail on April 28, 2015.

(2) The first amended charge in Case 10–CA–150997 was filed by the NNOC on May 21, 2015, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(G) (1) The charge in Case 10–CA–153336 was filed by the NNOC on June 1, 2015, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 2, 2015.

(2) The first amended charge in Case 10–CA–153336 was filed by the NNOC on July 27, 2015, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by U.S. mail on July 27, 2015.

(H) (1) The charge in Case 10–CA–151016 was filed by the NNOC on April 27, 2015, and a copy was served on Respondent Bluefield by U.S. mail on April 28, 2015.

(2) The first amended charge in Case 10–CA–151016 was filed by the NNOC on May 21, 2015, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(I) (1) The charge in Case 10–CA–153544 was filed by the NNOC on June 4, 2015, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 4, 2015.

(2) The first amended charge in Case 10–CA–153544 was filed by the NNOC on July 27, 2015, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on July 28, 2015.

(J) (1) The charge in Case 10-CA-174418 was filed by the NNOC on April 19, 2016, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on April 20, 2016.

(2) The first amended charge in Case 10-CA-174418 was filed by the NNOC on June 30, 2016, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 30, 2016.

(K) The charge in Case 10-CA-177532 was filed by the NNOC on June 3, 2016, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 3, 2016.

2. (A) At all material times, Respondent Affinity, has been a Delaware limited liability company with an office and place of business in Massillon, Ohio (Affinity facility), and has been engaged in the operation of an acute care hospital providing inpatient and outpatient care.

(B) At all material times, Respondent Barstow has been a corporation with an office and place of business in Barstow, California (Barstow facility), and has been engaged in the operation of an acute care hospital providing inpatient and outpatient care.

(C) At all material times, Respondent Watsonville has been a Delaware corporation with an office and place of business in Watsonville, California (Watsonville facility), and has been operating a hospital providing inpatient and outpatient care.

(D) At all material times, Respondent Greenbrier has been a limited liability company with an office and place of business in Ronceverte, West Virginia (Greenbrier facility), and has been operating an acute-care hospital providing inpatient and outpatient care.

(E) At all material times, Respondent Bluefield has been a limited liability company with an office and place of business in Bluefield, West Virginia (Bluefield facility), and has been engaged in the operation of an acute-care hospital providing inpatient and outpatient care.

(F) At all material times, Respondent CHSI, which operates as a holding company, has been a Delaware corporation with its principal office and place of business in Franklin, Tennessee, and with offices and places of business in Massillon, Ohio; Barstow, California; Watsonville, California; Ronceverte, West Virginia; and Bluefield, West Virginia, where it is engaged in the operation of acute care hospitals providing inpatient and outpatient care.

(G) Since about January 1, 2015, Respondent CHSPSC has been a limited liability company and at all material times, Respondent CHSPSC has been a wholly owned subsidiary of Respondent CHSI with an office and place of business in Franklin, Tennessee, and with offices and places of businesses in Massillon, Ohio; Barstow, California; Watsonville, California; Ronceverte, West Virginia; and Bluefield, West Virginia, where it is engaged in the operation of acute care hospitals providing inpatient and outpatient care.

3. (A) Since on or about January 1, 2014 through April 29, 2016, Quorum Health Resources, LLC has been a limited liability company and has been a subsidiary of Respondent CHSI with an office and place of business in Brentwood, Tennessee, and with offices and places of business in Charlotte, North Carolina and Frisco, Texas where it has been engaged in providing

management services and the operation of acute care hospitals providing inpatient and outpatient care.

(B) (1) About August 3, 2015, Respondent CHSI announced that it was creating a publicly traded hospital company, Quorum Health Corporation, by spinning off to its shareholders 38 hospitals and other assets.

(2) (a) Respondent Quorum Health Corporation is a Delaware corporation with an office and place of business in Brentwood, Tennessee.

(b) On or about April 29, 2016, Respondent Quorum Health Corporation acquired 38 hospitals from Respondent CHSI, including Respondents Affinity, Barstow and Watsonville, and since that date has continued to operate Respondents Affinity, Barstow and Watsonville, in basically unchanged form.

(3) QHCCS, LLC (Respondent QHCCS) is a limited liability corporation with an office and place of business in Brentwood, Tennessee and at all material times, Respondent QHCCS has been a wholly owned subsidiary of Respondent Quorum Health Corporation with its principal office and place of business in Brentwood, Tennessee, and with offices and places of business in Massillon, Ohio; Barstow, California; and Watsonville, California, where it is engaged in the operation of acute care hospitals providing inpatient and outpatient care.

(C) (1) Respondent Quorum Health Corporation was put on notice of its potential liability in Cases 08-CA-167313 and 31-CA-167522 by letter dated January 20, 2016, sent by regular and certified mail from General Counsel to Thomas Miller, Chief Executive Officer of Respondent Quorum Health Corporation.

(2) Respondent QHCCS was put on notice of its potential liability in Cases 08-CA-167313 and 31-CA-167522 by letter dated January 20, 2016, sent by regular and

certified mail from General Counsel to the Agent of Service of Respondent QHCCS c/o Corporation Service Company for Respondent QHCCS.

(3) Respondent Quorum Health Corporation was put on notice of its potential liability in Case 31-CA-174673 by letter dated May 4, 2016, sent by regular and certified mail to Thomas Miller, Chief Executive Officer of Respondent Quorum Health Corporation.

(4) Respondent QHCCS was put on notice of its potential liability in Case 31-CA-174673 by letter dated May 4, 2016, sent by regular and certified mail to the Agent of Service of Respondent QHCCS c/o Corporation Service Company for Respondent QHCCS.

(5) Respondent Quorum Health Corporation was put on notice of its potential liability in Case 08-CA-167313 by service of the Complaint and Notice of Hearing to Thomas Miller, Chief Executive Officer of Respondent Quorum Health Corporation.

(6) Respondent QHCCS was put on notice of its potential liability in Case 08-CA-167313 by service of the Complaint and Notice of Hearing to the Agent of Service of Respondent QHCCS c/o Corporation Service Company for Respondent QHCCS.

(7) Respondent Quorum Health Corporation was put on notice of its potential liability in Case 31-CA-167522 by service of the Complaint and Notice of Hearing to Thomas Miller, Chief Executive Officer of Respondent Quorum Health Corporation.

(8) Respondent QHCCS was put on notice of its potential liability in Case 31-CA-167522 by service of the Complaint and Notice of Hearing to the Agent of Service of Respondent QHCCS c/o Corporation Service Company for Respondent QHCCS.

(D) Based on the conduct and operations described above in paragraphs 3(A) through 3(C), Respondent Quorum Health Corporation has continued as the employing entity with notice of Respondent CHSI's, Respondent Affinity's, Respondent Barstow's and Respondent Watsonville's potential liability to remedy their unfair labor practices, and Respondent Quorum Health Corporation is a successor to Respondent CHSI, Respondent Affinity, Respondent Barstow and Respondent Watsonville.

(E) Based on the conduct and operations described above in paragraphs 3(A) through 3(C), Respondent QHCCS has continued as the employing entity with notice of Respondent CHSI's, Respondent Affinity's, Respondent Barstow's and Respondent Watsonville's potential liability to remedy their unfair labor practices, and Respondent QHCCS is a successor to Respondent CHSI, Respondent Affinity, Respondent Barstow and Respondent Watsonville.

4. (A) At all material times, Respondent Affinity and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 4(A) Respondent Affinity and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Affinity and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 4(C), Respondent Affinity and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

5. (A) At all material times, Respondent Barstow and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs,

information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 5(A), Respondent Barstow and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Barstow and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 5(C), Respondent Barstow and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

6. (A) At all material times, Respondent Watsonville and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 6(A), Respondent Watsonville and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Watsonville and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting,

physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 6(C), Respondent Watsonville and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

7. (A) At all material times, Respondent Bluefield and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 7(A), Respondent Bluefield and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Bluefield and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other;

have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 7(C), Respondent Bluefield and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

8. (A) At all material times, Respondent Greenbrier and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 8(A), Respondent Greenbrier and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Greenbrier and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 8(C), Respondent Greenbrier and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

9. (A) At all material times, Respondent CHSPSC and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have share common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulator programs,

information technology services; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 9(A), Respondent CHSPSC and Respondent CHSI constitute a single-integrated business enterprise and single employer within the meaning of the Act.

10. (A) (1) At all material times, Respondent CHSI and Respondent Affinity have been parties to a contract which provides that Respondent Affinity is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Affinity, and administered a common labor policy for Respondent Affinity's employees.

(3) At all material times, Respondent CHSI and Respondent Affinity have been joint employers of the employees of Respondent Affinity.

(B) (1) At all material times, Respondent CHSPSC and Respondent Affinity have been parties to a management services agreement which provides that Respondent Affinity is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Affinity, and administered a common labor policy for Respondent Affinity's employees.

(3) At all material times, Respondent CHSPSC and Respondent Affinity have been joint employers of the employees of Respondent Affinity.

11. (A) (1) At all material times, Respondent CHSI and Respondent Barstow have been parties to a contract which provides that Respondent Barstow is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Barstow and administered a common labor policy for Respondent Barstow's employees.

(3) At all material times, Respondent CHSI and Respondent Barstow have been joint employers of the employees of Respondent Barstow.

(B) (1) At all material times, Respondent CHSPSC and Respondent Barstow have been parties to a management services agreement which provides that Respondent Barstow is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Barstow and administered a common labor policy for Respondent Barstow's employees.

(3) At all material times, Respondent CHSPSC and Respondent Barstow have been joint employers of the employees of Respondent Barstow.

12. (A) (1) At all material times, Respondent CHSI and Respondent Watsonville have been parties to a contract which provides that Respondent Watsonville is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Watsonville and administered a common labor policy for Respondent Watsonville's employees.

(3) At all material times, Respondent CHSI and Respondent Watsonville have been joint employers of the employees of Respondent Watsonville.

(B) (1) At all material times, Respondent CHSPSC and Respondent Watsonville have been parties to a management services agreement which provides that Respondent Watsonville is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Watsonville and administered a common labor policy for Respondent Watsonville's employees.

(3) At all material times, Respondent CHSPSC and Respondent Watsonville have been joint employers of the employees of Respondent Watsonville.

13. (A) (1) At all material times, Respondent CHSI and Respondent Greenbrier have been parties to a contract which provides that Respondent Greenbrier is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Greenbrier and administered a common labor policy for Respondent Greenbrier's employees.

(3) At all material times, Respondent CHSI and Respondent Greenbrier have been joint employers of the employees of Respondent Greenbrier.

(B) (1) At all material times, Respondent CHSPSC and Respondent Greenbrier have been parties to a management services agreement which provides that Respondent Greenbrier is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Greenbrier and administered a common labor policy for Respondent Greenbrier's employees.

(3) At all material times, Respondent CHSPSC and Respondent Greenbrier have been joint employers of the employees of Respondent Greenbrier.

14. (A) (1) At all material times, Respondent CHSI and Respondent Bluefield have been parties to a contract which provides that Respondent Bluefield is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Bluefield and administered a common labor policy for Respondent Bluefield's employees.

(3) At all material times, Respondent CHSI and Respondent Bluefield have been joint employers of the employees of Respondent Bluefield.

(B) (1) At all material times, Respondent CHSPSC and Respondent Bluefield have been parties to a management services agreement which provides that Respondent Bluefield is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Bluefield and administered a common labor policy for Respondent Bluefield's employees.

(3) At all material times, Respondent CHSPSC and Respondent Bluefield have been joint employers of the employees of Respondent Bluefield.

15. (A) (1) Annually, Respondent Affinity, in conducting its business operations described above in paragraph 2(A), has derived gross revenue in excess of $250,000.

(2) Annually, Respondent Affinity, in conducting its business operations described above in paragraph 2(A), purchases and receives at its Massillon facility goods valued in excess of $50,000 directly from points outside the State of Ohio.

(3) At all material times, Respondent Affinity has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(B) (1) Annually, Respondent Barstow, in conducting its business operations described above in paragraph 2(B), has derived gross revenue in excess of $250,000.

(2) Annually, Respondent Barstow in conducting its business operations described above in paragraph 2(B) purchases and receives at its Barstow facility products, goods and materials valued in excess of $50,000 directly from points outside the State of California.

(3) At all material times, Respondent Barstow has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(C) (1) Annually, Respondent Watsonville, in conducting its business operations described above in paragraph 2(C), has derived gross revenue in excess of $250,000.

(2) Annually, Respondent Watsonville, in the course and conduct of its business operations, has purchased and received goods at its Watsonville facility valued in excess of $50,000, directly from points outside the State of California.

(3) Annually, Respondent Watsonville in conducting its business operations as described above in paragraph 2(C), has received Federal Medicare funds in excess of $5,000.

(4) At all material times, Respondent Watsonville has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(D) (1) Annually, Respondent Greenbrier, in conducting its business operations described above in paragraph 2(D), has derived gross revenue in excess of $250,000.

(2) Annually, Respondent Greenbrier, in conducting its business operations, purchases and receives goods at its Greenbrier facility, goods and materials valued in excess of $50,000 directly from points outside the State of West Virginia.

(3) At all material times, Respondent Greenbrier has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(E) (1) Annually, Respondent Bluefield, in conducting its business operations described above in paragraph 2(E), has derived gross revenue in excess of $250,000.

(2) Annually, Respondent Bluefield, in conducting its business operations described above in paragraph 2(E), purchases and receives at its Bluefield facility, goods and materials valued in excess of $50,000 directly from points outside the State of West Virginia.

(3) At all material times, Respondent Bluefield has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(F) (1) At all material times, Respondent CHSI, in conducting its business operations as described above in paragraph 2(F), has derived gross revenues in excess of $250,000.

(2) At all material times, Respondent CHSI, in conducting its business operations as described above in paragraph 2(F), has purchased and received at its Franklin, Tennessee office and place of business, goods and materials valued in excess of $5,000, directly from points located outside the State of Tennessee.

(3) At all material times, Respondent CHSI has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(G) (1) At all material times, Respondent CHSPSC, in conducting its business operations as described above in paragraph 2(G), has derived gross revenues in excess of $250,000.

(2) At all material times, Respondent CHSPSC, in conducting its business operations as described above in paragraph 2(G), has purchased and received at its Franklin, Tennessee office and place of business, goods and materials valued in excess of $5,000, directly from points located outside the State of Tennessee.

(3) At all material times, Respondent CHSPSC has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(H) (1) At all material times, Respondent Quorum Health Corporation, in conducting its business operations as described above in paragraph 3(B)(2), has derived gross revenues in excess of $250,000.

(2) At all material times, Respondent Quorum Health Corporation, in conducting its business operations as described above in paragraph 3(B)(2), has purchased and received at its Brentwood, Tennessee office and place of business, goods and materials valued in excess of $5,000, directly from points located outside the State of Tennessee.

(3) At all material times, Respondent Quorum Health Corporation has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(I) (1) At all material times, Respondent QHCCS, in conducting its business operations as described above in paragraph 3(B)(3), has derived gross revenues in excess of $250,000.

(2) At all material times, Respondent QHCCS, in conducting its business operations as described above in paragraph 3(B)(3), has purchased and received at its Brentwood, Tennessee office and place of business, goods and materials valued in excess of $5,000, directly from points located outside the State of Tennessee.

(3) At all material times, Respondent QHCCS has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

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

(B) At all material times, the CNA/NNOC has been a labor organization within the meaning of Section 2(5) of the Act.

(C) At all material times, the California Nurses Association, National Nurses United (CNA) has been a labor organization within the meaning of Section 2(5) of the Act.

17. (A) At all material times, Angela Boyle held the position of Vice President of Human Resources and has been a supervisor of Respondent Affinity within the meaning of Section 2(11) of the Act and agent within the meaning of Section 2(13) of the Act.

(B) (1) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Barstow within the meaning of Section 2(11) of the Act and/or agents within the meaning of Section 2(13) of the Act:

Michelle Miller	Director of Human Resources
Jeana Christensen	Human Resources Generalist

(2) At all material times, Jan Ellis held the position of Director, Employee Relations and/or Human Resources Representative, and has been an agent of Respondent Barstow, Respondent CHSI and/or an agent of Respondent CHSPSC within the meaning of Section 2(13) of the Act.

(C) At all material times, Kristi Abundis held the position of Director of Human Resources and has been a supervisor of Respondent Watsonville of Section 2(11) of the Act and agent within the meaning of Section 2(13) of the Act.

(D) (1) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Greenbrier

within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

Paige Adkins	Chief Financial Officer
Paul Hanna	Human Resources Director
Tammy Lilly	Intensive Care Unit Director
Gary Mabry	Director of Imaging Services
Fran O'Brien	Director of Obstetrics (ending March 2015)
Vivian Eazies	Director of Obstetrics (March 2015 – present)
Gigi Fergus	Interim Chief Nursing Officer
Autumn Hayes	Nursing Supervisor
Tammy Bradley	Intensive Care Unit Supervisor, Medical Surgery Telemetry Unit and Pediatrics Unit

(2) At all material times, Jan Ellis held the position of Director, Employee Relations and/or Human Resources Representative, and has been an agent of Respondent Greenbrier, Respondent CHSI and/or an agent of Respondent CHSPSC within the meaning of Section 2(13) of the Act.

(E) (1) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Bluefield within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

Laura Martin	Human Resources Director
David Henry	Chief Executive Officer
Pam Perdue	Compliance Manager/Privacy Officer

Mike Makosky	Chief Operating Officer/Facility Compliance Officer
Kathy Glover	Supervisor, Obstetrics Department
Lynn Puckett	Director, Operating Room
Paula Thompson	Director, Operating Room
Bessie Brown	Clinical Director – 3-South & 3-West

(2) At all material times, Jan Ellis held the position of Director, Employee Relations and/or Human Resources Representative, and has been an agent of Respondent Bluefield, Respondent CHSI and/or an agent of Respondent CHSPSC within the meaning of Section 2(13) of the Act.

18. (A) At all material times, an unnamed attorney has been an agent of Respondent Affinity within the meaning of Section 2(13) of the Act.

(B) At all material times, an unnamed attorney has been an agent of Respondent Barstow within the meaning of Section 2(13) of the Act.

(C) At all material times, an unnamed attorney has been an agent of Respondent Watsonville within the meaning of Section 2(13) of the Act.

(D) At all material times, an unnamed attorney has been the chief negotiator on behalf of Respondent Greenbrier in collective bargaining, and has been an agent within the meaning of Section 2(13) of the Act.

(E) (1) At all material times, an unnamed attorney has been the chief negotiator on behalf of Respondent Bluefield in collective bargaining, and has been an agent within the meaning of Section 2(13) of the Act.

(2) At all material times, a second unnamed attorney has been an agent of Respondent Bluefield within the meaning of Section 2(13) of the Act.

(F) At all material times, an unnamed attorney has been an agent of Respondent CHSI within the meaning of Section 2(13) of the Act.

(G) At all material times, an unnamed attorney has been an agent of Respondent CHSPSC within the meaning of Section 2(13) of the Act.

19. At all material times, Respondent Barstow has maintained the following policy under the heading "Compliance Disclosure Upon Separation":

> In connection with my separation of employment from an affiliate of Community Health Systems, Inc. ("CHS"), and pursuant to the CHS Compliance Program and the CHS Code of Conduct, I represent and warrant to CHS and its affiliates, officers, owners, directors, and employees, together with each of their respective successors, assigns, heirs and personal representatives (collectively, the "Company") that I have, at all times during my employment, complied with the CHS Compliance Program and the hospital Code of Conduct. I have disclosed in writing to the Corporate Compliance Officer any and all instances of known or suspected violations of law, rule, and regulation or corporate policy by the Company. Further, I have not and have no intention to file any whistleblower or similar lawsuits, claims, or disclosures to any governmental agency that would subject the Company to any liability as a result of any violation of any law, rule, regulation and know of no facts that would give rise to any such whistleblower or similar lawsuits, claims or disclosures to any governmental agency. In the event the representations and warranties contained become inaccurate or untrue after the date hereof, I agree that I will notify the Corporate Compliance Officer in writing, of the necessary corrections to make the representations and warranties accurate and true, prior to initiating any whistleblower or similar lawsuits, claims or disclosures to any governmental agency. I also agree to indemnify and hold the Company harmless from any loss, cost, damage or penalty incurred as a result of any inaccuracy or breach of the representations, warranties or agreements contained herein.

20. About February or March 2015, Respondent Greenbrier, by Tammy Bradley, at the Greenbrier facility, impliedly threatened employees with job loss if they did not accept charge nurse positions that are not in the Greenbrier Unit, as described below in paragraph 27(A).

21. Respondent Bluefield at Bluefield's facility, about the dates, in the locations, and by the individuals named below, coercively told employees that they did not receive wage increases because of the NNOC:

(A) About March 11, 2015, by Lynn Puckett at the Nurses' Station in the Operating Room;

(B) About March 2015, by Kathy Glover in her office, in the Obstetrics Department.

22. About April 1, 2016, Respondent Bluefield, by Compliance Manager/Privacy Officer Pam Perdue, in the Human Resources Director's office at the Bluefield facility, instructed employees not to discuss an ongoing disciplinary investigation.

23. (A) (1) About February 9, 2015, Respondent Bluefield discharged all Certified Registered Nurse Anesthetists.

(2) About February 9, 2015, Respondent Bluefield subcontracted bargaining unit work in the Anesthesia Department to Clinical Colleagues, Inc.

(B) About March 2015, Respondent Bluefield delayed a wage increase for all employees in the Bluefield Unit, as described below in paragraph 28(A).

(C) About March 2, 2016, Respondent Bluefield suspended its employee Mike Adams.

(D) About May 17, 2016, Respondent Bluefield suspended its employee Mike Adams.

(E) The conduct described above in paragraphs 23(A)(1), 23(A)(2) and 23(B) is inherently destructive of the rights guaranteed under by Section 7 of the Act.

(F) Respondent Bluefield engaged in the conduct described above in paragraphs 23(A)(1), 23(A)(2), 23(B), 23(C) and 23(D) because the named employees of Respondent Bluefield formed, joined and assisted the NNOC and engaged in concerted activities, and to discourage employees from engaging in these activities.

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

> All full-time and regular part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Affinity at its 875 Eighth Street N.E., Massillon, Ohio facility, but excluding all other employees, including managers, confidential employees, physicians, employees of outside registries and other agencies supplying labor to Respondent Affinity, already represented employees, guards and supervisors as defined in the Act, as amended.

(B) On October 5, 2012, the NNOC was certified as the exclusive collective bargaining representative of the Affinity Unit.

(C) At all material times since October 5, 2012, based on Section 9(a) of the Act, the NNOC has been the exclusive collective bargaining representative of the Affinity Unit.

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

> **INCLUDED**: All full-time, regular part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Barstow at its facility located at 820 East Mountain View St., Barstow California 92311.
>
> **EXCLUDED:** All other employees, including managers, confidential employees, physicians, employees of outside registries and other agencies supplying labor to Respondent Barstow, already represented employees, guards and supervisors as defined in the Act, as amended.

(B) On June 29, 2012, the CNA/NNOC was certified as the exclusive collective bargaining representative of the Unit.

(C) At all times since June 29, 2012, based on Section 9(a) of the Act, the CNA/NNOC has been the exclusive collective bargaining representative of the Barstow Unit.

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

> All employees described in and performing work covered by "Article 1. Recognition" of the July 27, 2011 through September 30, 2013 collective-bargaining agreement between the CNA and Respondent Watsonville (the Agreement); excluding all other employees, guards, and supervisors as defined in the Act.

(B) Since at least 2005, and at all material times, Respondent Watsonville has recognized the CNA as the exclusive collective bargaining representative of the Watsonville Unit. This recognition has been embodied in successive collective bargaining agreements, the most recent of which is effective by its terms from July 1, 2016 through June 30, 2019.

(C) At all material times since at least 2005, based on Section 9(a) of the Act, the CNA has been the exclusive collective bargaining representative of the Watsonville Unit.

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

> All full-time, regular part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Greenbrier at its 202 Maplewood Avenue, Ronceverte, West Virginia hospital; excluding all other employees, including managers, confidential employees, physicians, technical employees, service and maintenance employees, employees of outside registries and other agencies supplying labor to Respondent Greenbrier, guards and supervisors as defined in the Act.

(B) On August 30, 2012, a representation election was held pursuant to a consent election agreement, and on September 25, 2012, the NNOC was certified as the exclusive collective bargaining representative of the Greenbrier Unit.

(C) At all times since September 25, 2012, based on Section 9(a) of the Act, the NNOC has been the exclusive collective bargaining representative of the Greenbrier Unit.

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

> All full-time, regular part-time and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Bluefield at its 500 Cherry Street, Bluefield, West Virginia hospital; excluding all other employees, including managers, confidential employees, physicians, technical employees, service and maintenance employees, employees of outside registries and other agencies supplying labor to Respondent Bluefield, and guards and supervisors as defined in the Act.

(B) About August 29, 2012, a representation election was held pursuant to a consent election agreement, and on September 25, 2012, the NNOC was certified as the exclusive collective bargaining representative of the Bluefield Unit.

(C) At all times since September 25, 2012, based on Section 9(a) of the Act, the NNOC has been the exclusive collective bargaining representative of the Bluefield Unit.

29. (A) In about November 2015, the exact date being unknown, Respondent Affinity unilaterally offered Affinity Unit employees an employee discount program called QHC Benefits Plus, a program previously not available to unit employees.

(B) In about November 2015, the exact date being unknown, Respondent Affinity unilaterally offered long term care insurance to Affinity Unit employees, insurance coverage not previously available to unit employees.

(C) (1) In about November 2015, Respondent Affinity notified Affinity Unit employees that their retirement plan assets maintained in the 401(k) plan would transfer to a new retirement plan sponsored by Respondent QHCCS effective January 1, 2016.

(2) As a result of the change described above in paragraph 29(C)(1), Affinity Unit employees were unable to make changes to their investment options for any new 401(k) contributions, make loan payouts, take withdrawals or distributions through their 401(k) plan from January 1, 2016 through January 18, 2016.

(D) The subjects set forth above in paragraphs 29(A) through 29(C) concern employees' wages and other terms and conditions of employment, and are mandatory subjects for the purposes of collective bargaining.

(E) Respondent Affinity engaged in the conduct described above in paragraphs 29(A) through 29(C) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Affinity with respect to this conduct, and the effects of this conduct.

30. (A) Since about September 21, 2015, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information:

(1) The address or addresses of QHC.

(2) The list of the current or proposed Board of Directors or Trustees.

(3) The name and contact information of the CEO, Director of HR, Director of Labor Relations.

(4) An organization chart showing the directors, officers, and key employees of QHC.

(5) Copies of all proposed QHC work rules, employment manuals, office manuals, policy manuals, codes of behavior, codes of ethics, and/or statements of policy (e.g., sexual harassment policy, computer use policy) which presently apply or will apply to the bargaining unit members at QHC hospitals.

(6) A list of all persons with the authority to review, modify, or rescind the policies listed above, along with their job titles and office address(es).

(7) The current and/or proposed staffing plans for QHC operated facilities.

(8) A list of all persons with the authority to review, modify, or rescind the staffing plans listed above, along with their job titles and office address(es).

(9) A complete description of the following plans and benefits for nurses at those facilities that CHS intends to transfer to the newly formed QHC: health and dental benefits, short and long term disability, and life insurance.

(10) A complete description of retirement benefits for nurses at those facilities that CHS intends to transfer to the newly formed QHC.

(11) A list of all CHS hospitals that will be part of the proposed QHC spinoff, as well as a list of their directors, officers, and key employees.

(B) The information requested by the NNOC, as described above in paragraph 30(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective bargaining representative of the Affinity Unit.

(C) Since about September 21, 2015, Respondent Affinity failed and refused to furnish the NNOC with the requested information as set forth above in paragraph 30(A).

31. (A) Since on or about July 10, 2015, Respondent Barstow unilaterally changed its discipline policies regarding overtime for Registered Nurses.

(B) In about November 2015, the exact date being unknown, Respondent Barstow unilaterally offered Barstow Unit employees an employee discount program called QHC Benefits Plus, a program previously not available to unit employees.

(C) (1) In about November 2015, the exact date being unknown, Respondent Barstow notified Barstow Unit employees that their retirement plan assets maintained in the 401(k) plan would transfer to a new retirement plan sponsored by Respondent QHCCS effective January 1, 2016.

(2) As a result of the change described above in paragraph 31(C)(1), Barstow Unit employees were unable to make changes to their investment options for any new 401(K) contributions, make loan payouts, make withdrawals or distributions through the 401(k) plan from January 1, 2016 through January 18, 2016.

(C) The subjects set forth above in paragraphs 31(A), 31(B) and 31(C) concern employees' wages and other terms and conditions of employment, and are mandatory subjects for the purposes of collective bargaining.

(D) Respondent Barstow engaged in the conduct described above in paragraphs 31(A), 31(B) and 31(C) without prior notice to the CNA/NNOC, without affording the CNA/NNOC an opportunity to bargain with Respondent Barstow with respect to this conduct, and the effects of this conduct.

32. (A) Since about June 29, 2012, the CNA/NNOC and Respondent Barstow have not reached an initial collective bargaining agreement, and have not agreed upon an interim grievance procedure.

(B) On or about July 10, 2015, Respondent Barstow issued verbal and/or written warnings to Barstow Unit employees, including employees Stephanie Biggs, Jenny Canales, Tiniya Lacy, Chioma Okeke, Rachel Otubuah, Nicole Silva, and Jacqueleen Williams.

(C) Respondent Barstow engaged in the conduct as described above in paragraph 32(B) as a result of its conduct described above in paragraph 31(A).

(D) On about July 23, 2015, the CNA/NNOC, in writing, requested that Respondent Barstow bargain collectively about the disciplines of its employees as described above in paragraph 32(B).

(E) The subject set forth above in paragraph 32(B) relates to wages, hours, and other terms and conditions of employment of the Barstow Unit and is a mandatory subject for the purposes of collective bargaining.

(F) Since on or about July 23, 2015, Respondent Barstow has refused to bargain collectively with the CNA/NNOC about the disciplines as set forth in paragraph 32(B).

33. (A) On or about July 23, 2015, the CNA/NNOC, in writing, requested that Respondent Barstow furnish the CNA/NNOC with the following information:

(1) Records of any written or verbal communication to RNs from management regarding overtime in the last two months;

(2) A list of RNs disciplined for any reason connected with overtime for the past six months including the dates of discipline; and

(3) Copies of variance forms for overtime approval submitted by RNs — both those that were approved and signed and those submitted and rejected — for the past six months.

(B) On or about August 6, 2015, the CNA/NNOC, in writing:

(1) Repeated its request for the information described above in paragraphs 33(A)(1) and 33(A)(2);

(2) Requested confirmation that Respondent Barstow provided all responsive documents in response to the request described above in paragraph 33(A)(2);

(3) Requested confirmation that Respondent Barstow does not retain the information as described above in paragraph 33(A)(3); and

(4) Requested that Respondent Barstow furnish CNA/NNOC with a the names of RNs working overtime for the previous six months, the dates and the number of minutes of overtime.

(C) On or about January 4, 2016, the CNA/NNOC, by James Moy, orally, repeated the information requests described above in paragraphs 33(A) and 33(B).

(D) The information requested by the CNA/NNOC, as described above in paragraphs 33(A) and 33(B), is necessary for, and relevant to, the CNA/NNOC 's performance of its duties as the exclusive collective-bargaining representative of the Barstow Unit.

(E) Since about August 6, 2015, Respondent Barstow has failed and refused to furnish the CNA/NNOC with the requested information as set forth above in paragraphs 33(A) and 33(B).

34. (A) Since about September 21, 2015, the CNA/NNOC requested, in writing, that Respondent Barstow furnish the CNA/NNOC with the following information:

(1) The address or addresses of QHC.

(2) The list of the current or proposed Board of Directors or Trustees.

(3) The name and contact information of the CEO, Director of HR, Director of Labor Relations.

(4) An organization chart showing the directors, officers, and key employees of QHC.

(5) Copies of all proposed QHC work rules, employment manuals, office manuals, policy manuals, codes of behavior, codes of ethics, and/or statements of policy (e.g., sexual harassment policy, computer use policy) which presently apply or will apply to the bargaining unit members at QHC hospitals.

(6) A list of all persons with the authority to review, modify, or rescind the policies listed above, along with their job titles and office address(es).

(7) The current and/or proposed staffing plans for QHC operated facilities.

(8) A list of all persons with the authority to review, modify, or rescind the staffing plans listed above, along with their job titles and office address(es).

(9) A complete description of the following plans and benefits for nurses at those facilities that CHS intends to transfer to the newly formed QHC: health and dental benefits, short and long term disability, and life insurance.

(10) A complete description of retirement benefits for nurses at those facilities that CHS intends to transfer to the newly formed QHC.

(11) A list of all CHS hospitals that will be part of the proposed QHC spinoff, as well as a list of their directors, officers, and key employees.

(B) The information requested by the CNA/NNOC, as described above in paragraph 34(A) is necessary for, and relevant to, the CNA/NNOC's performance of its duties as the exclusive collective bargaining representative of the Barstow Unit.

(C) Since about September 21, 2015, Respondent Barstow has failed and refused to furnish CNA/NNOC with the requested information as set forth above in paragraph 34(A)(7), (10) and (11).

(D) Since about September 21, 2015 to about January 4, 2016, Respondent Barstow unreasonably delayed in furnishing the CNA/NNOC with the information described above in paragraph 34(A)(1), and the portion of 34(A)(3) concerning the name and contact information of the CEO.

(E) Since about September 21, 2015 to about June 9, 2016, Respondent Barstow unreasonably delayed in furnishing the CNA/NNOC with the information described above in paragraph 34(A)(2), the portion of 34(A)(3) concerning the name and contact information of the Director of HR and Director of Labor Relations, 34(A)(4), 34(A)(5), 34(A)(6) and 34(A)(8).

(F) Since about September 21, 2015 to about July 15, 2016, Respondent Barstow unreasonably delayed in furnishing the CNA/NNOC with the information described above in paragraph 34(A)(9).

35. (A) In about November 2015, Respondent Watsonville unilaterally offered Watsonville Unit employees an employee discount program called QHC Benefits Plus, a program previously not available to unit employees.

(B) (1) In about November 2015, Respondent Watsonville notified Watsonville Unit employees that their retirement assets maintained in the 401(k) plan would transfer to a new retirement plan sponsored by Respondent QHCCS effective January 1, 2016.

(2) As a result of the change described above in paragraph 35(B)(1), Watsonville Unit employees were unable to make changes to their investment options for any new 401(k) contributions, make loan payouts, make withdrawals or distributions through the 401(K) plan from January 1, 2016 through January 18, 2016.

(C) The subjects set forth above in paragraphs 35(A) and 35(B) concern employees' wages and other terms and conditions of employment, and are mandatory subjects for the purposes of collective bargaining.

(D) Respondent Watsonville engaged in the conduct described above in paragraphs 35(A) and 35(B) without prior notice to the CNA and without affording the CNA an opportunity to bargain with Respondent Watsonville with respect to this conduct, and the effects of this conduct.

36. (A) Since about September 21, 2015, the CNA requested, in writing, that Respondent Watsonville furnish the CNA with the following information:

(1) The address or addresses of QHC.

(2) The list of the current or proposed Board of Directors or Trustees.

(3) The name and contact information of the CEO, Director of HR, Director of Labor Relations.

(4) An organization chart showing the directors, officers, and key employees of QHC.

(5) Copies of all proposed QHC work rules, employment manuals, office manuals, policy manuals, codes of behavior, codes of ethics, and/or statements of policy (e.g., sexual harassment policy, computer use policy) which presently apply or will apply to the bargaining unit members at QHC hospitals.

(6) A list of all persons with the authority to review, modify, or rescind the policies listed above, along with their job titles and office address(es).

(7) The current and/or proposed staffing plans for QHC operated facilities.

(8) A list of all persons with the authority to review, modify, or rescind the staffing plans listed above, along with their job titles and office address(es).

(9) A complete description of the following plans and benefits for nurses at those facilities that CHS intends to transfer to the newly formed QHC: health and dental benefits, short and long term disability, and life insurance.

(10) A complete description of retirement benefits for nurses at those facilities that CHS intends to transfer to the newly formed QHC.

(11) A list of all CHS hospitals that will be part of the proposed QHC spinoff, as well as a list of their directors, officers, and key employees.

(B) The information requested by the CNA as described above in paragraph 36(A) is necessary for, and relevant to, the CNA's performance of its duties as the exclusive collective bargaining representative of the Watsonville Unit.

(C) Since about September 21, 2015, Respondent Watsonville has failed and refused to furnish the CNA with the requested information as set forth above in paragraph 36(A)(2), the portion of 36(A)(3) concerning the name and contact information of the Director of HR and Director of Labor Relations, and 36(A)(4), 36(A)(5), 36(A)(6), 36(A)(7), 36(A)(8), and 36(A)(11).

(D) Since about September 21, 2015 to about December 22, 2015, Respondent Watsonville unreasonably delayed in furnishing the CNA with the information described above in paragraphs 36(A)(1), and the portion of 36(A)(3) concerning the name and contact information of the CEO, and 36(A)(9) and 36(A)(10).

37. By the conduct described above in paragraph 20, Respondent Greenbrier, by Tammy Bradley, bypassed the NNOC and dealt directly with its employees in the Greenbrier Unit about accepting charge nurse positions that are not in the Greenbrier Unit.

38. (A) (1) About October 28, 2014, Respondent Greenbrier changed its policies regarding paid time off, mandatory time off and staffing.

(2) As a result of the changes described above in paragraph 38(A)(1), Respondent Greenbrier has, since about October 28, 2014, required its employees to use their paid time off to reduce their leave balances.

(B) About February or March 2015, Respondent Greenbrier removed relief charge nurse duties from the Greenbrier Unit in the Medical Surgery Telemetry Unit and Pediatrics Unit.

(C) (1) About February 2015, Respondent Greenbrier changed the method of obtaining work and/or assigning work hours for nurses in the Cath Lab; and

(2) As a result of the changes described above in paragraph 38(C)(1), Respondent Greenbrier has, since about February 2015, required its employees to obtain their own work hours and work assignments in order to satisfy a weekly hour requirement.

(D) The subjects set forth above in paragraph 38(A) through 38(C) relate to wages, hours, and other terms and conditions of employment of the Greenbrier Unit and are mandatory subjects for the purposes of collective bargaining.

(E) Respondent Greenbrier engaged in the conduct described above in paragraph 38(A) through 38(C) without prior notice to the NNOC and without affording the NNOC an opportunity to bargain with Respondent Greenbrier with respect to this conduct and the effects of this conduct.

(F) Respondent Greenbrier engaged in the conduct described above in paragraph 38(A) through 38(C) without first bargaining with the NNOC to an overall good-faith impasse for a collective bargaining agreement.

39. (A) Since about September 25, 2012, the NNOC and Respondent Greenbrier have not reached an initial collective bargaining agreement, and have not agreed upon an interim grievance procedure.

(B) On about August 6, 2015, Respondent Greenbrier issued two written warnings to its employee Julie Hoffman Jackson.

(C) On about August 6, 2015, Respondent Greenbrier discharged its employee Julie Hoffman Jackson.

(D) On about August 19, 2015, the NNOC, in writing, by electronic transmission, requested that Respondent Greenbrier bargain collectively about the written warnings and discharge of its employee Hoffman Jackson, as described above in paragraphs 39(B) and 39(C).

(E) The subjects set forth above in paragraphs 39(B) and 39(C) relate to wages, hours, and other terms and conditions of employment of the Greenbrier Unit and are mandatory subjects for the purposes of collective bargaining.

(F) Since about September 2, 2015, Respondent Greenbrier has refused to bargain collectively with the NNOC about the subject set forth in paragraphs 39(B) and 39(C).

40. (A) Since about August 19, 2015, the NNOC, in writing, requested that Respondent Greenbrier furnish the NNOC with the following information.

(1) A copy of Julie Hoffman Jackson's termination notice;

(2) Hoffman Jackson's attendance records;

(3) Attendance records for other nurses in the ICU department, where Hoffman Jackson worked;

(4) ICU variance report;

(5) Any other attendance records and logs for Hoffman Jackson.

(B) The information requested by the NNOC, as described above in paragraph 40(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Greenbrier Unit.

(C) Since about September 2, 2015, Respondent Greenbrier failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 40(A).

41. (A) About September 2, 2015, Respondent Greenbrier, in writing, conditioned bargaining over the discipline described above in paragraph 39 and its subparagraphs, and conditioned furnishing the requested information described above in paragraph 40(A) on the NNOC's execution of an indemnification agreement.

(B) In about September 2015, the exact date being presently unknown, Respondent Greenbrier, by an unnamed attorney at a bargaining session, repeated its demand for indemnification as a condition to bargaining and furnishing the requested information, as described above in paragraph 40(A).

(C) The indemnification demand described above in paragraphs 41(A) and 41(B) is not a mandatory subject for the purposes of collective bargaining.

(D) In about September 2015, the exact date being presently unknown, in support of the condition described above in paragraphs 41(A) and 41(B), Respondent insisted to impasse and refused to bargain with the NNOC and refused to furnish the NNOC with requested information as described above in paragraph 40(A).

42. (A) At various times from about February 27, 2015 through November 13, 2015, Respondent Greenbrier and the NNOC met for the purposes of negotiating an initial collective bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

(B) During the period described above in paragraph 42(A), Respondent Greenbrier engaged in the following conduct: bargained with no intention of reaching an agreement, insisted upon proposals that were predictably unacceptable to the NNOC, made proposals aimed at depriving the NNOC of its representational role, displayed a repeated unwillingness to adjust differences with the NNOC, insisted to impasse on a non-mandatory subject of bargaining over discipline related to indemnification; conditioned bargaining and furnishing requested information on the NNOC's execution of an indemnification agreement; failed to furnish the NNOC with requested relevant and necessary information; bypassed the NNOC and dealt directly with employees in the Greenbrier Unit; unilaterally changed work policies; unilaterally removed duties from employees in the Greenbrier Unit; and unilaterally changed the methods by which employees in the Greenbrier Unit obtain work hours and work assignments; and refused to bargain over discipline.

(C) By its overall conduct, including the conduct described above in paragraph 42(B), as well as in paragraphs 37 through 41, and their subparagraphs, Respondent Greenbrier has failed and refused to bargain in good faith with the NNOC as the exclusive collective bargaining representative of the Greenbrier Unit.

43. (A) Since about September 25, 2012, the NNOC and Respondent Bluefield have not reached an initial collective-bargaining agreement, and have not agreed upon an interim grievance procedure.

(B) On about March 4, 2016, the NNOC, in writing, by electronic transmission, requested that Respondent Bluefield bargain collectively about the March 2, 2016 suspension of its employee Adams, as described above in paragraph 23(C).

(C) The subject set forth above in paragraph 23(C) relates to wages, hours, and other terms and conditions of employment of the Bluefield Unit and is a mandatory subject for the purposes of collective bargaining.

(D) Since about March 8, 2016, Respondent Bluefield has failed and refused to bargain collectively with the NNOC about the subject set forth above in paragraph 23(C).

44. (A) (1) About February 9, 2015, Respondent Bluefield discharged all Certified Registered Nurse Anesthetists and subcontracted bargaining unit work in the Anesthesia Department to subcontractor, Clinical Colleagues.

(2) As a result of this conduct described above in paragraph 44(A)(1), on about February 9, 2015, Respondent Bluefield discharged its employees Candace Blankenship, Van Browning, Marla Cline, Douglas Hess, Stephanie Morrison, John Riddle IV, Kristi Shrewsbury, and Shewana Workman.

(B) About March 2015, Respondent Bluefield delayed a wage increase for all employees in the Bluefield Unit.

(C) (1) About February 2015, Respondent Bluefield changed the paid time off policy, mandatory time off policy and staffing for employees in the Bluefield Unit.

(2) As a result of the changes described above in paragraph 44(C)(1), Respondent Bluefield has, since about February 2015, required its employees to use paid time off to reduce their leave balances.

(D) The subjects set forth above in paragraphs 44(A) though 44(C) relate to wages, hours, and other terms and conditions of employment of the Bluefield Unit and are mandatory subjects for the purposes of collective bargaining.

(E) Respondent Bluefield engaged in the conduct described above in paragraphs 44(A) through 44(C) without prior notice to the NNOC and without affording the NNOC an opportunity to bargain with Respondent Bluefield with respect to this conduct and the effects of this conduct.

(F) Respondent Bluefield engaged in the conduct described above in paragraphs 44(A) though 44(C) without first bargaining with the NNOC to an overall good-faith impasse for a collective-bargaining agreement.

45. (A) Since about December 2, 2014, and again about February 19, 2015, and in about March and April 2015, the NNOC requested in writing, that Respondent Bluefield furnish the NNOC with the following information:

(1) A list of all the RNs currently employed at BRMC including their FTE status, pay rate, date of hire, unit, address, and phone number;

(2) A list of all RNs who have left BRMC in the past 12 months and their disposition (i.e., terminated, retired, resigned);

(3) A description of any and all efforts made by BRMC to recruit or retain RNs;

(4) The employee satisfaction surveys for the years 2012, 2013, 2014;

(5) Any and all contracts with staffing agencies that have provided RNs at BRMC;

(6) A copy of any and all staffing matrices that have been used in these units for the years 2012, 2013, 2014;

(7) The RN turnover rate at BRMC for the years 2012, 2013, 2014;

(8) A copy of daily assignment sheets for these units for the past 6 months through the date that they are provided to NNOC; and

(9) The number of hours that RNs have worked overtime for the past 12 months.

(B) The information requested by the NNOC, as described above in paragraph 45(A), is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Bluefield Unit.

(C) From about December 2, 2014 to about August 20, 2015, Respondent Bluefield unreasonably delayed in furnishing the NNOC with the information requested by it as described above in paragraph 45(A).

46. (A) Since about March 4, 2016, the NNOC requested in writing that Respondent Bluefield furnish the NNOC with the following information:

(1) A copy of the March 2, 2016 suspension notice that the employer issued to Mike Adams;

(2) A copy of any prior disciplinary actions in Mike Adams' employment record, should any exist;

(3) Any applicable policies relevant to Mike Adams' March 2, 2016 suspension;

(4) Copies of notes and statements made by other staff regarding Mike Adams' March 2, 2016 suspension.

(B) The information requested by the NNOC, as described above in paragraph 46(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective bargaining representative of the Bluefield Unit.

(C) Since about March 8, 2016, Respondent Bluefield, by Human Resources Director Laura Martin, in writing, has failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 46(A).

47. (A) Since about March 24, 2016, the NNOC requested in writing that Respondent Bluefield furnish the NNOC with the following information:

> (1) The purpose and subject of the disciplinary meeting regarding Mike Adams;
>
> (2) The date of the incident giving rise to Adams' investigatory suspension;
>
> (3) The policies or rules of conduct allegedly violated by Adams giving rise to the investigatory suspension and a description of the basis for the accusation.

(B) Since about March 28, 2016, the NNOC again requested in writing that Respondent Bluefield furnish the NNOC with the information described above in paragraph 47(A) and furnish the NNOC with the following information:

> … [W]hat is the nature of Mike's supposed infraction? When did this occurs [sic]? What information is the Employer relying on in its investigation?

(C) The information requested by the NNOC, as described above in paragraph 47(A) and 47(B) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective bargaining representative of the Bluefield Unit.

(D) Since about March 24, 2016, Respondent Bluefield, by Human Resources Director Laura Martin, in writing, has failed and refused to furnish to the NNOC with the information described above in paragraphs 47(A) (1) and 47(A)(2) and the portion of paragraph 47(A)(3) requesting a description of the basis for the accusation.

(E) Since about March 28, 2016, Respondent Bluefield, by Human Resources Director Laura Martin, in writing, has failed and refused to furnish to the NNOC with the information described above in paragraphs 47(A)(1) and 47(A)(2), the portion of paragraph 47(A)(3) requesting a description of the basis for the accusation and the information specifically described above in paragraph 47(B).

(F) From about March 24, 2016, to about May 20, 2016, Respondent Bluefield unreasonably delayed in furnishing the NNOC with the portion of the information described above in paragraph 47(A)(3) regarding the policy or rule its employee Mike Adams had been accused of violating.

48. (A) Since about April 5, 2016, and again about May 24, 2016, the NNOC requested in writing that Respondent Bluefield furnish the NNOC with the following information:

> (1) In reference to the Employer's question regarding misuse of patient information:
>
> > (A) The employer's written policy and any communication to employees regarding the employer's obligation to ensure patient records are secure and confidential.
> >
> > (B) Records of internal investigations regarding HIPPA at BRMC for the last six months for the six months preceding the date of this letter.
> >
> > (C) Records of those investigations that were determined to be violations of HIPPA for the six months preceding the date of this letter.
> >
> > (D) Records of those violations reported to external industry, government and regulatory bodies for the six months preceding the date of this letter.
> >
> > (E) The complete audit trail - not limited to screen shots - of the patient in question, and a list and explanation [sic] of

the role of each employee who had access to, and each person who actually accessed the record.

(2) In reference to the Employer's questions regarding access to patient information related to patients who are not part of an RNs assignment, to RNs' knowledge of their assignment before shift, and to the practices during the "daily huddle"…We request:

(A) The employer's written policy and any communication to employees regarding access to patient information related to patients who are not part of an RNs assignment, and to the practices during the "daily huddle: [sic]

(B) Records of print-outs of patient census reports in all units at BRMC for the month preceding [sic] 2/27/16.

(C) A diagram, drawn to scale, of the med surge RN station and immediately surrounding patient rooms.

(D) An explanation of the employer's procedure to ensure that confidential information [of patients] who are not assigned to a particular RN during the "daily huddle" or at the Med Surg nurses' station during the shift.

(E) The employer's assessment of the amount of time after clocking in but without direct patient care duties that RNs have to review [the] census and patient records and prepare to deliver care during their shift.

(4) [sic] In reference to the Employer's question regarding Mike Adams's knowledge of other employees accessing patient information while off shift:

(A) Records of instances when any employee has electronically accessed patient information while off shift over the last six months.

(B) The employer's written policy and any communication to regarding practice related to accessing patient information while off shift.

(5) In reference to the employer's request that, rather than asking questions at the investigatory meeting, the Union submit a written information request, we request:

> (A) A list and copies of incident reports made during the two week span before and after 2/27/16.
>
> (B) Policy and copies of any communication during the last year to employees regarding access to and correction of patient records after those patients are no longer under an RNs care during the last year, including but not limited to the "72 hour window" recently communicated to Med Surg RNs via email.

(B) The information requested by the NNOC, as described above in paragraph 48(A) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative of the Unit.

(C) Since about April 5, 2016, and about May 24, 2016, Respondent Bluefield, by Human Resources Director Laura Martin, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 48(A).

49. (A) About March 8, 2016, Respondent Bluefield, in writing, insisted as a condition of furnishing requested information that the NNOC execute an indemnification agreement.

(B) The condition described above in paragraph 49(A) is not a mandatory subject for purposes of collective bargaining.

(C) Since about March 8, 2016, in support of the condition described above in paragraph 49(A), Respondent Bluefield has failed and refused to furnish the NNOC with requested information as described above in paragraphs 46 through 48.

50. (A) At various times from about March 6, 2015 through November 8, 2015, Respondent Bluefield and NNOC met for the purposes of negotiating an initial collective-

bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

(B) During the period described above in paragraph 50(A), Respondent Bluefield engaged in the following conduct: bargained with no intention of reaching an agreement, insisted upon proposals that were predictably unacceptable to NNOC, made proposals aimed at depriving NNOC of its representational role, and displayed a repeated unwillingness to adjust differences with NNOC, insisted to impasse on a non-mandatory subject of bargaining over discipline related to indemnification; refused to bargain over discipline; conditioned bargaining and furnishing requested information on the NNOC's execution of an indemnification agreement; failed to furnish the NNOC with requested relevant and necessary information; unreasonably delayed in furnishing the NNOC with requested relevant and necessary information; unilaterally discharged employees in the Bluefield Unit; unilaterally subcontracted bargaining unit work; unilaterally delayed a wage increase; and unilaterally changed policies on paid time off, mandatory time off and staffing for bargaining unit employees.

(C) By its overall conduct, including the conduct described above in paragraph 50(B) as well as paragraphs 43 through 49, and their subparagraphs, Respondent Bluefield has failed and refused to bargain in good faith with NNOC as the exclusive collective-bargaining representative of the Unit.

51. By the conduct described above in paragraphs 19 through 22, and their subparagraphs, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

52. By the conduct described in paragraph 23 and its subparagraphs, Respondent has been discriminating in regard to the hire, tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

53. By the conduct described above in paragraphs 23(C), and 29 through 50, and their subparagraphs, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Sections 8(a)(1) and (5) of the Act.

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

In view of the extensive history of repeated unfair labor practice violations found by the Board and courts to have been engaged in by Respondent CHSI, Respondent CHSPSC, Respondent Affinity, Respondent Barstow, Respondent Watsonville, Respondent Greenbrier and Respondent Bluefield as a single integrated enterprise and/or joint employers, together with the similarity of the prior violations to the unfair labor practices alleged above in paragraphs 19 through 23 and paragraphs 29 through 50, the General Counsel seeks an Order requiring Respondent CHSI, Respondent CHSPSC, Respondent Affinity, Respondent Barstow, Respondent Watsonville, Respondent Greenbrier, and Respondent Bluefield, and Respondent Quorum Health Corporation, Respondent QHCCS, as successors to Respondent CHSI, Respondent Affinity, Respondent Barstow and Respondent Watsonville to: (1) post in all its facilities any Notice to Employees that may issue in this proceeding; (2) electronically post the Notice to Employees for employees at all its facilities if the Respondents customarily use electronic means such as an electronic bulletin board, e-mail, website, or intranet to

communicate with those employees; and (3) send a copy of any Board Order and Notice to Employees to all its supervisors at its Affinity, Barstow, Watsonville, Greenbrier and Bluefield facilities.

The General Counsel also seeks a broad remedial order applicable to Respondent CHSI, Respondent CHSPSC, Respondent Affinity, Respondent Barstow, Respondent Watsonville, Respondent Greenbrier and Respondent Bluefield, and Respondent Quorum Health Corporation, Respondent QHCCS, as successors to Respondent CHSI, Respondent Affinity, Respondent Barstow and Respondent Watsonville, on a corporate-wide basis, in any and all locations where they are an employer within the meaning of Section 2(2) of the Act, as part of a single integrated enterprise, as joint employers, or otherwise, to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act in the manner alleged, or in any other manner, together with any and all relief as may be just and proper to remedy the unfair labor practices alleged.

Barstow

As part of the remedy for the unfair labor practices alleged above in paragraphs 19 and 51, the General Counsel seeks an Order requiring Respondent Barstow:

(i) To rescind or revise the "Compliance Disclosure Upon Separation" policy in all of its forms and make clear that it does not bar or restrict employees' right to file charges with the National Labor Relations Board or interfere with employees' Section 7 rights.

(ii) To notify all applicants and current and former employees in the Barstow Unit who were required to sign or otherwise become bound to the "Compliance

Disclosure Upon Separation" policy in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised policy.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

Greenbrier

As part of the remedy for the unfair labor practices described above in paragraphs 37 through 42 and their subparagraphs and paragraph 53, the General Counsel seeks an Order requiring Respondent Greenbrier:

(i) To reimburse the NNOC for its costs and expenses incurred in collective bargaining for all negotiations during the relevant Section 10(b) period including, for example, reasonable salaries, travel expenses and per diems.

(ii) To read a notice to employees on working time in the presence of a Board agent, at meeting or meetings scheduled to ensure the widest possible attendance, by Respondent Greenbrier's chief negotiator in collective bargaining. Alternatively, the General Counsel seeks an Order requiring that Respondent Greenbrier promptly have a Board agent read the notice to employees during working time in the presence of Respondent Greenbrier's supervisors and agents identified above in paragraph 17(D).

(iii) To mail, at its own expense, the notice to all current employees in the Greenbrier Unit, as well as to all individuals Respondent Greenbrier has employed in the Greenbrier Unit since August 2012.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

Bluefield

As part of the remedy for the unfair labor practices alleged above in paragraphs 43 through 50 and their subparagraphs and paragraph 53, the General Counsel seeks an Order requiring Respondent Bluefield:

(i) To reimburse the NNOC for its costs and expenses incurred in collective bargaining for all negotiations during the relevant Section 10(b) period including, for example, reasonable salaries, travel expenses and per diems.

(ii) To read a notice to employees on working time in the presence of a Board agent, at meeting or meetings scheduled to ensure the widest possible attendance, by Respondent Bluefield's chief negotiator in collective bargaining. Alternatively, the General Counsel seeks an Order requiring that Respondent Bluefield promptly have a Board agent read the notice to employees during working time in the presence of Respondent Bluefield's supervisors and agents identified above in paragraph 17(E).

(iii) To mail, at its own expense, the notice to all current employees in the Bluefield Unit, as well as to all individuals Respondent Bluefield has employed in the Bluefield Unit since August 2012.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the amended third consolidated complaint. The answer must be **received by this office on or before July 3, 2017, or postmarked on or before July 1, 2017.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

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

Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the amended third consolidated complaint are true.

Dated at Cleveland, Ohio this 19th day of June 2017.

/s/ Allen Binstock

ALLEN BINSTOCK
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 8
1695 AJC FEDERAL OFFICE BLDG
1240 EAST NINTH ST
CLEVELAND, OH 44199

Attachments

Form NLRB-4338
(2-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Cases 08-CA-167313, et al.

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

A copy of the foregoing, was filed electronically with the National Labor Relations Board, Division of Judges, and served by electronic mail, as designated below, and by permission of the Administrative Law Judge, on June 19, 2017 on the following parties:

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Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative**. If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link:
www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.
Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.
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II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence**: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

EXHIBIT C

From: Boyle, Angela [angie_boyle@chs.net]
Sent: Thursday, September 03, 2015 5:26 PM
To: Vanessa Sylvester; Michelle Mahon
Subject: RE: Quorum Health Corporation

Vanessa,

On August 20, 2015 I forwarded you this invitation to discuss our Hospital's impending association with Quorum Health Corporation. In the meantime, I have not received any response.

If you have a desire to further a discussion of this development, we should do so sooner than later, in order to ensure that we have ample time to devote to any such discussion.

In any event, please let me know if I should be corresponding with anyone else on your behalf.

Angie Boyle, SPHR | Vice President, Human Resources
Affinity Medical Center | 875 8th St NE | Massillon, OH 44646
Tel: 330.837.6860 | Cell: 330.413.5905 | Fax: 330.830.6927 | http:/www.affinitymedicalcenter.com

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From: Boyle, Angela
Sent: Thursday, August 20, 2015 10:14 AM
To: Vanessa Sylvester (vsylvester@nnoc.net); MMahon@nationalnursesunited.org
Subject: Quorum Health Corporation

Vanessa,

Attached is a copy of the release issued by Community Health Systems, Inc. on August 3rd, announcing the creation of Quorum Health Corporation, a publicly traded, diversified portfolio of thirty-eight hospitals presently associated with Community Health Systems, including DHSC, LLC dba Affinity Medical Center.

We have not, as yet, received any inquiry from your organization about this impending development.

Please feel free to contact us at your earliest convenience in the event you wish to discuss this event in a timely fashion.

Angie Boyle, SPHR | Vice President, Human Resources
Affinity Medical Center | 875 8th St NE | Massillon, OH 44646
Tel: 330.837.6860 | Cell: 330.413.5905 | Fax: 330.830.6927 | http:/www.affinitymedicalcenter.com

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GC Exh. 198

Community Health Systems Announces Plans to Spin off 38 Hospitals and Quorum Health Resources

FRANKLIN, Tenn.--(BUSINESS WIRE)--Aug. 3, 2015-- Community Health Systems, Inc. (NYSE: CYH) (the "Company") announced today that it plans to create a new publicly traded hospital company by spinning off to Community Health Systems' stockholders a group of 38 hospitals and Quorum Health Resources, LLC, a leading hospital management and consulting business. The new company will be named Quorum Health Corporation to leverage the existing strength of the Quorum brand. The spin-off is intended to be tax-free to Community Health Systems and its stockholders and is expected to be completed in the first quarter of 2016.

Quorum Health Corporation will be headquartered in middle Tennessee and will operate independently with its own board of directors and management team. It will include a diversified portfolio of 38 hospitals with an aggregate of 3,635 licensed beds across 16 states. The hospitals that will comprise Quorum Health Corporation have strong market positions and are primarily located in cities or counties having populations of 50,000 or less. In 84 percent of these markets, the hospital is the sole provider of acute care hospital services. In 2014, The Joint Commission recognized 74 percent of the hospitals that will become part of Quorum Health Corporation as Top Performers in Key Quality Measures. The new company will also include Quorum Health Resources, which provides hospital management and consulting services to 150 non-affiliated hospitals across the United States, most of which are located in similar markets as Quorum Health Corporation's sole provider hospitals.

In 2014, the businesses that will comprise Quorum Health Corporation generated unaudited annual net revenue of approximately $2.1 billion and adjusted EBITDA of approximately $255 million.

Benefits of the Transaction

- **Creates New Healthcare Company Poised for Growth.** With an attractive portfolio of high-quality community hospitals, streamlined management structure and independent access to capital markets, Quorum Health Corporation is expected to have an enhanced ability to drive growth by capitalizing on acquisition opportunities consistent with its portfolio, developing facility specific operating strategies aligned with its community needs and better leveraging its management and consulting capabilities.
- **Community Health Systems to Sharpen Focus and Growth Profile.** The spin-off will result in additional opportunities for profitable growth for Community Health Systems, as the Company will focus primarily on larger markets and on investing in strengthening its regional healthcare networks, while maintaining the benefits of scale from being one of the largest hospital companies in the country.
- **Designed to Increase Stockholder Value.** Community Health Systems stockholders will have the opportunity to realize the unique growth potential of two focused healthcare companies that will be better positioned to pursue their distinct business strategies.
- **Tax-Free Transaction to Community Health Systems Stockholders.** The distribution is intended to qualify as tax-free to Community Health Systems stockholders for U.S. federal income tax purposes.

"This significant transaction will realign our portfolio into two strong and focused companies that can respond to market demands with greater agility and that are better positioned to take advantage of growth opportunities, while creating additional value for our stockholders," said Wayne T. Smith, chairman and chief executive officer of Community Health Systems, Inc. "Over the past 30 years, Community Health Systems has evolved from a collection of smaller hospitals into a much more complex and diversified portfolio of hospitals, outpatient services, and healthcare systems across the country. We know how important hospitals are to their communities and recognize that smaller facilities have distinct opportunities and different challenges than those in larger markets, where the majority of our assets are located."

Smith continued, "This transaction will allow Quorum Health Corporation's hospitals to focus on the changes in the healthcare delivery system, which are different in smaller community hospitals than in our larger and more urbanized markets. At the same time, the transaction will facilitate a sharper focus on the hospitals that are retained by Community Health Systems, especially in high-opportunity markets and in areas where we are building regional healthcare networks."

Smith concluded, "Our stockholders have benefited from our acquisitiveness as we have grown the size and value of our company. We view this transaction as the best next step in our continuous effort to return value to our stockholders."

Quorum Health Corporation will launch with the benefit of transitional services from Community Health Systems, including purchased services in select areas such as information technology, billing and collections and payroll services. When the transaction is complete, Community Health Systems, Inc. will remain one of the largest publicly traded U.S. hospital companies with 160 affiliated hospitals in 22 states.

The transaction is expected to qualify as a tax-free distribution to Community Health Systems and its stockholders. Quorum Health Corporation expects to file its Form 10 with the Securities and Exchange Commission before the end of the third quarter. The Form 10 will contain detailed information about the new company, its management team, the spin-off transaction, and other related matters.

The transaction is subject to customary conditions, certain legal and valuation opinions, effectiveness of the Form 10 filing, and final approval and declaration of the distribution by the Community Health Systems, Inc. Board of Directors. The transaction is not subject to a stockholder vote. There can be no assurance regarding the ultimate timing of the spin-off or that it will be completed. Community Health Systems may, at any time, and for any reason until the proposed transaction is complete, abandon the spin-off or modify or change the terms. Quorum Health Corporation intends to have its common stock authorized for listing on the New York Stock Exchange. The Contingent Value Rights issued in connection with the Health Management Associates, Inc. transaction in January 2014 will be unaffected by this transaction.

Quorum Health Corporation Hospitals

Cherokee Medical Center	Centre, Alabama
DeKalb Regional Medical Center	Fort Payne, Alabama
L.V. Stabler Memorial Hospital	Greenville, Alabama
Forrest City Medical Center	Forrest City, Arkansas
Helena Regional Medical Center	Helena, Arkansas
Barstow Community Hospital	Barstow, California
Watsonville Community Hospital	Watsonville, California
Trinity Hospital of Augusta	Augusta, Georgia
Fannin Regional Hospital	Blue Ridge, Georgia
Clearview Regional Medical Center	Monroe, Georgia
Barrow Regional Medical Center	Winder, Georgia
Union County Hospital	Anna, Illinois
Metro South Medical Center	Blue Island, Illinois
Galesburg Cottage Hospital	Galesburg, Illinois
Gateway Regional Medical Center	Granite City, Illinois
Heartland Regional Medical Center	Marion, Illinois
Crossroads Community Hospital	Mt. Vernon, Illinois
Red Bud Regional Hospital	Red Bud, Illinois
Vista Medical Center	Waukegan, Illinois
Vista Medical Center – West	Waukegan, Illinois
Kentucky River Medical Center	Jackson, Kentucky
Three Rivers Medical Center	Louisa, Kentucky
Paul B. Hall Regional Medical Center	Paintsville, Kentucky
Mesa View Regional Hospital	Mesquite, Nevada
Mimbres Memorial Hospital	Deming, New Mexico
Alta Vista Regional Hospital	Las Vegas, New Mexico
Sandhills Regional Medical Center	Hamlet, North Carolina
Martin General Hospital	Williamston, North Carolina
Affinity Medical Center	Massillon, Ohio
McKenzie-Willamette Medical Center	Springfield, Oregon
Lock Haven Hospital	Lock Haven, Pennsylvania
Sunbury Community Hospital	Sunbury, Pennsylvania
Henderson County Community Hospital	Lexington, Tennessee
McKenzie Regional Hospital	McKenzie, Tennessee

Big Bend Regional Medical Center	Alpine, Texas
Scenic Mountain Medical Center	Big Spring, Texas
Mountain West Medical Center	Tooele, Utah
Evanston Regional Hospital	Evanston, Wyoming

Conference Call

Community Health Systems, Inc. will hold a conference call on Tuesday, August 4, 2015, at 10:00 a.m. Central, 11:00 a.m. Eastern, to discuss this transaction and to review financial and operating results for the second quarter ended June 30, 2015. Investors will have the opportunity to listen to a live internet broadcast of the conference call by clicking on the Investor Relations link of the Company's website at www.chs.net. To listen to the live call, please go to the website at least fifteen minutes early to register, download and install any necessary audio software. For those who cannot listen to the live broadcast, a replay will be available shortly after the call and will continue to be available through September 5, 2015.

Advisors

Credit Suisse is serving as Community Health Systems' financial advisor, and Bass, Berry & Sims PLC and Bradley Arant Boult Cummings LLP are serving as legal advisors to Community Health Systems in connection with the proposed spin-off.

About Community Health Systems, Inc.

Community Health Systems, Inc. is one of the largest publicly traded hospital companies in the United States and a leading operator of general acute care hospitals in communities across the country. Through its subsidiaries, the company currently owns, leases or operates 198 affiliated hospitals in 29 states with an aggregate of approximately 30,000 licensed beds. The Company's headquarters are located in Franklin, Tennessee, a suburb of south Nashville. Shares in Community Health Systems, Inc. are traded on the New York Stock Exchange under the symbol "CYH." More information about the Company can be found on its website at www.chs.net.

Forward-Looking Statements

Certain statements contained in this communication may constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements include, but are not limited to, statements regarding the expected timing of the completion of the spin-off transaction, the benefits of the spin-off transaction to either Community Health Systems or Quorum Health Corporation, the tax-free treatment of the spin-off transaction, the anticipated management of the business to be spun off, the market position of the business to be spun off and other statements that are not historical facts. Such statements are based on the views and assumptions of the management of the Company and are subject to significant risks and uncertainties. There can be no assurance that the proposed transaction or these future events will occur as anticipated, if at all, or that actual results will be as expected. Actual future events or results may differ materially from these statements. Such differences may result from a number of factors, including but not limited to: the timing and completion of the proposed transaction; a failure to obtain necessary regulatory approvals; a failure to obtain assurances of anticipated tax treatment; a deterioration in the business or prospects of the Company or Quorum Health Corporation; adverse developments in the Company or Quorum Health Corporation's markets; adverse developments in the U.S. or global capital markets, credit markets or economies generally; the risk that the benefits of the proposed transaction may not be fully realized or may take longer to realize than expected; the impact of the proposed transaction on the Company's third-party relationships; the Company's ability following completion of the spin-off to identify and acquire additional hospitals in larger and more urbanized markets with terms that are attractive to the Company and to integrate such acquired hospitals; and changes in regulatory, social and political conditions. Additional risks and factors that may affect results are set forth in the Company's filings with the Securities and Exchange Commission, including the Company's most recent Annual Report on Form 10-K.

The forward-looking statements speak only as of the date of this communication. The Company does not undertake any obligation to update these statements.

Non-GAAP Financial Measures

EBITDA is a non-GAAP financial measure which consists of net income attributable to Quorum Health Corporation, before interest, income taxes, and depreciation and amortization. Adjusted EBITDA is EBITDA adjusted to exclude impairment of long-lived assets, net income attributable to noncontrolling interests, and expenses related to legal settlements and related costs. Community Health Systems believes that it is useful to present adjusted EBITDA because it clarifies for investors Quorum Health Corporation's portion of EBITDA generated by continuing operations. Community Health Systems uses adjusted EBITDA as a measure of liquidity. Community Health Systems has also presented Quorum Health Corporation's adjusted EBITDA in this communication because it believes it provides investors with additional information about Quorum Health Corporation's ability to incur and service debt and make capital expenditures.

Adjusted EBITDA is not a measurement of financial performance or liquidity under U.S. GAAP. It should not be considered in isolation or as a substitute for net income, operating income, cash flows from operating, investing or financing activities or any other measure calculated in accordance with U.S. GAAP. The items excluded from adjusted EBITDA are significant components in understanding and evaluating financial performance and liquidity. This calculation of adjusted EBITDA may not be comparable to similarly titled measures reported by other companies.

Because certain terms of the spin-off have not yet been determined, including as to the balance sheet and statement of cash flows of Quorum Health Corporation, it is not reasonably possible at this time to provide the net income for Quorum Health Corporation or a reconciliation to the estimated adjusted EBITDA figure included in this communication. Historical GAAP financial information for Community Health Systems is included in its most recent Annual Report on Form 10-K filed with the SEC, and historical GAAP financial information for Quorum Health Corporation will be included in the Form 10 registration statement relating to the spin-off.

View source version on businesswire.com: http://www.businesswire.com/news/home/20150803006222/en/

Source: Community Health Systems, Inc.

Community Health Systems, Inc.
Investor Contact:
W. Larry Cash, 615-465-7000
President of Financial Services and Chief Financial Officer
or
Media Contact:
Tomi Galin, 615-628-6607
Senior Vice President, Corporate Communications, Marketing and Public Affairs

Attachments: C.H.S. - Quorum Health Corporation - Press release Announcing Spin-Off issued on April 1 2016.pdf

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From: Drake, Kiley [mailto:Kiley.Drake@Affinitymedicalcenter.com]
Sent: Monday, April 11, 2016 2:33 PM
To: Michelle Mahon
Cc: doncarmody@bellsouth.net; Ellis, Janice P; Vanessa Sylvester
Subject: Quorum Health Corporation - Press Release Announcing Spin-Off, issued on April 1, 2016

Ms. Mahon,

Attached for your information is a copy of a Press Release issued on April 1st, announcing that the Quorum "spin-off" is expected to become effective on April 29, 2016.

Thank you

Kiley Drake, MBA, PHR | Human Resources Director, Affinity Medical Center | 875 8th St NE | Massillon, OH 44646

Tel: 330.837.6860 | Fax: 330.830.6927 | Ext: 1254 Kiley.Drake@AffinityMedicalCenter.com

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GC Exh 213

CHS COMMUNITY HEALTH SYSTEMS, INC. QUORUM | HEALTH CORPORATION

COMMUNITY HEALTH SYSTEMS BOARD OF DIRECTORS APPROVES COMPLETION OF THE SPIN-OFF OF QUORUM HEALTH CORPORATION

FRANKLIN, Tenn. (April 1, 2016) – Community Health Systems, Inc. (NYSE: CYH) ("CHS") today announced that its board of directors has approved the distribution to its stockholders of 100% of the common stock of a new, independent publicly traded company, Quorum Health Corporation ("QHC"). If the spin-off proceeds as anticipated, each CHS stockholder of record as of April 22, 2016, the record date for the distribution, will receive on April 29, 2016, the distribution date, one share of QHC common stock for every four shares of CHS common stock held as of the record date. No fractional shares of QHC common stock will be issued in connection with the distribution.

The spin-off is expected to become effective on April 29, 2016. Following the spin-off, QHC will own or lease a portfolio of 38 hospitals with an aggregate of 3,582 licensed beds. The hospitals are geographically diversified across 16 states, primarily located in cities or counties having populations of 50,000 or less. QHC will also operate Quorum Health Resources, LLC, a leading hospital management advisory and consulting services business.

CHS will remain one of the largest publicly traded hospital companies in the United States and a leading operator of general acute care hospitals in communities across the country. Immediately following the completion of the spin-off, CHS' stockholders will own all of the outstanding shares of common stock of QHC.

Beginning on or about April 20, 2016, and continuing up to and through the distribution date, it is expected that there will be two markets in CHS common stock. Shares that trade in the "regular way" market will be entitled to shares of QHC common stock distributed pursuant to the distribution; shares that trade in the "ex-distribution" market will trade without an entitlement to shares of QHC common stock distributed pursuant to the distribution. Shares of CHS in the "ex-distribution" market will trade under the symbol "CYH WI."

QHC anticipates that "when-issued" trading will begin on or about April 20, 2016, and will continue up to and through the distribution date. Shares of QHC in the "when-issued" market will trade under the symbol "QHC WI." "Regular-way" trading in QHC's common stock is expected to begin on May 2, 2016, the first trading day following the completion of the spin-off (although this date may change if certain conditions are not satisfied by that date, as described in QHC's information statement filed as an exhibit to the Registration Statement on Form 10 filed with the Securities and Exchange Commission).

No action or payment is required by CHS stockholders to receive the shares of QHC common stock in the distribution. CHS expects to make available the information statement to all stockholders entitled to receive the distribution of shares of QHC common stock. The information statement is an exhibit to QHC's Registration Statement on Form 10 that describes QHC, including the risks of owning QHC common stock, and other details regarding the spin-off.

-MORE-

generally; risks associated with QHC's substantial indebtedness, leverage and debt service obligations; QHC's ability to successfully make acquisitions or complete divestitures; QHC's ability to successfully integrate any acquired hospitals; to recognize expected synergies from acquisitions or improve cash flows from intended divestitures; and changes in regulatory, social and political conditions. Additional risks and factors that may affect results are set forth in CHS' and QHC's filings with the Securities and Exchange Commission, including CHS' most recent Annual Report on Form 10-K, current reports on Form 8-K and quarterly reports on Form 10-Q and QHC's Registration Statement on Form 10, as amended. The forward-looking statements speak only as of the date of this communication. Neither CHS nor QHC undertakes any obligation to update these statements.

Contacts: Community Health Systems, Inc.
Investors: W. Larry Cash
President of Financial Services and Chief Financial Officer
(615) 465-7000
Media: Tomi Galin
Senior Vice President, Corporate Communications, Marketing and Public Affairs
(615) 628-6607

Quorum Health Corporation
Investors: Michael J. Culotta
Executive Vice President and Chief Financial Officer
(615) 465-7000

-END-

EMPLOYEE MEMO

To: Employees
From: Ron Bierman, CEO
Date: April 29, 2016
RE: Quorum Health Corporation Spin-off

Today, Community Health Systems completed the spin-off of Quorum Health Corporation, creating an entirely new, independent company with 38 hospitals in 16 states. Our future is very promising as an affiliate of Quorum Health. With the focus of the new company on hospitals like ours, we can expect specialized support so we can respond to the unique needs of our community.

We expect this to be a very smooth transition. Your pay rate, title and responsibilities remain the same. There are no changes to benefits or the 401k plan for those employees who participate in them. Our hospital leadership team, medical staff, employees and hospital name will all remain the same, and we will continue to have access to resources for safety and quality, operational excellence and financial health. Patients can continue to expect the same quality of care, and we will continue to provide charity care and pay taxes to our community.

Department leaders will be connecting with their new QHC corporate colleagues over the next few days to learn about any immediate changes or new policies. Unless you are instructed to use new policies or procedures, please continue to follow the ones you do today. If you have questions, please first ask your department director.

As we learn more, I look forward to sharing additional information with you about the transition process. In the meantime, attached to this memo is a letter from Tom Miller, CEO of QHC, he asked I share with you.

As always, thank you for all you do to support our hospital each day. I appreciate your hard work as we continue to provide patients with high quality care.

GC Ex 215

EXHIBIT D

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

DHSC, LLC d/b/a AFFINITY MEDICAL CENTER, *et al.* and NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), *et al.*	08-CA-167313, *et al*.

CHSPSC, LLC AND COMMUNITY HEALTH SYSTEMS, INC.'S MOTION FOR CONSENT ORDER AND DISMISSAL

I. INTRODUCTION

Respondents CHSPSC, LLC ("CHSPSC") and Community Health Systems, Inc. ("CHSI") (collectively, the "Corporate Respondents") hereby move for a Consent Order and Dismissal of the Amended Third Consolidated Complaint ("Complaint") allegations against them. The proposed Consent Order is as follows:

> 1. Subject to exceptions and appeals, any final order sustaining unfair labor practices with respect to DHSC, LLC, Hospital of Barstow, Inc., Bluefield Hospital Company, LLC, Greenbrier, VMC, LLC, and Watsonville Hospital Corporation (the "Hospital Respondents") shall obligate CHSPSC, LLC ("CHSPSC") to financially guarantee monetary remedies, if any, and shall state that CHSPSC, without admitting to liability, provided certain contracted management and consulting services for the Hospital Respondents. CHSPSC shall be jointly and severally responsible for effectuating non-monetary remedies in any such final order with respect to these Hospital Respondents, subject to CHSPSC's compliance rights to contest its ability to do so.
>
> 2. Any final order sustaining an unfair labor practice with respect to Complaint Paragraph 19 (Compliance Disclosure Upon Separation Form) shall require CHSPSC, without admitting to liability, to cease and desist from recommending the language determined to be illegal ("illegal language") in the Compliance Disclosure Upon Separation Form to client hospitals it serves. Where previously adopted by a hospital which CHSPSC continues to serve, CHSPSC shall communicate the final order to the client hospitals it serves and effectuate rescission by indicating the law that requires the illegal language's removal. CHSPSC will further meet notice requirements contained in any final order addressing said

language removal by communicating the final order to the client hospitals it serves and indicating the law that compels the notice requirement.

3. Community Health Systems, Inc. ("CHSI"), as a holding company, is (1) an indirect, remote owner of CHSPSC; (2) a former indirect, remote owner of Affinity, Barstow and Watsonville; and (3) an indirect, remote owner of Fallbrook, Bluefield and Greenbrier. CHSI accepts and adopts the above settlement, without admitting to being a single/joint employer, to promote compliance with the National Labor Relations Act. Because CHSI lacks any employees who may act to implement the terms of the Consent Order, CHSI appoints CHSPSC to effectuate any and all compliance with the above items. The remainder of the Complaint against CHSI and CHSPSC shall be dismissed.

The proposed Consent Order satisfies the legal standards set forth in both *United States Postal Service and Branch 256 ("USPS")*, 364 NLRB No. 116 (2016) and *Independent Stave*, 287 NLRB 740, 743 (1987). Adoption of the Consent Order will eliminate a complex, unnecessary phase in these proceedings. It will result in significant cost savings for the government and the parties, while addressing joint and single employer remedies for the unfair labor practice allegations in this case.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. General Counsel Has Pled a Limited Number of Specific Single/Joint Relationships

GC alleges in the Complaint that five hospital entities (collectively the "Hospital Respondents," referred to also herein with their names commonly used in the proceedings), located in different geographic areas, engaged in unfair labor practices. The Corporate Respondents, based in the Nashville area, have been pled into the case purely as alleged single/joint employers with the respective Hospital Respondents.

The number of Hospital Respondents involved in this case has always constituted a small fraction of the healthcare entities associated with the Corporate Respondents. At the time of the alleged unfair labor practices, CHSI, a holding company for publicly traded stock which employs no one, indirectly owned 196 hospitals and dozens of other healthcare entities in 29 states. Those

entities employed approximately 135,000 individuals. CHSPSC provided management services to affiliated entities. After the divestiture of many entities, the Corporate Respondents remained associated with over 130 acute care hospitals in more than 20 states, together with dozens of other business entities. (Ex. 1). Collectively, the affiliated entities now employ more than 115,000 people. (Ex. 1).

Hospital Respondents Greenbrier and Bluefield, the only operating Hospital Respondents which continue to be associated with the Corporate Respondents, employ a total of only 250 CNA-represented employees. (Ex. 1). The Corporate Respondents cannot effectuate non-monetary compliance for Hospital Respondents with whom they are no longer affiliated, which includes Watsonville, Barstow and Affinity. (Ex. 1). Thus, a fraction of only two hundredths of one percent (120/120,000 =.002) of the affiliated employee population maintain a meaningful connection with this case.

B. General Counsel Has Pled Allegations Concentrated at only Two Hospital Entities Affiliated with the Corporate Respondents.

The Corporate Respondents seek a resolution because their continued presence in the case has become relatively insignificant for the parties with respect to compliance. Even if the Corporate Respondents could have effectuated non-monetary remedies at Barstow, Watsonville and Affinity, they cannot do so now. The Corporate Respondents are no longer affiliated with these hospital entities. The allegations at those locations do not appear to carry meaningful monetary exposure. The Corporate Respondents can agree to guarantee monetary remedies for these Hospital Respondents, the same remedial outcome which would occur in the event of a single/joint finding.

The Complaint allegations in this case vary from CHS I in terms of their number and nature. 42 pages of the Complaint's 64 pages consist of naming the charges, parties, their alleged

relationships, and requested remedies. The remaining 22 Complaint pages set forth the allegations listed below.

> **Greenbrier and Bluefield -** Greenbrier allegedly: impliedly threatened union members with job loss if they refused to accept promotions, dealing directly with employees (Complaint Paragraphs 20, 37); changed a policy, resulting in more PTO use (Complaint Paragraph 38); removed relief charge nurse duties in two units (Complaint Paragraph 38); changed the method for obtaining work in the Cath Lab (Complaint Paragraph 38); disciplined and discharged an employee, refusing to bargain and respond to an information request about it (Complaint Paragraphs 39, 40); and failed to bargain in good faith (Complaint Paragraphs 41, 42). Bluefield allegedly: delayed a wage increase and told employees they did not receive wage increases because of the union (Complaint Paragraphs 21, 23); told employees not to discuss an ongoing disciplinary investigation. (Complaint Paragraph 22); subcontracted CRNA work and failed to bargain about it. (Complaint Paragraph 23, 44); suspended an employee twice, failed to respond to an information request about it, and failed to bargain about the suspensions. (Complaint Paragraphs 43, 47); delayed or failed to fully respond to three information requests (Complaint Paragraphs 45, 46, 48); and failed to bargain in good faith (Complaint Paragraph 49).
>
> **Affinity, Barstow and Watsonville -** Affinity, Barstow and Watsonville allegedly implemented QHC Benefits Plus and a long-term care insurance option, and did not respond to information requests (Complaint Paragraphs 29, 30, 31, 34-36). Affinity and Barstow allegedly transferred 401(k) assets to an identical plan which resulted in a brief blackout period. (Complaint Paragraphs 29, 31). Barstow allegedly changed a disciplinary policy about overtime, resulting in oral or written warnings, about which Barstow did not bargain or respond to an information request, and it implemented a personnel form. (Complaint Paragraphs 19, 31, 32, 33).

The allegations reveal alleged violations concentrated at Bluefield and Greenbrier, the only Respondent Hospitals which continue to be affiliates of the Corporate Respondents. General Counsel has not claimed the Corporate Respondents engaged in the alleged unfair labor practices at Bluefield and Greenbrier. Rather, as pled, they are simply corporations in the Nashville area which are part of two different single or joint employer relationships with these two West Virginia hospital entities.

GC seeks remedies beyond the relationships pled, and yet over eighty years after the Act's passage, no case in remotely like circumstances has ever resulted in such an order.[1] GC seeks to leapfrog across and disregarding corporate entities. The law simply does not support an order potentially applying to over a hundred and fifty unnamed entities and employers, based on two hundredths of one percent of an alleged employee population, with no recidivism and no allegations of Corporate Respondent wrongdoing with respect to currently affiliated entities. As explained below, any order to the contrary would clearly violate the Board remedial limitations set forth by the United States Supreme Court.

C. The Proposed Consent Order Provides Comprehensive Joint and Single Employer Relief, Addressing the Unfair Labor Practices Pled in the Complaint.

The proffered Consent Order resolves the legitimate remedial issues raised in the Complaint by offering, for remedial purposes, to permit the Corporate Respondents to be treated as if they were single/joint employers with the Respondent Hospital entities. Entry of the Consent Order obliges the Corporate Respondents to guarantee any remedies at those hospitals, subject to compliance proceedings on non-monetary issues (i.e. whether the Corporate Respondents, following divestiture of the Hospital Respondents, has the power to effectuate non-monetary remedies such as ordering bargaining).

The Corporate Respondents, accordingly, crafted a proposed Consent Order tailored to the Complaint's alleged single and joint employer relationships pled in the complaint by guaranteeing remedies. The Corporate Respondents have, moreover, ceded to full remedial notice, to be

[1] Having never pled single or joint employer connections among or with employees of the more than 150 other entities associated with CHSI and CHSPSC, GC nevertheless seeks a corporate-wide cease and desist order potentially applying to all such relationships. (Complaint Paragraph 56). Despite the infinitesimal connection this case now has with the 120,000 employees of other entities, GC seeks to cover relationships remote and unconnected with this case temporally, geographically, and otherwise.

determined as a matter of discretion in any final order. The Corporate Respondents have also included a policy-based corporate-wide remedy to cure policy defects, if any, for unnamed hospital entities.

D. Although Judge Laws' Rejected, with Qualification, a Similar Consent Order Which Remains The Subject of A Pending Special Appeal, CHS II Differs from CHS I.

On November 15, 2016, Judge Laws issued an Order denying a similar Consent Order for CHS I. Judge Laws did not find recidivism, as the Corporate Respondents have never been found to be single or joint employers. She did not find that the Corporate Respondents had to submit to a single/joint finding as a pre-condition to a consent order. Board law changed since the initial filing of the CHS I consent order. In *United States Postal Service and Branch ("USPS")*, 364 NLRB No. 116 (2016), the Board determined that *Independent Stave*, 287 NLRB 740, 743 (1987) would no longer apply to consent orders proffered over the objections of GC and a charging party.

Judge Laws reasoned that under *USPS* the prospect of some type of broader based remedial order limited her in granting the motion. Judge Laws, however, qualified her Order by stating "Under *Independent Stave*, I may have come to a different conclusion about the merits of Respondent's motion." Order at p. 2. The Corporate Respondents appealed the Order and that appeal has remained pending for more than six months.

This case differs from CHS I. CHS I involved dozens of challenges to policies maintained at multiple hospital entities. It involved dozens more allegations, more varied allegations, and an additional Respondent Hospital. The CHS I Complaint, for example, is 122 pages long, nearly twice as long as the 64 page long CHS II Complaint. CHS I included more numerous allegations with respect to all Respondent Hospitals, whereas CHS II concentrates primarily on only two hospitals. Whereas Judge Laws could not rule out a wider remedy at the time she issued her Order, the CHS II Complaint raises no such concerns. The Consent Order presented herein should be

accepted under *USPS*. It also meets the potentially soon-to-be-reinstated *Independent Stave* balancing test.

III. ARGUMENT

A. The Consent Order Should Be Adopted Under *USPS* and Applicable Supreme Court Precedent.

Board policy emphasizes and favors settlement. Settlements assist the Board in functioning effectively by conserving administrative and taxpayer resources while promoting industrial peace.[2] Under *USPS*, a unilateral consent order remains a viable tool for the Board to effectuate the Act's policies. A consent order must be accepted if it remedies "all of the violations *alleged* in the complaint." 364 NLRB No. 116 at 4 (emphasis added). The Consent Order proffered by the Corporate Respondents satisfies this standard because it has been tailored to remedy alleged vicarious single/joint responsibility within the alleged single/joint relationships pled in the Complaint.

Single/joint employers serve the purpose of guaranteeing a remedy through joint and several obligations. *Emsing's Supermarket, Inc.*, 294 NLRB 302 (1987). Single and joint consent orders should therefore be viewed through the lens of a corporate respondent's proper role of guaranteeing final remedies. The proffered Consent Order guarantees financial remedies and non-monetary remedies to the violations alleged, subject to post-divestiture compliance proceedings, thus satisfying *USPS*. With this guarantee, the Corporate Respondents submitted themselves to the maximum extent allowed by law to whatever remedies will be ordered against the Hospital Respondents. No remedial offer could be more "full" within the single or joint relationships pled.

[2] *Independent Stave*, 287 NLRB 740, 743 (1987); *Poole Foundry & Machine Co. v. NLRB*, 192 F. 2d 740, 742 (4th Cir. 1951); *Hotel Holiday Inn de Isla Verde v. NLRB*, 723 F.2d 169, 173 fn. 1 (1st Cir. 1983); *Combustion Engineering*, 272 NLRB 215 (1984); *Coca-Cola Bottling Co.*, 243 NLRB 501, 502 (1979); *Texaco, Inc.*, 273 NLRB 1335, 1336-1337 (1985).

USPS does not require the Corporate Respondents to offer remedies stretching beyond the single or joint employer relationships pled in the complaint, into other single or joint employer relationships neither named therein nor alleged to have engaged in unfair labor practices. *USPS* "violations alleged in the complaint" have been specifically pled in this case to have occurred within single/joint employer relationships, not within or among any other single/joint relationships, much less within more than 150 other non-pled potential relationships across the country. GC's request for a remedy potentially applying to these other relationships does not change the limited number of pled single/joint relationships or the fact that the unfair labor practices allegedly occurred only within those pled employer relationships.

To be clear, the Complaint does not include an assertion that the Corporate Respondents have engaged in unfair labor practices nationwide (e.g. with respect to policies or any other matter). The Complaint does not include a request for specific relief in the form of a corporate-wide rescission of policies, posting or other specific relief within single or joint employment relationships not named in this case. The fact that GC now hopes for more or has requested remedies not tied to particular unfair labor practice allegations or identified single or joint relationships, including potentially punitive remedies, is immaterial. GC does not get to prescribe the remedy. Under *USPS* the litigation is effectively over, as a matter of law, once a single/joint vicarious liability respondent commits to providing the single/joint remedy for the violations alleged in the complaint.

USPS should be applied in a manner consistent with Board policy favoring settlements and Supreme Court authority. The Supreme Court has prohibited the Board from requiring a remedy beyond the relationships alleged in a complaint. In *Communications Wkrs. of America AFL-CIO v. N.L.R.B.*, 362 U.S. 479, 480 (1960), the Board ordered a union to refrain from engaging in strike

violations with the respondent named employer and with "any other employer." The Supreme Court struck the "any other employer" reference from the order because the complaint did not allege actual violations against another employer relationship. *Id.* at 480. The same reasoning applies to other employer relationships not pled or named in the instant case. They may not be covered by a Board order and they may not serve as a barrier to a Consent Order.

Similarly, in *Carpenters Local 60 (Mechanical Handling) v. NLRB*, 365 U.S. 651, 655 (1961), the Board ordered a union to refund dues paid by employees who were not adversely affected by the unfair labor practices, stretching beyond the allegations in the complaint. The Court again struck that portion of the remedy, reasoning that the Board may only remedy specific allegations. The Board may not punish a respondent by interfering with respondent's relationships among employees who have not been subjected to wrongdoing. Rather, the Board may only "remove the consequences of the violation." *Id.* at 655. Anything more becomes "punitive" and beyond Board authority. *Id.; See also, Sure–Tan, Inc. v. NLRB*, 467 U.S. 883, 900 (1984)(Board remedies must be tailored to the specific unfair labor practice pled, without estimation or speculation). The same reasoning applies to any order in this case which would impose requirements on relationships based on estimation or speculation and not pled in the complaint, none of which may be allowed to preclude the proffered Consent Order. *USPS* does not require the Corporate Respondents to submit to an unavailable remedy.

B. The Consent Order Clearly Satisfies *Independent Stave*.

Alternatively, the Consent Order meets the test under *Independent Stave*, 287 NLRB 740, 743 (1987), a balancing test which may soon be restored by the Board. The Consent Order convincingly meets three of the four *Independent Stave* factors: (1) it is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; (2)

no fraud, coercion or duress has occurred; and (3) the Quorum Respondents have no history of violating the Act. The case for reasonableness is strong. The Consent Order has been proffered in advance of litigating joint/single employer issues, which will be contested. This issue, disposing of an entire phase of the proceedings, is tailor-made for resolution via Consent Order.

IV. CONCLUSION

The Corporate Respondents have offered a path forward which favors judicial economy. They have chosen to offer a *USPS* and *Independent Stave* settlement, committing to more than *USPS* and *Independent Stave* require by stretching to remedy potential issues with forms used in relationships not named in the Complaint. GC's quixotic desire for a more punitive outcome reflects a zeal tailor-made for extinguishment via Consent Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on July 31, 2017, a true and accurate copy of the foregoing was served upon the following via electronic mail:

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4819-8230-6124, v. 2

AFFIDAVIT OF BEN C. FORDHAM

STATE OF TENNESSEE)
) ss.
COUNTY OF WILLIAMSON)

Ben C. Fordham, being duly sworn, deposes and states as follows:

1. I am over eighteen years of age, and I have personal knowledge of the matters stated in this Affidavit. All the facts stated in this Affidavit are true and correct to the best of my knowledge, information, and belief.

2. I am presently Senior Vice President and Chief Litigation Counsel for CHSPSC, LLC ("CHSPSC"). CHSPSC provides certain consulting services to Community Health Systems, Inc. ("CHSI") in its role as a publicly traded company.

3. The principal place of business of CHSI is in Franklin, Tennessee. CHSI is a publicly traded holding company. At the time the Consolidated Complaint in this action was filed, CHSI indirectly owned interests in companies which owned or leased the hospitals involved in this case, including DHSC, LLC ("Affinity"); Hospital of Barstow, Inc. ("Barstow"); Bluefield Hospital Company, LLC ("Bluefield"); Fallbrook Hospital Corporation ("Fallbrook"); Greenbrier VMC, LLC ("Greenbrier"); Watsonville Community Hospital Corporation ("Watsonville") (collectively "Respondent Hospitals"). CHSI also indirectly owned an interest in CHSPSC, LLC ("CHSPSC"). CHSI is a stock holding company, and has no employees.

4. CHSPSC is a consulting and management services company with its principal place of business in Franklin, Tennessee. CHSPSC provided contracted management and consulting services to Respondent Hospitals. Respondent Hospitals constituted a small number of the corporate entities affiliated with CHSI and CHSPSC (collectively, the "Corporate Respondents"). Those entities included clinics, doctor groups, and many other types of ancillary service businesses. In addition to those entities, at the time the Consolidated Complaint in this case was filed, the Corporate Respondents were similarly affiliated with approximately 196 acute care hospitals in 29 states located across the country. The referenced entities collectively employed approximately 135,000 employees.

5. On April 29, 2016, 38 hospitals formerly affiliated with the Corporate Respondents were divested to form Quorum Health Corporation ("QHC"), also a publicly traded holding company. The Corporate Respondents remain affiliated with 159 acute care hospitals in 22 states, together with dozens of other businesses. Collectively, these entities employ more than 120,000 employees. As part of this divestiture, the Corporate Respondents have disassociated with Affinity, Watsonville, and Barstow ("the divested hospitals") which are now affiliates of QHC.

6. As a result of the divestiture of the entities, the divested hospitals have become indirectly owned by QHC. The Corporate Respondents have no ownership relationship with the divested hospitals. CHSPSC no longer serves as a management services company for the divested hospitals. As separate corporate entities, neither CHSI nor CHSPSC may compel QHC or its affiliates to undertake any particular remedial action, such as: complying with information requests; engaging in collective bargaining; or implementing revised personnel policies or procedures.

7. As a result of the divestiture, among Respondent Hospitals, only Fallbrook (which closed in 2014), Greenbrier, and Bluefield remain affiliated with the Corporate Respondents. Greenbrier and Bluefield employ a total of approximately 250 CNA represented employees. Collectively, following the QHC divestiture, the affiliated entities associated with the CHSI and CHSPSC Respondents have more than 120,000 employees, including 46 bargaining units represented by different unions.

8. As of the divestiture, Respondent Hospitals, with the exception of Fallbrook, continued to operate as acute care medical facilities, with substantial workforces and substantial resources, fully capable of remedying alleged unfair labor practices which could be remedied. This continues to be true with respect to the non-divested Respondent Hospitals Greenbrier and Bluefield.

9. CHSPSC has never been subject to an order or finding that it violated the National Labor Relations Act ("the Act"), nor has CHSPSC been subject to a single/joint employer finding under the Act. As a publicly traded holding company, with no employees, CHSI has not operated Respondent Hospitals and has never been subjected to a single or joint employer finding under the Act.

Further affiant sayeth naught.

Ben C. Fordham

Sworn to and subscribed before me this 8th day of July, 2016.

NOTARY PUBLIC

EN03072.Public-03072 4836-8713-0163v1

CINDY L. BARLOW
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY
My Comm. Expires May 23, 2018

EXHIBIT E

1 MR. HUDSON: Your Honor, if I may? I was waiting
2 patiently before the record opened, and then I realized I
3 waited too long and you opened. And I apologize for not
4 bringing this to your attention in advance of opening the
5 record, but if it pleases Your Honor, on behalf of QHCCS,
6 I would like to make an oral motion to sever QHCCS, LLC,
7 from the case. It will be a very brief presentation, and
8 I'm making it now because as the record is beginning to
9 open, even those those issues may not be addressed for
10 months down the road, when we get to Nashville. It
11 seemed appropriate to raise at this time at the beginning
12 of the hearing. May I be heard, Your Honor?
13 JUDGE CARTER: That's fine.
14 MR. HUDSON: Thank you.
15 QHCCS, LLC, is a service company located in
16 Brentwood, Tennessee. It provides services to three of
17 the hospitals which are respondents in this case. It's a
18 new company. It's not alleged to have engaged in unfair
19 labor practices.
20 QHCCS is in this case purely as an alleged
21 successor to CHSI. CHSI is in the case as an alleged
22 single or joint employer with the three hospitals that
23 are now being served by QHCCS. So we have a bit of a
24 torturous path to bringing QHCCS into the case. In other
25 words, Your Honor, it's not your typical successor

1 situation. They're a complex joint/single relationship
2 that led to QHCCS being included.
3 I think the General Counsel reasons that
4 since QHCCS is affiliated with QHC, one of the other
5 respondents, and since QHC was a CHS spinoff, where CHS
6 divested some of its holdings, that QHCCS is somehow
7 successor to CHS.
8 Now, we presume if QHCCS, LLC, stays in the
9 case, that there will be some proof in the record that's
10 going to include an analysis of QHCCS's operations and
11 its relationships with the hospital respondents.
12 This case, Your Honor, may not be one where
13 we have simple proof of QHC's purchase of some CHS
14 holdings. Judge Laws, of course, addressed this issue of
15 whether QHCCS, LLC, and QHC should be included in the
16 first case, CHS-1. She decided to sever the allegations
17 against QHCCS to have them heard in compliance.
18 For reasons of efficiency, we request the
19 same treatment of QHCCS, LLC, and the successor issues in
20 the instant case.
21 As to efficiency, it's inefficient to have
22 the issue -- we submit, Your Honor, it's inefficient to
23 have the issue heard in this case because it may be
24 unnecessary altogether to do so. The hospitals have the
25 capacity to remedy the alleged violations, and, absent a

EXHIBIT F

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DHSC, LLC d/b/a AFFINITY MEDICAL CENTER, *et al.* and NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), *et al.*	08-CA-167313, *et al*.

CHSPSC, LLC AND COMMUNITY HEALTH SYSTEMS, INC.'S RENEWED AND MODIFIED MOTION FOR CONSENT ORDER AND FOR PARTIAL DISMISSAL

I. INRODUCTION

Respondents CHSPSC, LLC ("CHSPSC") and Community Health Systems, Inc. ("CHSI") (collectively, the "Corporate Respondents") hereby submit their Renewed and Modified Motion for Consent Order and for Partial Dismissal ("Renewed Motion"). The Corporate Respondents incorporate the applicable information, arguments and affidavit presented in their initial July 31, 2017 Motion for Consent Order and Dismissal to support the modified consent order presented below.

The Corporate Respondents base their Renewed Motion, in part, on *UPMC*, 365 NLRB No. 153 (2017), in which the Board restored *Independent Stave,* 287 NLRB 740 (1987). In *UPMC*, the Board adopted Judge Carissimi's recommended acceptance of a consent order identical to the order presented by the Corporate Respondents below. The *UPMC* analysis, including its application of *Independent Stave*, applies to the instant case. The joint and single employer allegations against the Corporate Respondents should be dismissed and the proffered consent order should be entered.

II. ARGUMENT

A. The *UPMC* Decision Provides a Clear Path to Resolution.

Like the instant case, *UPMC* involved multiple hospitals which faced a several allegations, together with single employer allegations against their corporate affiliate/parent. In *UPMC*, General Counsel consolidated twenty-two cases, which together included allegations of: multiple instances of surveillance; multiple threats; multiple interrogations; photographing union activity; disparate enforcement of solicitation policies on several occasions; supporting a company-sponsored labor organization; four separate employee discharges for union activity; and nine separate instances of adverse disciplinary actions for union activity. *UPMC*, 2014 LRRM (BNA) 171779 (NLRB Div. of Judges).

Like the instant case, Judge Carissimi segmented the proceedings, with single employer allegations to be heard in the final hearing phase of the case. Prior to the commencement of the single employer hearing phase, UPMC moved to dismiss the single employer allegations against it based on a simple offer to guarantee remedies for substantiated unfair labor practices. That offer became the following Order which the Board entered.

> ORDER
> The Respondent, UPMC, shall be the guarantor of any remedies that the Board may order in the original decision in this case (JD-62-14). As the guarantor, Respondent UPMC must ensure that Respondent UPMC Presbyterian Shadyside takes all steps necessary to comply with any remedies that may be contained in the Board's Order, including providing for any such remedies itself, if UPMC Presbyterian Shadyside fails to do so.
>
> IT IS FURTHER ORDERED that the allegation in the complaint that Respondent UPMC and Respondent UPMC Presbyterian Shadyside constitute a single employer is dismissed as, under the circumstances, it would not effectuate the policies of the Act to continue to litigate and reach a decision regarding that allegation.

B. The Corporate Respondents Newly Proffered Consent Order is Consistent with the Order Entered in *UPMC*.

The Corporate Respondents proffer the order below, marked up to identify necessary, though primarily form-oriented, variations from the *UPMC* order.

> ORDER
> The Respondent, CHSPSC, LLC ~~UPMC~~ shall be the guarantor of any remedies that the Board may order with respect to the underlying unfair labor practice allegations in this case ~~in the original decision in this case (JD-62-14)~~. As the guarantor, Respondent CHSPSC, LLC ~~UPMC~~ must ensure that the Hospital Respondents ~~UPMC Presbyterian Shadyside~~ take~~s~~ all steps necessary to comply with any remedies that may be contained in the Board's Order, including providing for any such remedies itself, if the Hospital Respondents ~~UPMC Presbyterian Shadyside~~ fail~~s~~ to do so, subject to CHSPSC, LLC's compliance rights to contest its ability to effectuate non-monetary remedies for divested Hospital Respondents.[1] Community Health Systems, Inc. accepts these terms and has appointed CHSPSC, LLC to be its agent with respect to effectuating compliance.[2]
>
> IT IS FURTHER ORDERED that the allegations in the complaint that Respondent CHSPSC, LLC and Respondent Community Health Systems, Inc. ~~Respondent UPMC and Respondent UPMC Presbyterian Shadyside~~ constitute a single/joint employer with the Hospital Respondents or with one another are ~~is~~ dismissed as, under the circumstances, it would not effectuate the policies of the Act to continue to litigate and reach a decision regarding these allegations.

C. The Proffered Modified Consent Order Satisfies *Independent Stave* and *UPMC*.

In *UPMC*, the Board applied *Independent Stave* in a straightforward fashion. The Board analysis from *UPMC*, set forth below, applies on all fours to the instant case.

1. *General* - Single-employer status does not constitute an unfair labor practice.[3] It "provides a backup party—or a potential alternate party—that is responsible for providing whatever

---

[1] With all but two of the operating Hospital Respondents having been divested and having lost their management services connection with CHSPSC, CHSPSC must reserve the right to maintain its inability to guarantee certain non-monetary remedies (e.g. bargaining obligations). Affidavit of Ben Fordham, previously filed herein.

[2] CHSI is a holding company. It has no employees and can do no more than appoint an agent to effectuate compliance. Affidavit of Ben Fordham, previously filed herein.

[3] Similarly, General Counsel has not alleged the Corporate Respondents engaged in any unfair labor practices, nor have the Corporate Respondents been defending against any. The *UPMC* analysis directly applies to the instant Motion because it only addresses single/joint status.

relief is ultimately ordered." *UPMC* at p. 7. UPMC offered a guarantee which was "effectively" this "outcome." *Id.* The analysis is identical herein.

2. *Independent Stave Factor 1* - The General Counsel's opposition is "an important consideration weighing against approval, but it is not determinative…." *UPMC* at p. 7. Union and General Counsel consent "is not the decisive factor to be weighed." *Id., quoting Iron Workers Local 27 (Morrison-Knudson)*, 313 NLRB at 217. The analysis is identical herein.

3. *Independent Stave Factor 2* - The "reasonableness" factor is "the most important consideration when evaluating a consent settlement agreement." *UPMC* at p. 12. The *UPMC* consent decree was reasonable because: (a) UPMC's remedial guarantee was "as effective as a finding of single employer status;" (b) the single employer allegations meant UPMC was not alleged to be a wrongdoer; (c) the order eliminated risk while providing an additional party to help guarantee a remedy; and (d) such an order "greatly expedites" the resolution of the proceedings because it eliminates a complex phase of the case. *Id.* at 8-9. The analysis is identical herein. In addition, changes in business and remedial circumstances bolster the consent order's reasonableness. Respondent Affinity has gone out of business. The Corporate Respondents' guarantee with respect to monetary remedies, providing a party who can pay, is significant in light of the closure. With respect to non-monetary remedies at Affinity, it would not further the purposes of the Act to continue litigating with the Corporate Respondents. Those remedies, if any, are no longer consequential (i.e. there are no employees affected by the remedy). Nor are non-monetary remedies with respect to Watsonville or Barstow significant with respect to the Corporate Respondents. Post-divestiture, the Corporate Respondents cannot effectuate those

remedies. The consent order is therefore reasonable, in part, because it resolves issues of vicarious responsibility on a *UPMC* guarantee basis. While most of these issues have become inconsequential, they remain expensive and time-consuming to litigate.

4. *Independent Stave Factors 3 and 4* - "[T]here are no allegations of fraud, coercion, or duress, and there is no evidence that UPMC has a history of violating the Act or has breached previous settlement agreements resolving unfair labor practice disputes." *UPMC* at pp. 7-8. The analysis is identical herein.

III. CONCLUSION

With *UPMC*, the Board delivered a case which applies directly to the Corporate Respondents' efforts to resolve the single/joint allegations pled herein. The above modified consent order faithfully tracks language deemed acceptable by the Board in *UPMC*, which finds identical support in the instant case. The Affinity closure and other divestitures make the consent order even more reasonable than in *UPMC.* The Corporate Respondents respectfully request that the newly proffered consent order be accepted, resulting in the dismissal of the Corporate Respondents and the elimination of a single/joint hearing in this case.

Respectfully submitted,

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EXHIBIT G

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DHSC, LLC, d/b/a AFFINITY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., HOSPITAL OF BARSTOW, INC., d/b/a BARSTOW COMMUNITY HOSPITAL, WATSONVILLE HOSPITAL CORPORATION d/b/a WATSONVILLE COMMUNITY HOSPITAL, and/or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and/or joint employers and QUORUM HEALTH CORPORATION and QHCCS, LLC, successor employers, et al.		
and	**Cases**	**08-CA-167313 et al.**
NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), CALIFORNIA NURSES ASSOCIATION/NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC) and CALIFORNIA NURSES ASSOCIATION (CNA), NATIONAL NURSES UNITED, et al.		

COUNSEL FOR GENERAL COUNSEL'S MEMORANDUM IN OPPOSITION TO RESPONDENTS' RENEWED MOTION FOR CONSENT ORDER AND FOR PARTIAL DISMISSAL

Pursuant to Section 102.24(a) of the National Labor Relations Board's Rules and Regulations and Administrative Law Judge Geoffrey Carter's (ALJ) Order, Counsel for General Counsel (General Counsel) files this Memorandum in Opposition to Respondent CHSPSC's and Respondent CHSI's Renewed and Modified Motion for Consent Order and for Partial Dismissal (Renewed Motion for Consent Order).

Respondent's Renewed Motion for Consent Order should be denied. The Proposed Modified Consent Order fails to satisfy the standard set forth in Independent Stave Co., 287 NLRB 740, 743 (1987), and as enunciated in UPMC, 365 NLRB No. 153 *slip. op.* (Dec. 11,

2017). An examination of all of the surrounding circumstances demonstrates that the Proposed Modified Consent Order is not reasonable in light of the nature of the violations alleged, the risks inherent in litigation, as well as the stage of the litigation. The facts in the instant consolidated action where the General Counsel seeks a corporate-wide remedy, are distinguishable from UPMC and thus require a different result from that case.

Respondents contend that the Proposed Modified Consent Order should be approved, arguing that the instant consolidated case is analogous to UPMC, and that the Proposed Modified Consent Order is in accord with the adopted Order in UPMC.[1] Respondents further seek the dismissal of allegations related to the Corporate Respondents and the single/joint employer allegations, including the elimination of the single/joint phase of this consolidated action. Respondents' arguments should be soundly rejected.

Respondents' Proposed Modified Consent Order is not reasonable in light of the nature of the violations alleged for the following reasons. First, the Proposed Modified Consent Order fails to adequately guarantee remedies for all allegations against all of the Respondent Hospitals, in this connection failing to include all related corporate entities and named Corporate Respondents as guarantors and parties to the agreement. Second, the Proposed Modified Consent Order fails to include the appropriate and necessary corporate-wide remedy sought against Respondent CHSPSC, Respondent CHSI and the successors, Respondent Quorum Health Corporation (QHC) and Respondent QHCCS, LLC (QHCCS) (referred to collectively as Quorum Respondents). Third, the Respondents' Proposed Modified Consent Order fails to provide non-economic remedies for the unfair labor practices at Respondent Affinity, which, despite its operating status, are still needed to effectuate the purposes of the Act. Fourth, the

[1] UPMC, *supra*, at 11 and 26.

Proposed Consent Order unreasonably fails to guarantee essential non-monetary remedies for Respondents Watsonville and Barstow.

Further, the Proposed Modified Consent Order is not reasonable considering the risks inherent in the litigation and the stage of litigation. The risk calculus for the instant action differs from that in UPMC. Here, the Proposed Modified Consent Order provides no responsibility to corporate Respondent CHSI, to effectuate any of the proposed remedies, and Respondent CHSPSC is not responsible for non-monetary remedies at particular Respondent Hospitals. Furthermore, Quorum Respondents are not even included in the agreement.

It is not reasonable to grant the Proposed Modified Consent Order at this stage of litigation because it is premature to grant these motions, where the parties are still adducing evidence concerning allegations involving Respondents Bluefield, Greenbrier and Barstow, evidence relevant to the need for corporate-wide relief. Unlike in UPMC, there is no delay associated with pending subpoena enforcement actions. Additionally, granting the consent settlement agreement at this stage of the proceeding would deprive the General Counsel of the opportunity to adduce relevant evidence regarding the appropriateness of any corporate-wide remedy during any single/joint employer litigation.

Finally, Respondents' contention that its Proposed Modified Consent Order is reasonable based on changed circumstances surrounding Respondent Affinity's closure and the April 2016 spinoff of three Respondent Hospital, is unavailing. To the extent Respondent CHSPSC and CHSI will not fully guarantee the remedies in the Proposed Modified Consent Order further underscores insufficiency of the proposal. Respondents also fail to meet the standards for a motion to dismiss.

Accordingly, it is urged that Respondents' Proposed Modified Consent Order be denied as explicated below.

I. RELEVANT PROCEDURAL HISTORY

On September 26, 2016, the Regional Director for Region 8 issued an Order Further Consolidating Cases, Third Consolidated Complaint in Cases 08-CA-167313, et al. (Complaint) (GC Exh. 1.1.26). The Complaint includes various alleged unfair labor practice conduct at Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Greenbrier and Respondent Watsonville (referred to collectively as Respondent Hospitals), including various 8(a)(1), (3) and (5) allegations that are part of this consolidated action. The Complaint also alleges that Respondent CHSPSC and Respondent CHSI are single and/or joint employers with the named Respondent Hospitals. In addition, the Complaint alleges that the Quorum Respondents are successor employers to Respondents Affinity, Barstow, and Watsonville.

In addition, the Complaint prays for a corporate-wide cease-and-desist remedy. The corporate-wide cease-and-desist remedy applies, on a corporate-wide basis, to any and all locations where: (1) entities are single and/or joint employers with Respondent CHSI and/or Respondent CHSPSC; and (2) where such entities have engaged in conduct that violates the Act. The Complaint states:

> The General Counsel also seeks a broad remedial order applicable to Respondent CHSI, Respondent CHSPSC, Respondent Affinity, Respondent Barstow, Respondent Watsonville, Respondent Greenbrier and Respondent Bluefield, and Respondent Quorum Health Corporation, Respondent QHCCS, as successors to Respondent CHSI, Respondent Affinity, Respondent Barstow and Respondent Watsonville, on a corporate-wide basis, in any and all locations where they are an employer within the meaning of Section 2(2) of the Act, as part of a single integrated enterprise, as joint employers, or otherwise, to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act in the manner alleged, or in any other manner, together with any and all relief as may be just and proper to remedy the unfair labor practices alleged. (Complaint, p. 56).

On June 26, 2017, the ALJ issued an Order Denying Quorum Respondents' March 27, 2017 Motion to Sever. (GC Exh. 1.1.55). On July 19, 2017, the ALJ, upon reconsideration granted Quorum Respondent' Motion to Sever, and indicated that their role as Golden State successors[2] would be litigated in compliance. (Tr. 1447-1448).

On July 31, 2017, Respondents CHSPSC and CHSI filed a Motion for Consent Order and Dismissal which was subsequently withdrawn. On March 1, 2018, these Respondents filed a Renewed Motion for Consent Order, which incorporates by reference its July 31, 2017 Motion for Consent Order. On March 5, 2018, the ALJ issued an Order Setting Briefing Schedule concerning Respondents' Renewed Motion for Consent Order.

II. THE PROPOSED MODIFIED CONSENT ORDER

RESPONDENT CHSPSC'S AND RESPONDENT CHSI'S PROPOSED MODIFIED CONSENT ORDER.

ORDER

The Respondent, CHSPSC, LLC ~~UPMC~~ shall be the guarantor of any remedies that the Board may order with respect to the underlying unfair labor practice allegations in this case ~~in the original decision in this case (JD-62-14)~~. As the guarantor, Respondent CHSPSC, LLC ~~UPMC~~ must ensure that the Hospital Respondents ~~UPMC Presbyterian~~ ~~Shadyside~~ takes ~~s~~ all steps necessary to comply with any remedies that may be contained in the Board's Order, including providing for any such remedies itself, if the Hospital Respondents ~~UPMC Presbyterian Shadyside~~ fail~~s~~ to do so, subject to CHSPSC, LLC's compliance rights to contest its ability to effectuate non-monetary remedies for divested Hospital Respondents. Community Health Systems, Inc. accepts these terms and has appointed CHSPSC, LLC to be its agent with respect to effectuating compliance.

IT IS FURTHER ORDERED that the allegations in the complaint that Respondent CHSPSC, LLC and Respondent Community Health Systems, Inc. ~~Respondent UPMC~~ ~~and Respondent UPMC Presbyterian Shadyside~~ constitute a single/joint employer with the Hospital Respondents or with one another are ~~is~~ dismissed as, under the circumstances, it would not effectuate the policies of the Act to continue to

[2] Golden State Bottling Co. v NLRB, 414 U.S. 168, 176 (1973).

litigate and reach a decision regarding these allegations.[3]

III. ARGUMENT

A. RESPONDENTS' RENEWED MOTION FOR CONSENT ORDER AND FOR PARTIAL DISMISSAL SHOULD BE REJECTED.

1. Respondents' Proposed Modified Consent Order Fails to Meet the Standards Enunciated Under UPMC and Independent Stave Co.

a. The Applicable Standard Under *UPMC* and *Independent Stave*

In United States Postal Service and Branch 256 (USPS), 364 NLRB No. 116, *slip op.* (August 27, 2016), the Board outlined the standard for approving a consent order proposed by a respondent in the face of objections from the General Counsel and the charging party. In USPS, the Board found that a proposed unilateral consent order, "protects the public interest and effectuates the purposes and policies of the Act only if it provides a full remedy for all of the violations alleged in the complaint." *Id.* at 3. The Board held:

> 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.*

In UPMC, 365 NLRB No. 153 *slip op.* (December 11, 2017), the Board overruled the standard enunciated in USPS. In reversing the USPS standard, the Board returned to its prior "reasonableness" standard set forth in Independent Stave, 287 NLRB 740 (1987).[4]

Under Independent Stave, the Board examines the circumstances surrounding the settlement agreement including, but not limited to:

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[3] The tracked changes reflect Respondent's edits to the language in the Order contained in UPMC, *supra*, at 11, and 26.

[4] The Board applies the term "consent settlement agreement" to apply to settlement terms to which respondent has agreed but the General Counsel and charging party or parties have not agreed; formerly, referred to as "consent order" or "unilateral settlement by consent order." *See* UPMC, *supra, slip op.* at 1, n.2. Because Respondents in the Renewed Motion for Consent Order used the term "Consent Order," General Counsel will continue to utilize that term in this Memorandum.

> (1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement; (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.[5]

In UPMC, the Board found with respect to the first factor of the Independent Stave analysis, there was inconclusive evidence that the parties agreed to be bound by the settlement. With respect to the second factor of Independent Stave, the Board held that the reasonableness consideration was the most important factor in evaluating a consent settlement agreement.[6]

The Board found that the UPMC consent settlement agreement was reasonable for the following reasons. First, the Board found that the UPMC remedial guarantee was as effective as a finding of single-employer. Second, the Board noted that the corporate parent's remedial guarantee was reasonable in light of the circumstances that UPMC's subsidiary, Presbyterian Shadyside, was the alleged wrongdoer. The Board noted there was no allegation that the corporate parent, as a separate entity, committed any unfair labor practices. Third, the Board held that UPMC's remedial guarantee was reasonable in light of the risks inherent in litigating the issue of single employer status, and that rejecting the offer risked the corporate respondent not facing any liability for the unfair labor practices. The Board also found that the consent settlement agreement ensured that the corporate parent was responsible for the performance of any Board-ordered remedies. Fourth, the Board found that the consent settlement agreement was reasonable at that stage in litigation. The Board concluded that accepting respondent's offer expedited the resolution of the proceeding and eliminated delay and uncertainty where there was

[5] Independent Stave, *supra*, at 743.
[6] UPMC, *supra*, *slip op*. at 8.

an ongoing subpoena enforcement dispute and where the process for adjudicating the single employer status could take years.

With regard to the third and fourth prongs of the Independent Stave analysis, the Board found that there was no allegation of fraud, coercion or duress, as well as no evidence that UPMC itself had a history of violating the Act or had breached prior settlement agreements.

b. The Proposed Modified Consent Order and circumstances in the instant consolidated case are distinguishable from *UPMC*, 365 NLRB No. 153 (Dec. 11, 2017).

The language of Respondents' Proposed Modified Consent Order and the instant circumstances are distinguishable from UPMC and necessitate a different result under the Independent Stave factors.

Contrary to Respondents' contentions in its Renewed Motion for Consent Order, Respondents' divergence from the UPMC consent settlement agreement language is not limited to mere form over substance. Here, Respondents have added language ensuring CHSPSC's right to contest its ability to effectuate non-monetary remedies for divested Hospitals, requiring litigation and a determination potentially absolving Respondent CHSPSC of any liability as a guarantor. UPMC involved a single respondent hospital and a corporate respondent which provided its guarantee in the consent settlement agreement. In the instant case, there are multiple corporate respondents not party to the proposed agreement. Prior to April 29, 2016, Respondents CHSPSC and CHSI were affiliated with all of the named Respondent Hospitals; since that time, Respondents CHSPSC and CHSI remain affiliated with only Respondents Greenbrier and Bluefield among the Respondent Hospitals.[7] Since April 29, 2016, the Quorum Respondents

[7] On April 29, 2016, Respondent CHSI completed its spin-off of Quorum Health Corporation (QHC), creating a company which included 38 hospitals, including Respondents Affinity, Barstow and Watsonville. (GC Exh. 214, pp. 2-3; GC Exh. 215; and GC Exh. 198, pp.2-3.).

have served as corporate owner and/or provided managements services for Respondents Affinity, Barstow and Watsonville. (Tr. 23-24).

Further, unlike in UPMC, the General Counsel, supported by Board precedent, seeks a corporate-wide cease and desist remedy which is not even contemplated by the Proposed Modified Consent Order.[8] The litany of Board Orders, district court injunctions and circuit court enforcement actions against the named Respondent Hospitals far outnumber and outweigh the history of unlawful activity found in UPMC. Accordingly, Respondents' Proposed Modified Consent Order is distinguishable from the consent agreement in UPMC.

c. Applying *Independent Stave* Factor One: the Charging Party and General Counsel Oppose the Proposed Consent Order.

Applying factor one of the Independent Stave, the Charging Party and the General Counsel oppose Respondents' Proposed Modified Consent Order. This factor should be weighed against approval, notwithstanding that this factor was found in UMPC to be neither conclusive nor determinative.[9]

d. Applying *Independent Stave* Factor Two: Respondents' Proposed Modified Consent Order is not reasonable in light of the nature of the violations alleged, the risks inherent in litigation and the stage of the litigation.

General Counsel submits that Respondents' Proposed Modified Consent Order is not reasonable in light of the nature of the alleged violations, the risks inherent in litigation or the stage of the litigation.

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[8] In UPMC, et al, Case No. 06-CA-102465, 2014 WL 6808989, *slip op. at* *116 (November 14, 2015), the underlying case on the merits in UPMC, 365 NLRB No. 153 (Dec. 11, 2017), *slip op*. at 23 (and which is presently before the Board on exceptions), ALJ Carissimi concluded that Respondent UPMC Presbyterian Shadyside "engaged in such egregious and widespread misconduct so as to demonstrate a general disregard for employee's statutory rights," necessitating the issuance of a broad cease and desist order prohibiting Respondent UPMC Presbyterian Shadyside from violating the Act "in any other manner." UPMC, 06-CA-102465, *supra*, at *116. However, there was no corporate-wide remedy sought.

[9] UPMC *supra*. at 7.

1. *Respondents' Proposed Modified Consent Order fails to adequately guarantee remedies for all allegations against all of the Respondent Hospitals and fails to include all related corporate entities.*

Under the Proposed Modified Consent Order, Respondents CHSI and the named Quorum Respondents are not directly responsible for any remedies. Moreover, the Proposed Consent Order does not provide the same type of guarantee as in UPMC,[10] as Respondent CHSI has no responsibility to remedy any of the unfair labor practices, and Respondent CHSPSC retains the right to contest its role as guarantor at the Respondent Hospitals currently operated by the Quorum Respondents.

In the event that Respondent CHSPSC contests its ability to effectuate non-monetary remedies at particular Respondent Hospitals, General Counsel has no ability to seek compliance for non-economic remedies directly from named Respondents, Respondent CHSI or the Quorum Respondents, who have no obligations under the Proposed Modified Consent Order. In UPMC, the corporate parent was held responsible for the performance of any remedies ordered by the Board.[11] Because the Quorum Respondents are not parties to the Proposed Modified Consent Order, there is no guarantee that non-monetary remedies will be remedied by Respondent CHSPSC.

The Proposed Modified Consent Order also fails to adequately hold Respondent CHSI accountable for the unfair labor practices. In its Proposed Modified Consent Order, Respondents state, "Community Health Systems, Inc. accepts these terms and has appointed CHSPSC, LLC to be its agent with respect to effectuating compliance."[12] Respondent further notes that Respondent CHSI is a holding company, has no employees and can do no more than appoint an agent to effectuate compliance. However, Respondent CHSPSC's characterizations of its relationship

[10] *Id.* at 11 and 26.
[11] *Id.* at 9.
[12] *See* Respondent's Renewed Motion for Consent Order, p.3.

with CHSI and its relationship with Respondent Hospitals are neither established nor uncontroverted facts. Respondent CHSPSC's previous submission of an affidavit from Ben Fordham, Senior Vice President and Chief Litigation Counsel for CHSPSC cannot be taken at face value as the General Counsel has not yet had an opportunity to cross-examine Fordham on his affidavit or to adduce evidence on the relationship between Respondents CHSPSC and CHSI.

The relationship between the corporate parent and the subsidiary in UPMC was undisputed. The parties entered into a stipulation regarding the relationship between the single corporate parent, UPMC and its subsidiary, Presbyterian Shadyside. By contrast, there is no stipulation in the Proposed Modified Consent Order addressing the relationships between CHSPSC and CHSI, QHC, and QHCCS. As noted by ALJ in his ruling on Respondents' motion to sever, the General Counsel may adduce evidence from Quorum Respondents' fact witnesses regarding the complaint allegations. (Tr. 1448). The parties' relationships have yet to be litigated, including Respondent CHSI's relationships with Respondent CHSPSC and the Respondent Hospitals at the time of the unfair labor practices. Moreover, the General Counsel has the right to litigate that the Quorum Respondents are Golden State successors, who bear responsibility for unremedied unfair labor practices. (Tr. 1448).

Because Respondent CHSI should be held fully accountable, the Proposed Modified Consent Order must be denied. The proposed language in the Proposed Modified Consent Order that CHSPSC would merely act as an agent for CHSI is insufficient. Without a cease and desist order against both Respondent CHSPC and Respondent CHSI, and without Respondent CHSI and the Quorum Respondents responsible for guaranteeing the remedy, the Proposed Consent Order is not reasonable in light of the nature of the allegations.

2. *Respondents' Proposed Modified Consent Order fails to include the corporate-wide remedy sought against Respondent CHSPSC, Respondent CHSI and the Quorum Respondents.*

Unlike UPMC, the General Counsel seeks a corporate-wide cease and desist remedy. The cease-and-desist remedy applies, on a corporate-wide basis, to any and all locations where: (1) entities are single and/or joint employers with Respondent CHSI and/or Respondent CHSPSC; and (2) where such entities have engaged in conduct that violates the Act. Respondents' Proposed Modified Consent Order fails to address or even contemplate this prayed-for relief.

The corporate-wide remedy is necessary and appropriate. The Board has issued such remedies requiring nationwide notice posting if there is a clear pattern or practice of unlawful conduct,[13] where there is evidence of a centralized source of the unlawful activity,[14] and if there is a finding that the unlawful conduct impacts employees at other facilities.[15]

Here, there is a clear pattern and practice of unlawful conduct. The flagrant violations of Board and Court Orders by Respondent Hospitals is similar to that found in J.P. Stevens & Co., 240 NLRB 33 (1979), *enf'd*, 612 F.2d 881 (4th Cir.), *cert. denied*, 449 U.S. 918 (1980). In J.P. Stevens & Co., the Board ordered a corporate-wide remedy against the respondent and its wholly-owned subsidiaries. The Board found similar violations throughout the respondent's corporate structure and found the entity to be a single employer given the evidence of control over labor relations. Repeated District Court injunctions, Board orders, Circuit Court orders

[13] *See* Miller Group, 310 NLRB 1235, 1235 n. 4 (1993) (The Board concluded that notices should have been posted at more than one facility, due to the recidivist nature of unfair labor practices, where there is a "clear pattern or practice of unlawful conduct," *citing* John J. Hudson, Inc., 275 NLRB 874 n.2 (1984)).

[14] *See, e.g.*, Tradesman Int'l Inc., 351 NLRB 399, 340-341(2007) (The Board found that a nationwide notice posting remedy was warranted because respondent, which had a history of unlawful conduct, set a corporate-wide tone encouraging its field offices to engage in unlawful activity.)

[15] *See*, Overnite Transportation Co., 329 NLRB 990 (1999) (order requiring that the employer post at all its service centers a notice employees remedying unfair labor practices which the Board found had impacted employees on a nation-wide basis).

and contempt adjudications have failed to stanch the unfair labor practices committed by the Respondent Hospitals. To date, the General Counsel has been restricted from presenting his evidence to show that the unfair labor practices emanate from Respondent CHSI and Respondent CHSPSC.[16] Most recently, the District Court for the Northern District of Ohio issued a temporary injunction against Respondent Affinity, based on Respondent Affinity's refusal and failure to provide information requested by the NNOC about the announced corporate spinoff to the Quorum Respondents, and the unilateral changes related to QHC benefits and long-term care insurance. Binstock v. DHSC, LLC d/b/a Affinity Medical Center, 5:16-CB-01060-BYP, (N.D. Ohio Sept.5, 2017) (Pearson, B.).

In evaluating whether a corporate-wide remedy is warranted, courts have examined whether the unfair labor practices stemmed from a corporate-wide labor policy. *See* NLRB v. S.E. Nichols, Inc., 862 F.2d 952, 961 (2nd Cir. 1988). The General Counsel has been restricted

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[16] Multiple Board and Federal Court Orders, including in some cases, Section 10(j) temporary injunctions, have issued against Respondents Affinity, Barstow and Fallbrook. These hospitals are currently alleged to be single and/or joint employers with Respondents CHSPSC and CHSI. The prior Board decisions demonstrate a pervasive pattern of violations of Section 8(a)(1), (3), and (5) of the Act. *See*, e.g., Affinity Medical Center, 362 NLRB No. 78 (2015); Barstow Community Hospital, 361 NLRB No. 34 (2014); and Fallbrook Hospital, 360 NLRB No. 73 (2014). On January 22, 2014, the General Counsel obtained a Section 10(j) injunction against Respondent Affinity in the District Court for the Northern District of Ohio, which ordered, among other things, that Respondent Affinity recognize and bargain in good faith with the Union. *See* Calatrello v. DHSC, LLC d/b/a Affinity Medical Center, 2014 WL 296634 (N.D. Ohio Jan. 24, 2014) (Adams, J.) (order granting injunctive relief). As demonstrated by the cases in the instant litigation alone, General Counsel alleges that Respondent Affinity continues to evade its bargaining obligations and continues to engage in opprobrious Section 8(a)(5) misconduct.

On August 2, 2013, the General Counsel obtained a Section 10(j) injunction against Respondent Barstow in Cases 31-CA-090049 and 31-CA-096140 from the United States District Court for the Central District of California. *See* Rubin v Hospital of Barstow, Inc., d/b/a/ Barstow Community Hospital, No. 5:15-CV-00933-CAS (DTBx) (Aug. 2, 2013). On August 29, 2016, the United States District Court for the Central District of California granted another 10(j) petition involving Barstow in part based on Case 31-CA-167522**,** which is part of this consolidated action. *See* Rubin v. Hospital of Barstow, Inc., No. EDCV 16-1600, 2016 WL 4547152 (C.D. Cal. August 29, 2016).

On May 6, 2016, the Fourth Circuit Court of Appeals in NLRB v Bluefield Regional Medical Center, 2016 WL 2609605 (4th Cir. 2 016), enforced the Board's Order requiring Respondents Bluefield and Greenbrier to recognize and bargain with the Union as the exclusive collective-bargaining representative of the respective bargaining units.

Furthermore, there is the consolidated action in DHSC, LLC d/b/a Affinity Medical Center, 08-CA-117890, et al (CHS I), which is being litigated in front of ALJ Laws. Additionally, a complaint issued in Case 31-CA-199679 on November 30, 2017, against Respondent Barstow, Respondent CHSI, Respondent CHSPSC, as well as QHC and QHCCS, LLC as successors.

from presenting his evidence of centralized control over labor relations and centralized management by Respondents CHSPSC and CHSI until a future single/joint employer phase of the proceeding.[17] Respondents contend in the July 31, 2017 Motion for Consent Order that the consolidated action does not allege that Respondents CHSI and CHSPSC have engaged in nationwide violations with respect to policies or any other matter. However, the record contains evidence that the Respondent Hospitals issued similar unlawful package proposals supporting allegations of surface bargaining, conditioned bargaining on the same indemnification agreements, and engaged in similar unilateral changes to Quorum Respondent benefits and related to the "blackout period" in the transfer of 401(k) retirement assets to a new retirement plan sponsored by QHCCS at multiple Respondent Hospitals.[18] The General Counsel is prepared to present evidence of the centralized control over labor relations and centralized management by Respondent CHSPSC and Respondent CHSI over Respondent Hospitals,[19] including evidence of the same employment practices, accounting, purchasing, insurance, billing and a host of other functions needed to operate the Respondent Hospitals. The General Counsel also intends to submit evidence related to the CHSPSC Human Resources Policy Manual and the maintenance

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[17] In the consolidated action in 08-CA-117890, et al, (CHS I) General Counsel has adduced evidence of employees' understanding of the corporate impact on their terms and conditions of employment. *See* Alcoa, Inc., 363 NLRB No. 39, *slip op*. at 16 (Nov. 16, 2015) (An entity holding itself out to its employees as a single integrated enterprise and providing employment documents to employees with the name of the putative single employer evidences an interrelationship of operations, and a single employer finding). General Counsel intends to adduce similar evidence in any single/joint employer phase herein. It should also be noted that in CHS I, General Counsel has alleged that Respondent CHSPSC directly participation in certain violations at Respondent Affinity.

[18] *See* GC Exh. 235-236 regarding changes in QHC Benefits Plus, long-term care insurance and transferring 401(k) assets.

[19] Where an "arms-length relationship" does not exist among seemingly independent entities, the Board may find that the entities constitute a single employer. Newark Electric Corp., 362 NLRB No. 44, slip op. at 10 (2015); Dow Chemical Co., 326 NLRB 288 (1998); RBE Electronics of S.D., 320 NLRB 80 (1995). In determining whether two or more businesses are sufficiently integrated so that they may be fairly treated as a single enterprise, the Board examines four principal factors: (1) interrelation of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control. Newark Electric Corp., 362 NLRB No. 44, *slip op*. at 10 (2015), *citing* Radio and Television Broadcast Technicians Local Union 1264 v. Broadcast Service of Mobile, Inc., 380 U.S. 255, 256 (1956). *See also* Alcoa, Inc., 363 NLRB No. 29, *slip op*. at 6 (2015). In determining whether companies constitute a single employer, the Board has noted that "the fundamental inquiry is whether there exists overall control of critical matters at a policy level by one company over the other." Emsing's Supermarket, 282 NLRB 302 (1987).

and enforcement of that policy manual at the Respondent Hospitals. In the consolidated action in 08-CA-117890, et al. (CHS I), the record is replete with evidence of the Respondent Hospitals' maintenance and enforcement of similar, if not identical work rules, employee handbooks, and code of conduct policies.[20] In the instant consolidated action, it is alleged that Respondent Barstow unlawfully maintained a policy under the heading "Compliance Disclosure Upon Separation," which references the CHS Compliance Program and CHS Code of Conduct. (Complaint,¶19).[21] Thus, the alleged consolidated complaint contains a work rules violation related to the Corporate Respondents.

The Board has the authority to order remedies, including nationwide and corporate-wide relief.[22] In Fresh & Easy Neighborhood Market, Inc., 356 NLRB 1175 (2011), the Board

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[20] The General Counsel seeks to establish that Respondent CHSPSC and Respondent CHSI are single and/or joint employers with the named Respondent Hospitals through their centralized control over labor relations. During the single/joint employer phase General Counsel intends to adduce evidence, presented in the consolidated action in CHS I, that the named Respondent Hospitals maintain and enforce similar, if not the same, employee handbook work rules. Respondent Hospitals' work rules frequently reference Respondent CHSI and Respondent CHSPSC controlling employees' terms and conditions of employment. The named Respondent Hospitals also enforce similar, if not verbatim, versions of the Code of Conduct.

[21] In matters in which unlawful policies or work rules have been maintained on a corporate-wide basis, the Board has ordered company-wide notice postings to appropriately remedy the violations. *See*, Ross Stores, Inc., 363 NLRB No. 79, slip op. (Dec. 23, 2015). The Board traditionally requires notice posting at all locations where an unlawful rule or policy has been in effect. See e.g., Flyte Time Worldwide, 363 NLRB No. 107, slip op. at 4 (Feb. 4, 2016); Target Corp., 359 NLRB 953, 955 (2013); MasTec Advanced Technologies, 357 NLRB 103, 108 (The Board has "consistently held that, where an employer's overbroad rule is maintained as a company-wide policy, [it] will generally order the employer to post an appropriate notice at all of its facilities where the unlawful policy has been or is in effect."); Guardsmark, LLC, 344 NLRB 809, 812 (2005), *enfd. in relevant part* 475 F.3d 369 (D.C. Cir. 2007) (as the D.C. Circuit observed, "only a company-wide remedy extending as far as the company-wide violation can remedy the damage.).

[22] *See e.g.*, HTH Corp., 361 NLRB No. 65, *slip op.* at 1-2 (October 24, 2014).In HTH Corp., the Board found that the single employer respondent committed pervasive unfair labor practices over a significant period of time despite the Board's enforcement efforts, demonstrating a persistent indifference to its responsibilities under the Act and obstinate defiance of Board and court's Order. The Board ordered a broad cease-and-desist order, notice-reading and enhanced remedies, including litigation costs, extended posting period, an explanation of rights, publication in media, and a visitation remedy to ensure compliance with the mailing, posting and publication components. The publication in media required a notice and explanation of rights in two local publications of broad-based circulation and local appeal, twice a week for a period of eight weeks. HTH, *supra.* at 5-7, 12-15. The order also required an Explanation of Rights and copy of the notice to be provided to all new employees for a period of three consecutive years. *Id.* In fashioning the enhanced corporate-wide remedies, the Board found that remedies should be tailored to the violations in each case. *Id.* at *3, citing* Ishikawa Gasket America, 337 NLRB 175, 176 (2001), *enf'd*. 354 F.3d 534 (6th Cir. 2004) (Board may impose additional remedies "where required by the particular circumstances of a case").

ordered a corporate-wide notice posting because the unlawful rule appeared in the handbook for all of respondent's employees beyond just the Las Vegas stores at issue to ensure that all affected employees were informed of the respondent's violation and the nature of their rights under the Act.

Respondents CHSPSC and CHSI's unlawful conduct has detrimentally impacted the employees at Respondent Hospitals. A corporate-wide order is appropriate and essential based on the pervasive pattern of unlawful conduct, given that as single or joint employer entity, Respondent Hospitals, along with Respondents CHSPSC and CHSI, have a propensity for continued violations.[23] The most recent 10(j) injunctions in Affinity and Barstow demonstrate the immediate and deleterious impact of the unfair labor practice conduct on unit employees. There is a strong likelihood of remedial failure based on Respondent Hospitals' propensity to commit unfair labor practices, their flagrant violations and their disregard of past Board and Court Orders. A corporate-wide remedy would re-assure employees employed at a hospital found to be a single or joint employer of the Respondents that where there is similar conduct, such conduct has been remedied and will not be tolerated.

The corporate-wide remedy is proportionate to the violations and warranted in the context of the Respondents' predilection to violate the Act. S.E. Nichols, Inc., 284 NLRB 556, 560 (1987). Respondents' claim that the corporate-wide remedy exceeds the scope of the pleadings or is beyond the relationships alleged, mischaracterizes the remedy, which is narrowly tailored to apply to Respondent CHSI and Respondent CHSPSC, and the Respondent Hospitals, on a corporate-wide basis, at any and all locations where they are single and/or joint employers, and

[23] *See* NLRB v. S.E. Nichols, Inc., 862 F.2d 952, 960-961 (2d Cir. 1988); *See* J.P. Stevens & Co., Inc., 240 NLRB 33 (1979); Tradesmen Int'l. Inc., 351 NLRB 399 (2007); and HTH Corporation, 361 NLRB No. 65 *slip op.* (Oct. 24, 2014).

where such entities have engaged in conduct that violates the Act.[24] Contrary to Respondents' contentions, the remedy is not punitive.[25] Rather, the corporate-wide remedy is appropriate to the circumstances, and narrowly tailored to the violations of this case. HTH Corp., 361 NLRB No. 65, *slip op*. at 1-2 (October 24, 2014).

As discussed below, adoption of the Proposed Modified Consent Order unreasonably and prematurely forecloses the General Counsel's ability to present evidence to support the need for the corporate-wide remedy. In Fresh & Easy Neighborhood Market, Inc., 356 NLRB 1175 (2011), the Board stated, "corporate-wide remedies are not reserved only for recidivists." Even if a corporate-wide remedy proves inappropriate, other remedies, such as a limited expansion beyond the actual location where unfair labor practices occurred, may need to be considered.

The Respondents' failure to make any remuneration or even reference to the corporate-wide remedy in the proposed consent orders leaves a gaping hole. This expedient omission is not, as claimed by Respondents, due to using the UPMC consent settlement agreement as a template. Failing to consider or contemplate any nationwide relief renders the Proposed Modified Consent Order unreasonable in light of the nature of the violations alleged.

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[24] Respondents' reliance upon Communication Workers of America AFL-CIO v. NLRB, 362 US 479, 480 (1960), for the proposition that a corporate-wide remedy extend to "any other employer," beyond the employer relationships specified in the complaint, is misplaced. As pled, the corporate-wide cease and desist remedy involves hospitals affiliated with Respondents CHSPSC and Respondent CHSI, not any other hospitals unaffiliated with corporate Respondents, or affiliated with some other hospital chain. Rather than applying to disparate employee groups with no ties at all, employees of other affiliated CHSI hospitals would be protected by the corporate-wide remedy sought.

[25] Unlike, Carpenters Local 60(Mechanical Handling) v NLRB, 365 U.S. 651, 655 (1961), a case relied upon by Respondents in its July 31, 2017 Consent Motion, the corporate wide remedy sought is not punitive. In that case, the Supreme Court determined the Board's order was punitive and beyond its powers, where it compelled the union to return all dues and fees collected from members, where there was no evidence that union membership was influenced or compelled by reason of any unfair labor practice. *Id.* at 655. Thus, the relationship between the violation and the impact was, at best, tenuous. Here, the corporate-wide remedy seeks to compel hospitals found to have a single employer/joint employer relationship with Respondents CHSPSC and CHSI, and who have committed violations, to be held accountable. Employees at other facilities arguably have been impacted by shared corporate-wide policies.

3. The remedial guarantee is not reasonable in light of the risks inherent in litigation or the stage of the proceeding.

The current status of the litigation has not increased the inherent risks of litigating the single and joint employer allegations sufficient to warrant adopting the Proposed Modified Consent Order. In UPMC, the Board found that the corporate guarantees to remedy the unfair labor practices were reasonable in light of risks inherent in litigating the single employer allegations. The Board concluded that to reject the consent settlement agreement, in which UPMC fully guaranteed the remedies, could result in absolving UPMC of any liability for Presbyterian Shadyside's unfair labor practices in the event the General Counsel was unsuccessful in his litigation of the single employer allegation.[26] Unlike UPMC, Respondents CHSPSC and CHSI have not sufficiently guaranteed that they will remedy the unfair labor practices of the Respondent Hospitals. The General Counsel takes no risk by litigating the single and/or joint employer status between and among Respondents CHSPSC and CHSI with one another and the Respondent Hospitals as the Proposed Consent Order provides for nothing more than what would be ordered in the event the General Counsel is unsuccessful in carrying his burden on the single and/or joint employer allegations. Thus, granting the proposed Orders would deprive the General Counsel of securing a remedy and full liability from Respondents CHSPSC and CHSI.

Respondents contend that the Proposed Modified Consent Order prevents costly time-consuming litigation and would eliminate a complex phase of litigation. The Proposed Order fails to remedy the complaint allegations, which, if approved, eliminates litigation. However, eliminating litigation for the sake of simplicity for a respondent is not a basis to approve a deficient consent order. While there is a need and value in avoiding unnecessary litigation, that

[26] UPMC *supra*, at 9.

alone is an inappropriate basis to accept a settlement that is unreasonable under the circumstances.[27]

It is premature at this stage of litigation to adopt the Proposed Modified Consent Order when the evidence to be presented at the scheduled hearings will significantly impact the need for corporate-wide relief. Specifically, the General Counsel has not had the opportunity to present his entire case in Bluefield, Greenbrier, and Barstow.

Overall, the Proposed Modified Consent Order is not reasonable in light of the risks inherent in litigation and the stage of the proceeding.

e. Applying Independent Stave Factors 3 and 4 do not otherwise necessitate approval of the Proposed Modified Consent Order.

Applying factor three of Independent Stave, as both the Charging Party and General Counsel oppose the proposed consent Order, there is no evidence of coercion. Applying factor four of Independent Stave, with respect to the recidivist history of the Corporate Respondents, there are no prior unfair labor practice findings against the Corporate Respondents directly related to these Respondent Hospitals. However, as pointed out above, the unfair labor practice history of Respondent Hospitals reflects a continued and persistent defiance of the Act, more pervasive than that of the entities in UPMC.[28] This recidivist history should also be evaluated as part of the surrounding circumstances. Overall, factors three and four of the Independent

[27] UPMC, *supra.* at 7.

[28] UPMC, *supra*. at 15-16, 16 n. 12. In UPMC, *supra*, unlike in the instant consolidated action, there was only one respondent hospital, and there was no evidence to show that similar, if not the same, unfair labor practice violations were being committed at other facilities, including the maintenance and enforcement of the same overbroad rules and codes of conduct; the same unilateral changes to work rules and other terms and conditions of work made at different facilities; the same refusals to bargain over discipline and terminations at the different facilities; the same failure to provide information about bargaining unit employees' disciplines and terminations, and the same failure to bargain in good faith. The similarities of the unlawful conduct at the named Respondent Hospitals demonstrate a control center manned by Corporate Respondents. As indicated, General Counsel intends to adduce evidence, already adduced in the consolidated action in CHS I, of the Respondent Hospitals' maintenance and enforcement of similar, if not identical, work rules, employee handbooks, and code of conduct policies.

Stave analysis are not dispositive. As noted in UPMC, factor two of the Independent Stave analysis outweighs the other factors considered.[29]

2. Respondents' arguments concerning changed circumstances should be rejected.

Respondents' claims that its Proposed Modified Order is reasonable and that the single/joint employer phase of the litigation has been rendered insignificant due to changed circumstances should be soundly rejected. Respondents argue that continued litigation beyond a financial guarantee does not further the purposes of the Act. Respondents assert that after the closure of Affinity in March 2018, it would not further the purposes of the Act to continue litigation against the Corporate Respondents concerning non-monetary remedies because any remedies are no longer consequential, inasmuch as no employees work there. [30]

Respondents' Motion fails to address the viability of the unfair labor practice allegations, and the record evidence that supports the allegations. Rather, it conveniently ignores the substantive allegations and moves directly to its potential difficulty in complying with any Board Order due to the operating status of the entities.

These arguments ignore the reality and the established Board precedent that non-economic remedies have value in informing affected employees of their rights under the Act, the unfair labor practices that the respondent agrees to cease and desist from and the respondent's assertion that it will not engage in additional unfair labor practice activity. Even in situations where the respondent has closed its doors, a respondent is responsible for mailing a notice to its former employees announcing that it has fully remedied its unfair labor practices. In this case, such a notice would tell employees that unilateral changes have been remedied, and that outstanding information has been provided. Informing employees of their rights and notifying them that their

[29] *Id.* at 8.
[30] *See* Renewed Motion for Consent Order, at p. 4.

employer has affirmatively agreed to cease any unlawful activity sends a powerful message to employees that their rights will be fully protected. Fresh & Easy Neighborhood Market, Inc., 356 NLRB 1175, 1175-1176 (2011) (postings mailed to employees of closed facilities).

A failure to remedy the violations at Affinity, simply because it has closed, does not effectuate the purposes of the Act. A failure to properly remedy allegations undermines other employees in the other Respondent Hospitals, especially where a corporate-wide remedy is sought.

Likewise, Respondents also argue that non-monetary remedies with respect to Watsonville and Barstow are not significant due to the April 29, 2016 divestiture to the Quorum Respondents. The proposed consent order contends that Respondents CHSPSC and CHSI cannot guarantee remedies at facilities where it no longer has control.[31] A predecessor who violates the Act can remedy its unfair labor practices. While Respondent CHSPSC claims the divested hospitals are no longer under their control, there is no basis to assert that it cannot remedy its unlawful activity. As discussed above, the Proposed Consent Order should include all corporate entities that can effectively guarantee the allegations.

B. RESPONDENTS' MOTION TO DISMISS ALLEGATIONS SHOULD BE REJECTED.

To the extent that Respondents' Motion for Renewed Consent Order is interpreted as a motion to partially dismiss allegations by virtue of the adoption of the Proposed Modified Consent Order or otherwise based on changed circumstances, such motion should be rejected.[32] Respondents' attempt to seek dismissal as to any single/joint employer allegations, as well as any other allegations pertaining to Respondents CHSPSC and CHSI, should be rejected as premature

[31] *See* Renewed Motion for Consent Order, at p. 5.
[32] See Renewed Motion on Consent Order, at p.1.

at this stage of litigation. General Counsel submits the Proposed Modified Consent Order is unreasonable under Independent Stave and UPMC. Additionally, when analyzing a motion to dismiss portions of a complaint, the complaint must be reviewed in the light most favorable to the General Counsel.[33] General Counsel has not rested on a substantial portion of the allegations (i.e., in Bluefield and Greenbrier). To the extent General Counsel has rested on any particular allegations, the General Counsel submits that it has not failed to establish its violations by a preponderance of the evidence.[34] Respondents have not addressed the status of the General Counsel's evidence in its arguments. Any motions to dismiss are not ripe and should be rejected.

III. CONCLUSION

For the foregoing reasons, Counsel for General Counsel respectfully requests that Respondents' Renewed Motion for Consent Order be denied. In short, Respondents' Renewed Motion for Consent Order fails to satisfy all of the factors analyzed under Independent Stave and as set forth in UPMC. General Counsel submits that an examination of the surrounding circumstances demonstrates that Respondents' Renewed Motion for Consent Order is not reasonable in light of the nature of the violations alleged, the risks inherent in litigation, as well

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[33] In ruling on a motion to dismiss a portion of a complaint, the Administrative Law Judge ruling under 102.35(a)(8) of the Board's Rules and Regulations, follows the same standard as in Section 102.24. (Judge's Bench Book, Section 10-300). Respondent CHSPSC cannot and has not met its burden to show that the General Counsel cannot prove any set of facts that will support its claims entitling the General Counsel to relief. Section 102.24 requires that the complaint be viewed "in the light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief." Detroit Newspapers Agency, 350 NLRB 524, 525 n. 7 (2000). When such motions to dismiss are made before the General Counsel rests, the Board and ALJ accept all allegations of the complaint and all inferences are drawn in favor of General Counsel. *See* Industrial Construction Services, Inc., 323 NLRB 1037, 1040 (1997) (on the pleadings the court accepts as true all allegations of the complaint and all inferences are drawn in favor of the plaintiff). To the extent that there are additional work rules hearings, the parties have not rested on that portion of the evidence, and General Counsel has not rested as to all of the allegations in its case, as related to Greenbrier, nor has any evidence been adduced as to the single/joint employer allegations.

[34] For motions to dismiss for failure of proving an essential element of General Counsel's case made after the General Counsel rests, an administrative law judge, under Fed R. Civ.P. 52(c), enters judgment against a party when the evidence shows that party has not sustained its burden of proof. Yale University, 330 NLRB 246, 247 (1999). Thus, a motion to dismiss should be granted if the General Counsel has failed to establish a violation by a preponderance of the evidence. Industrial Construction Services, Inc., 323 NLRB 1037, 1040 (1997).

as the stage of the litigation. Respondents' Proposed Modified Consent Order is not a mirror image of the UPMC consent settlement agreement, and the instant matter can be readily distinguished from the circumstances in UPMC and thus warrants its rejection. Accordingly, Respondents' arguments that the Renewed Motion for Consent Order is reasonable based on changed circumstances should be denied.

DATED at Cleveland, Ohio this 20th day of March 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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DATED at Cleveland, Ohio this 20th day of March, 2018

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EXHIBIT H

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

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.,	)	Cases: 08-CA-167313 et al.
and	)	
CALIFORNIA NURSES ASSOCIATION/ NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC)	)	

CHARGING PARTY'S OPPOSITION TO THE RENEWED AND MODIFIED MOTION FOR A CONSENT ORDER AND PARTIAL DISMISSAL

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I. INTRODUCTION

On March 1, 2018, Respondent CHSPSC, LLC (Respondent CHSPSC) and Respondent Community Health Systems, Inc. (Respondent CHSI) (collectively the "Corporate Respondents") filed a renewed and modified motion for a consent order and partial dismissal on the single and joint employer allegations in the Amended Third Consolidated Complaint in Cases 08-CA-167313, et al. (complaint) based on the Board's decision in *UPMC,* 365 NLRB No. 153 (2017) and additional arguments under *Independent Stave,* 278 NLRB 740 (1987).

For the reasons set forth below, unlike in *UPMC,* in these circumstances, where a single and/or joint employer finding is necessary for a reasonable remedy in this case, and where the factors under *Independent Stave,* 278 NLRB 740 (1987) have not been satisfied, the motion for a consent order on the single/joint employer allegations and partial dismissal should be denied.

II. ARGUMENT

The Corporate Respondents tie their motion directly to *UPMC,* going so far as to tailor the revised proffered consent order to closely track the language of the consent order approved by the Board in UPMC. The record evidence has already amply demonstrated the Corporate Respondents' involvement in the unfair labor practices alleged in the complaint. Undoubtedly the single/joint employer phase of these proceedings will elicit further evidence of the Corporate Respondents' direct participation in the unfair labor practice conduct alleged in the complaint. *UPMC,* where there was no such evidence of the corporate parent's involvement in the unfair labor practice conduct of the subsidiary, clearly does not require adoption of the proffered consent order.

Under *Independent Stave,* the Board, in determining whether a proffered resolution of unfair labor practice allegations effectuates the Act, considers: "(1) whether the charging party(ies), the respondent(s), and any of the individual discriminate(s) have agreed to be bound,

and the position taken by the General Counsel regarding the settlement; (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes." *UPMC,* 365 NLRB No. 153, slip op. at 7.

Here, the *Independent Stave* factors militate against adoption of the Corporate Respondents' proffered consent order. Neither the Charging Party, nor any of the alleged discriminatees, have agreed to be bound by the Corporate Respondents' proffered consent order. To the contrary, Charging Party strenuously objects to the proffered "settlement," and to Charging Party's knowledge, the General Counsel also strongly opposes the Corporate Respondents' proffered "settlement." For reasons addressed specifically below, the proposed "settlement" is wholly unreasonable. The stage of the proceedings (post-complaint and after considerable litigation) argues against adoption of the proffered consent order; and the risks in litigation are low, as evidence already forcefully demonstrates that the Corporate Respondents and Respondent hospitals constitute a single employer and/or joint employer under the Act during the relevant complaint period. With regard to the history of violations of the Act prong of *Independent Stave*, Respondent Hospitals, with which the Corporate Respondents are alleged to constitute a single and/or joint employer, have violated the Act repeatedly, in a manner that displays what can only be described as utter contempt for the rights set forth in Section 7 of the Act.[1]

[1] The extraordinary history of unfair labor practice conduct of the Respondent hospitals with whom the Corporate Respondents are alleged to constitute a single employer and/or joint employer under the Act during the relevant complaint period, even if not viewed under the history of violations prong of *Independent Stave,* impacts the reasonableness of the Corporate Respondents' proffered consent orders.

Specifically with regard to the reasonableness of the Corporate Respondents' proffered Consent Order under *Independent Stave*, as the voluminous record has established, despite the bifurcated nature of these proceedings, the Corporate Respondents are inextricably intertwined in the unlawful conduct of the Respondent Hospitals (for example by bargaining proposals, the same lead negotiator joined by an agent of Corporate Respondents, Jan Ellis, participating in bad faith bargaining; nearly identical unilateral changes; and unlawful responses to Charging Party's requests for information.) This includes the Respondent Hospitals that the Corporate Respondents continue to operate, as well as those which have divested and are now owned by the Quorum entities. Evidence will be adduced at the single/joint employer phase of these proceedings, which will unequivocally demonstrate that the Corporate Respondents are not merely derivatively liable for the great bulk of the unlawful conduct engaged in by the Respondent hospitals, but are directly liable for having participated in the violations of the Act.

Were this solely a situation where a putative single and/or joint employer would be derivatively liable by nature of the single or joint employer relationship with subsidiary entities and had no hand in the alleged unlawful conduct, a consent order such as was found satisfactory in *UPMC* might be found sufficient under current Board law. But again that is not so here, as evidence has already been adduced regarding the Corporate Respondents' connection to unfair labor practice conduct alleged in the complaint, and additional evidence of such direct participation will surely be adduced with regard to multiple other complaint allegations at the single/joint employer phase of the proceedings.

The existence of a single-employer relationship between nominally distinct business entities depends on a four-factor test: (1) whether there is common ownership or financial control, (2) whether there is common management, (3) whether there is interrelationship of

operations, and (4) whether there is centralized control of labor relations. See, e.g., *Radio & Television Union Local 1264 v. Broadcast Service of Mobile*, 380 U.S. 255, 256-57 (1965). None of the four factors is controlling, and not all factors need be present to support a single-employer finding. Rather, single employer status depends on all the circumstances and is characterized by the absence of an arm's-length relationship between unintegrated companies. See *Flat Dog Productions, Inc.*, 347 NLRB 1180, 1181-1182 (2006). Centralized control of labor relations is the most critical factor in the single employer analysis. See *Taft Coal Sales*, 360 NLRB 96, 99 (2014).

In proving the centralized control of labor relations between the Corporate Respondents and the Respondent hospitals during the relevant time period in the complaint, evidence will be adduced that demonstrates the Corporate Respondents' direct involvement in a multitude of unfair labor practices alleged in the complaint.

That the Corporate Respondents are not alleged as "direct participants" does not raise due process concerns. The Corporate Respondents have been put on notice of their potential liability throughout these proceedings as single and/or joint employers with the Respondent hospitals, and any findings by the administrative law judge (the Judge) that the Corporate Respondents directly participated in unfair labor practices on a direct participation theory would not be precluded by the absence of such direct participation allegations in the complaint. Board law is clear that matters not specifically pled will form the basis of an unfair labor practice finding by the Judge or the Board where the matter has been fully litigated and is closely connected to the complaint allegations. See, e.g., *Pergament United Sales,* 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d. Cir. 1990).

By prematurely precluding further litigation concerning the Corporate Respondents' single and/or joint employer status by adopting the proffered consent order and dismissing Corporate Respondents from the case, necessary parties to the resolution of these unfair labor practices will escape a finding of liability, even if they profess to guarantee any remedies the Board may ultimately order in this matter, leaving the strong likelihood of repeated unlawful conduct by the Corporate Respondents continuing into the future.

As stressed earlier, Respondent Hospitals have engaged in a history of complete disregard for the rights guaranteed in the Act, and the pattern of such unfair labor practice conduct demonstrates that the Corporate Respondents have been the source of this scorched earth conduct. Whether seen as addressing the history of violations of the Act prong or reasonableness prong under *Independent Stave,* the history cannot be disregarded in considering the propriety of Corporate Respondents' proffered consent order.

With regard to Respondent Affinity, the Board, in *DHCS, LLC d/b/a Affinity Medical Center,* 362 NLRB No. 78 (2015), issued an order requiring, inter alia, Respondent Affinity to recognize and bargain with the Union, refrain from discharging and discriminating against employees because of their support for the Union, refrain from denying access to the Union previously granted in retaliation for employees Section 7 activities, and to reinstate and make whole discharged Registered Nurse Ann Wayt.

Prior to the issuance of this Order, the District Court for the Northern District of Ohio ordered preliminary injunctive relief under Section 10(j), requiring Respondent Affinity, inter alia, to recognize and bargain in good faith with the Union, reinstate Registered Nurse Ann Wayt, and to cease and desist from its unlawful conduct. *Calatrello v. DHCS, LLC d/b/a Affinity Medical Center,* 2014 WL 296634 (N.D. Ohio, January 24, 2014). On September 5, 2017, the

District Court for the Northern District of Ohio issued a second Section 10(j) injunction, concerning conduct alleged in the complaint herein, requiring Respondent Affinity, inter alia, to bargain in good faith with the Union on a prescribed bargaining schedule. *Binstock v. DHSC,* No. 5:16-cv-01060-BYP (N.D. Ohio, September 5, 2017).

With regard to Respondent Barstow, the Board, in *Hospital of Barstow, Inc.,* 361 NLRB No. 34 (2014) issued an order requiring, inter alia, that Respondent Barstow recognize and bargain in good faith with the Union, refrain from prematurely declaring impasse, and to refrain from making unlawful unilateral changes.

The District Court for the Central District of California also issued two Section 10(j) orders against Respondent Barstow. The first, inter alia, required Respondent Barstow to bargain in good faith with the union and refrain from making unlawful unilateral changes. *Rubin v. Hospital of Barstow, Inc.* 2013 WL 3946543 (C.D. Cal. July 29, 2013). The second, based in part on the underlying complaint allegations herein, again ordered Respondent Barstow, inter alia to bargain in good faith with the Union, refrain from making unlawful unilateral changes, to furnish relevant and necessary information and rescind disciplines issued to Registered Nurses. *Rubin v. Hospital of Barstow, Inc.,* 2016 WL 4547152 (C.D. Cal. August 29, 2016).

Concerning Respondents Greenbrier and Bluefield, the Board issued an order requiring Respondent Bluefield and Respondent Greenbrier to recognize and bargain with the Union. *Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center,* 361 NLRB No. 154 (2014). Respondents Greenbrier and Bluefield continued to challenge the Union's certification until ordered by the Fourth Circuit Court of Appeals to recognize and bargain with the Union. *NLRB v. Bluefield Regional Medical Center,* 2016 WL 2609605 (4th Cir. 2016).

The extraordinary nature of this litany of pervasive unlawful conduct by the Respondent Hospital subsidiaries of the Corporate Respondents cannot be gainsaid. Moreover, the Corporate Respondents are alleged to have played the same role with regard to the Respondent Hospitals' alleged unlawful conduct in *CHS 1,* Cases 08-CA-117890. It would be unreasonable to adopt the consent order in these circumstances, which would preclude a finding of liability on the part of the Corporate Respondents, especially where the record evidence to date demonstrates an identical pattern of bad faith bargaining in both *CHS 1* and *2.*

Returning to the *Independent Stave* analysis, there is no basis for granting the motion. There is no *Independent Stave* factor supporting adoption of the consent order. The mere absence of outright fraud, duress or coercion is hardly grounds to conclude the "settlement" offer meets the requirements of *Independent Stave*.

III. CONCLUSION

For all of the foregoing reasons, adoption of the proposed renewed and modified consent order is unwarranted under *Independent Stave.* Accordingly, Charging Party respectfully urges the Judge to deny Corporate Respondents' motion.

DATED: March 20, 2018

Respectfully submitted,

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

Micah Berul, Registered In-House Counsel

PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury that I am a citizen of the United States, over the age of eighteen years, not a party to the within action and that my business address is 155 Grand Avenue, Oakland, California 94612.

On the date below, I served the foregoing document entitled

CHARGING PARTY'S OPPOSITION TO RENEWED, MODIFIED MOTIONS FOR A CONSENT ORDER AND PARTIAL DISMISSAL

via Electronic Mail as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 20, 2018, at Oakland, California.

Tyin Tschneaux

EXHIBIT I

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

DHSC, LLC, d/b/a AFFINITY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., HOSPITAL OF BARSTOW, INC., d/b/a BARSTOW COMMUNITY HOSPITAL, WATSONVILLE HOSPITAL CORPORATION d/b/a WATSONVILLE COMMUNITY HOSPITAL, and/or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and/or joint employers, and QUORUM HEALTH CORPORATION and QHCCS, LLC, successor employers, et al.	)	
and	)	Cases: 08-CA-167313, et al.
NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), CALIFORNIA NURSES ASSOCIATION/ NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC) and CALIFORNIA NURSES ASSOCIATION/ (CNA), NATIONAL NURSES UNITED, et al.	)	

CHARGING PARTY'S REQUEST TO SUPPLEMENT OPPOSITION TO RENEWED AND MODIFIED MOTION FOR CONSENT ORDER

Charging Party requests that it be permitted to submit a brief supplement to its March 20, 2018, Opposition to Respondent CHSPSC's and Respondent CHSI's (the "Corporate Respondents'") Renewed and Modified Motion for a Consent Order and Partial Dismissal regarding the single and joint employer allegations in the Amended Third Consolidated Complaint in Cases 08-CA-167313, et al. This request is based on evidence admitted into the record during the most recent phase of the administrative law hearing in Cases 08-CA-167313, et al., which in the Charging Party's view, further demonstrates the Corporate Respondents' commission of unfair labor practices. Such evidence has direct bearing on the reasonableness of

the Corporate Respondents' proffered consent order under *Independent Stave,* 278 NLRB 740 (1987) and *UPMC,* 365 NLRB No. 153 (2017).

In this regard, the Board in *UPMC,* in ordering the single-employer allegation dismissed while retaining UPMC as a party to ensure enforcement of its guarantee of any remedies ultimately ordered against its subsidiary, found it highly significant that "a 19-day hearing that resulted in a 120-page decision produced no evidence that UPMC had independently committed a single unfair labor practice." *UPMC,* 365 NLRB No. 153, slip op. at 9.

Evidence adduced at hearing in this matter since the time Oppositions to Corporate Respondents' Renewed and Revised Motion were filed, which may demonstrate Corporate Respondents' commission of any unfair labor practice/s should, accordingly, be considered prior to ruling on the Corporate Respondents' motion. It should also be noted that Charging Party is not at this time requesting an ongoing back and forth of replies and further responses, merely the opportunity for all parties to be afforded the opportunity to address the same evidentiary record, to date, prior to the April 4, 2018, deadline for any replies to the Oppositions to Corporate Respondents' Renewed and Revised Motion.

Charging Party respectfully urges Your Honor to grant Charging Party's request to supplement its Opposition to Corporate Respondents' Renewed and Modified Motion for Consent Order.

DATED: April 2, 2018

Respectfully submitted,

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

Micah Berul, Registered In-House Counsel

PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury that I am a citizen of the United States, over the age of eighteen years, not a party to the within action and that my business address is 155 Grand Avenue, Oakland, California 94612.

On the date below, I served the foregoing document entitled

CHARGING PARTY'S REQUEST TO SUPPLEMENT ITS OPPOSITION TO RENEWED, MODIFIED MOTIONS FOR A CONSENT ORDER

via Electronic Mail as follows:

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via U.S. First Class Mail as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 2, 2018, at Oakland, California.

Tym Tschneaux

EXHIBIT J

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DHSC, LLC d/b/a AFFINITY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., HOSPITAL OF BARSTOW, INC., d/b/a BARSTOW COMMUNITY HOSPITAL, WATSONVILLE HOSPITAL CORPORATION d/b/a WATSONVILLE COMMUNITY HOSPITAL and / or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and / or joint employers and QUORUM HEALTH CORPORATION and QHCCS, LLC, successor employers and NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC) and CALIFORNIA NURSES ASSOCIATION (CNA), NATIONAL NURSES UNITED	08-CA-167313, *et al*.

RESPONDENT HOSPITALS' REPLY TO OPPOSITIONS TO RENEWED AND MODIFIED MOTION BY RESPONDENTS CHSPSC, LLC AND COMMUNITY HEALTH SYSTEMS, INC. FOR <u>CONSENT ORDER AND PARTIAL DISMISSAL</u>

As Respondents in the above-captioned cases, DHSC, LLC formerly d/b/a Affinity Medical Center, Hospital of Barstow, Inc. d/b/a Barstow Community Hospital, Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center and Watsonville Hospital Corporation d/b/a Watsonville

Community Hospital (hereafter, collectively at times, the "Hospitals") hereby reply, by and through the Undersigned Counsel, to the Oppositions filed by the General Counsel and the Charging Party (hereafter, the "Union") to the Renewed and Modified Motion for Consent Order and for Partial Dismissal filed by Respondent CHSPSC, LLC and Community Health Systems, Inc.

BACKGROUND

On March 1, 2018, CHS, Inc. and CHSPSC, LLC (hereafter, for ease of reference, collectively, "CHS") filed with Your Honor a Renewed and Modified Motion for Consent Order and for Partial Dismissal (hereafter, the "Motion"). On March 20, 2018, Oppositions were filed by the General Counsel and the Union (hereafter, at times, the "GC Opposition" and the "Union Opposition," respectively). By an e-mail sent to the parties' attorneys on March 21, 2018, Your Honor authorized any party to file a Reply by April 4, 2018.

Although the Motion primarily affects CHS, for the reasons explained below, the Hospitals' interests are also implicated by the Motion, which the Hospitals now join and support by offering the following reply to the Oppositions.

ARGUMENT

Contrary to what the General Counsel may imply, UPMC did not create any standard of its own. Instead, as part of UPMC, the Board overruled United States Postal Service, 364 NLRB No. 116 (2016), and restored Independent Stave, 287 NLRB 740 (1987), as the analysis that governs the question of whether the Board should approve a party's offer to settle unfair labor practice allegations. Thus, even under the presumption, purely for the sake of argument, one or more material difference exists between UPMC and the proceedings now before Your Honor, the argument that these differences require Your Honor to reject the Consent Orders is a *non sequitur*. See GC Opposition, page 2 ("[t]he facts in the instant consolidated action . . . are distinguishable from UPMC and **thus require** a different result from that case") (emphasis added). The bottom line is that the proposed Consent Order should be approved or rejected based upon the Independent Stave analysis, whereby Your Honor must assess the "reasonableness" of the Consent Order.

The assessment of the reasonableness of any settlement should take account of "all factors present in the case to determine whether it will effectuate the purposes and policies of the Act to give effect to the settlement." 287 NLRB 740, 743 (1987). In each case, the relevant factors

will include: (1) whether the General Counsel objects to the settlement, (2) the nature of the alleged violations, the risks inherent in the litigation, and the stage of the proceedings, (3) whether any fraud, coercion, duress has taken place in connection with the settlement, and (4) whether the party who proffers the settlement has engaged in a history of violations of the Act or failed to comply with any settlement reached as part of any previous unfair labor practice proceeding. Id.

In the case here, for the reasons explained below, the Consent Order proffered by CHS is reasonable, and therefore, should be approved. Between CHS 1.0 and CHS 2.0, the parties have endured years of intense litigation, but more litigation, potentially, much more litigation, lies ahead. The Hospitals' managers and employees are fatigued, and for the sake of their noble work in support of patient care, should resume a normal workplace focus. The Consent Order presents an opportunity, which is uniquely available now, to obviate future litigation, which, as explained below, would be prejudicial to the Hospitals. Moreover, in spite of every effort by the General Counsel and the Union to question the efficacy of the resolution proposed by CHS, the value of the Consent Order is undeniable. Under Independent Stave, the Consent Order can and should be approved in spite of the fact CHS has not offered a corporate-wide remedy, which, as

explained below, is beyond the reach of the General Counsel and creates the risk of more litigation now and more litigation later. And finally, the General Counsel's ongoing and shameless efforts to mischaracterize the Hospitals' supposed "recidivism" misses the mark, yet again.

1.) The Ongoing Litigation Desired by the General Counsel and the Union Offers Virtually No Benefit and Subjects the Hospitals to Undue Prejudice

On December 2, 2015, Judge Mark Carissimi, as the Administrative Law Judge originally assigned to CHS 1.0 (Case Nos. 08-CA-117890, *et al*.), entered a Case Management Order that called for the end of all hearings, inclusive of those related to the single employer allegations, by June 2016. As matters have turned out, the hearings on the alleged unfair labor practices will not conclude before May 2018, nearly two (**2**) years beyond the end point originally envisioned for all hearings in the case, and hearings have not even been scheduled for the presentation of other evidence that may be necessary for the case (*e.g.*, evidence related to the single employer theory). Clearly, no one foresaw that nearly a two-year period would be necessary for the development of a record on the alleged unfair labor practices standing alone. In the case now before Your Honor, the hearings began roughly a year ago and the record on the alleged unfair labor practices is a long distance away from completion.

In any complex litigation, in spite of every effort to streamline the proceedings, one, simple fact of the matter remains – there are delays that are not only unforeseeable, but also unavoidable. In the litigation now before Judge Laws, aside from the time that has been necessary to present evidence and address the parties' disputes over the law and the facts, the proceedings have been delayed because of deaths that affected one party or another, sickness, car accidents and other freak happenings, witnesses' refusal to appear in response to subpoenas, failures of technology, and Mother Nature's adjustments to travel plans. Some of the same vagaries of litigation have affected the proceedings before Your Honor. Put simply, in any assessment of the risk inherent in a litigation, experience should not be forgotten, and in the litigation here, experience has made very clear that, no matter how careful the design and no matter how effective the execution, any measures to streamline the proceedings are ultimately at the mercy of the litigation itself.

Hearings on the single employer theory will, of course, only be necessary to the extent Your Honor determines that one or more of the Hospitals engaged in an unfair labor practice. Presumably, however, should Your Honor determine that even one unfair labor practice took place, the General Counsel will demand that full-fledged hearings be convened in

order for the parties to present their dueling evidence on the single employer theory. The Union's view would undoubtedly be the same. Any litigation over the single employer allegations would be, within its own four corners, an immense litigation.

As Your Honor probably recalls, the General Counsel and the Union served all of the Respondents with massive Subpoenas *Duces Tecum* related to the single employer allegations. These Subpoenas will surely breed numerous disputes before any hearing even convenes, and like UPMC, the disputes may escalate to the federal courts. When the hearings do commence, progress will likely be slow going. To one degree or another, each Hospital will likely have a need to question each witness called by the General Counsel, and similarly, each Hospital will likely present evidence of its own in defense of the single employer allegations. The Hospitals also presume that, given the nature of the allegations, the Union will actively participate in the hearings.[1]

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[1] The possibility that Judge Laws may preside over a single employer hearing in the near future should not alter Your Honor's analysis under Independent Stave. As Your Honor may know already, CHS has presented Judge Laws with Consents Orders that, if approved, would lead to the dismissal of the single employer allegations in CHS 1.0. Put another way, there is a possibility, or as the point should be made under Independent Stave, a risk that a single employer hearing before Your Honor would be the occasion on which the parties unfurl the entirety of their evidence on the single employer dispute. Even in the event Judge Laws makes a single

Notably, hearings on the single employer allegations may not be the end of all hearings in the litigation. In particular, under the presumption, for the sake of argument, Your Honor determines that the Act has been violated in one way or the other and a single employer relationship was in place between CHS and one or more of the Hospitals, the General Counsel will request that Your Honor impose a corporate-wide remedy. See GC Opposition, page 4. In most cases, a remedy follows automatically based upon the nature of the unfair labor practice (*e.g.*, backpay and an offer of reinstatement for an unlawful termination) or the evidence that is necessary for the evaluation of a possible remedy may be pulled from the record on the alleged unfair labor practices (*e.g.*, an award of negotiation costs). The same is not true with a request for a corporate-wide remedy. As shown by the General Counsel's own summary of the case law, in order to prove a basis for such a remedy, the General Counsel must show, *inter alia*, the unlawful conduct has impacted employees at other workplaces. See GC Opposition, page 12. Presumably, the General Counsel would intend to offer evidence to prove, as a factual matter, that any unfair labor practice that took place at the Hospitals also affected employees at other workplaces that have some

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employer finding before Your Honor convenes a hearing on the allegation, the hearing will undoubtedly give rise to numerous disputes, nonetheless.

relationship with CHS, or alternatively, CHS may seek an opportunity to prove that the effect of any unfair labor practice was confined to the Hospitals' employees.

Hearings on the single employer allegations and hearings on the request for a corporate-wide remedy would subject the Hospitals to extreme costs and severe prejudice. The origin of the dispute between the Hospitals and the Union is a barrage of Unfair Labor Practice Charges that were filed by the Union in the Fall of 2013, and ultimately, adopted by the General Counsel *via* the Complaint issued in CHS 1.0. In each year that has gone by, the litigation has only grown in size. In September 2016, the General Counsel commenced the proceedings now before Your Honor, and a few days ago, the General Counsel formulated "CHS 3.0" by the issuance of a Consolidated Complaint that arises out of Unfair Labor Practice Charges that the Union recently pursued against Barstow. Case Nos. 31-CA-199679 and 31-CA-211144. "Extraordinary" would be a conservative description for the time that has already been taken out of the days of the Hospitals' respective managers and employees in order to attend to these legal proceedings, and in the absence of some reasonable management of the proceedings, there is no end in sight.

Any hearing on the single employer allegations or the corporate-wide remedy would not only require the Hospitals to continue to expend their resources, but would also subject the Hospitals to prejudice. As noted above, a hearing on the single employer allegations would necessarily be preceded by a finding on Your Honor's part that one or more unfair labor practice has taken place. In an ordinary case, once an Administrative Law Judge has concluded a party violated the Act, the party has the opportunity to pursue immediate review by the Board. In the case here, however, the Hospitals do not enjoy any such opportunity.[2] Instead, the Hospitals' opportunity to pursue review by the Board would be delayed for the period of time – the lengthy period of time – that would be necessary for hearings to be completed on the single employer allegations, and possibly, the corporate-wide remedy as well. The delay would be especially prejudicial for Affinity, Barstow and Watsonville, none of which have had any relationship with CHS since they were spun off roughly two years ago.

In addition, should Your Honor award any economic remedy, the affected Hospital(s) would suffer prejudice. The amount of nearly every economic remedy demanded by the General Counsel is considerable and, as

[2] The agency's rules and regulations do not appear to contemplate what would amount to interlocutory exceptions to Your Honor's rulings on the alleged unfair labor practices. See § 102.45(a).

each day goes by, the amount of the liability would increase by virtue of the compound interest that would apply under Kentucky River Medical Center, 365 NLRB No. 6 (2010). In the case of nearly every non-economic remedy, the delay would not only prejudice the affected Hospital(s), but also undermine the objectives that Congress hoped to achieve through the Act. The hearings on the single employer allegations and the corporate-wide remedy would substantially delay any final adjudication of the merits, and therefore, substantially delay the performance of any remedy that may ultimately be required of the Hospitals, such as the production of information to the Union, meetings and negotiations with the Union, or other activity that is part and parcel of the collective bargaining that the Act was designed to promote and preserve.

2.) CHS' Proposed Consent Order Is Reasonable Despite the Absence of a Corporate-Wide Remedy

In the Opposition, the General Counsel urges Your Honor to reject the Consent Order because neither CHS, Inc. nor CHSPSC has offered a corporate-wide remedy. See GC Opposition, page 12. In the process, the General Counsel overlooks the fact that USPS is no longer the law. Under Independent Stave, a party seeking to resolve an unfair labor practice allegation is not under any burden to offer each and every remedy that the General Counsel has pursued for the alleged violation. In the case here, for

a number of reasons, Your Honor should reject the General Counsel and the Union's protestations over the sufficiency of the proposed Consent Order.

As noted before, a corporate-wide remedy does not automatically follow a finding that a party has engaged in one or more unfair labor practice. To the contrary, the General Counsel must persuade Your Honor, through evidence and argument, that a corporate-wide remedy is needed in order to remedy the unfair labor practices. See GC Opposition, page 12. Matters do not end there, however, as the General Counsel would not be able to apply the remedy in any future case unless the General Counsel is able to satisfy further burdens of proof. Id. The corporate-wide remedy requested by the General Counsel, therefore, portends more than one layer of future, risky litigation, which, in the end, can offer only one guarantee: deep, ongoing depletions to the resources of private and public parties alike. Furthermore, for the numerous reasons explained by CHS' submissions to Your Honor, a corporate-wide remedy is not available in the case at hand.

A.) The General Counsel's Entitlement to the Remedy

In order for Your Honor to award a corporate-wide remedy, on top of a number of other necessary showings, the General Counsel would need to persuade Your Honor that the Hospitals have engaged in unfair labor practices and these violations have "impact[ed] employees at other

facilities." See GC Opposition, page 16. In the case before Your Honor, however, the General Counsel has not come forward with any sensible explanation as to how the Hospitals' alleged violations of the Act could affect the employees of any entity, let alone every entity that is owned by CHS, Inc. and serviced by CHSPSC. The fact the Hospitals are alleged to have engaged in substantially the same refusals to bargain (see GC Opposition, page 14) proves nothing in terms of the working conditions of employees who are outside the scope of the General Counsel's pleading. In addition, the fact that the General Counsel has challenged a solitary work rule at one facility hardly provides a bridge between employees of the hospitals here and employees of hospitals elsewhere. See GC Opposition, page 14. Notably, the General Counsel has not even alleged that the compliance policy is maintained by the other Hospitals in the litigation at hand, and even under the (shaky) presumption the General Counsel proves the policy as maintained by Barstow violated the Act, under The Boeing Company, 365 NLRB No. 154 (2017), the General Counsel would be required to prove the unlawfulness of the policy on a case-by-case, and more to the point, a facility-by-facility basis.

To be an appropriate remedy, a corporate-wide remedy must also be based upon evidence that violations arise from a corporate-wide labor

policy. See GC Opposition, pages 13. In essence, the General Counsel requests that Your Honor make a finding that a corporate-wide policy has already been proven, or at the very least, endorse the General Counsel's prediction that such a policy will be proven by the time the record closes. Id., pages 13 – 14. The Union, for its part, goes even further. Specifically, the Union argues that, in spite of the fact that no direct participation allegations are set forth by the Complaint, they will, nonetheless, be a part of some shadow litigation taking place before Your Honor, and naturally, the Union will prevail on the allegations. See Union Opposition, pages 1, 3. Evidently, the General Counsel and the Union have overlooked, or maybe choose not to accept, a simple truth that was observed by the Board in UPMC: "[l]itigation is never certain." 365 NLRB No. 153, slip op. *7. None of the Respondents have offered any evidence in defense of the General Counsel's theory that CHS controls the Hospitals' employee relations. The General Counsel and the Union's subjective assessments of the evidence and self-serving predictions should carry no weight as part of Your Honor's analysis under Independent Stave.[3]

[3] The General Counsel has also acknowledged that a corporate-wide remedy is not awarded unless the General Counsel is able to show a "clear pattern or practice of unlawful conduct." See GC Opposition, page 12. As shown by the Hospitals' response to the General Counsel's claim of recidivism, Your

B.) The Application of a Corporate-Wide Remedy in Future Cases

The litigation engendered by the General Counsel's request for a corporate-wide remedy would not be confined to the proceedings now before Your Honor. Instead, as made clear by the General Counsel's own Opposition, the remedy could not apply in any future case unless the General Counsel proved that a single employer relationship was in place between CHS, Inc. and / or CHSPSC and the local facility. See GC Opposition, page 12. The General Counsel's plan may be to rely upon a single employer finding by Judge Laws and / or Your Honor as a way to fast-track the litigation of single employer allegations in future cases. Aside from the fact the single employer allegations remain under dispute in the case before Judge Laws and the case before Your Honor, the high probability is that a single employer allegation in a future case will give rise to sizable litigation. Any effort by the General Counsel to apply the doctrine of *res judicata* would, itself, generate considerable litigation as any local facility that is involved in a future case would surely argue that they ought to have a full

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Honor has not been presented with any evidence of any pattern or practice of unlawful conduct. See page 17, *infra*.

and fair opportunity to defend against the allegation that they are in a single employer relationship with CHS, Inc. and / or CHSPSC.

The absence of a corporate-wide remedy in the case now before Your Honor would not, of course, affect the General Counsel's opportunity to pursue a remedy – any remedy – against the local facility in these future cases envisioned by the General Counsel and there is no reason to believe that the local facility would be unable or unwilling to perform the remedy. Though the Hospitals presume that Your Honor's focus would naturally be on the proceedings over which Your Honor presides, the Hospitals do urge Your Honor to consider the future litigation that could result from Your Honor's award of a corporate-wide remedy. The prospective conservation of resources, whether for the sake of private parties, an agency whose budget is the subject of ongoing reductions, or simply the U.S taxpayer, should be a legitimate, if not necessary point of consideration under Independent Stave, and as applied here, strongly weighs in favor of the approval of the Consent Order proposed by CHS.

3.) CHS' Reservation of Compliance Rights Is Reasonable

The General Counsel urges Your Honor to reject the Consent Order because CHS, Inc. and CHSPSC have reserved their rights to challenge, as part of any subsequent compliance proceedings, their ability to perform any

non-economic remedy that may be awarded in connection with a violation of the Act by a divested facility. Contrary to the General Counsel's contention, CHS' reservation of rights does not "**require**" any litigation. See GC Opposition, page 8 (emphasis added). In fact, the litigation contemplated by the General Counsel is a relatively remote possibility. Aside from the open question as to whether the General Counsel has proven any violation of the Act, the General Counsel has not presented Your Honor with any reason to believe that Affinity, Barstow or Watsonville would be unable to perform any remedy that is awarded for a violation of the Act.

The fact CHS, Inc. and CHSPSC have reserved their compliance rights is nearly a red herring in the context of whether the Consent Order should be approved under Independent Stave. The compliance litigation that is of concern to the General Counsel is only a possibility, and a relatively slim possibility, given the ability of any divested facility to perform on any remedy that may be awarded down the road.

4.) The Hospitals' "Recidivism"

By now, given the parties' previous exchanges on the question, the Hospitals can only describe the General Counsel's arguments on the Hospitals' supposed recidivism as completely disingenuous. In a previous submission to Judge Laws, one that supported CHS' original effort to obtain

a Consent Order in CHS 1.0, the Hospitals presented Judge Laws with the facts as they relate to the relatively few occasions on which the Board found one or another of the Hospitals to be in violation of the Act. See Respondent Hospitals' Reply to General Counsel's Opposition to CHS, Inc. and CHSPSC, LLC's Revised Motion to Adopt Modified Consent Order, a copy of which is attached hereto as "Exhibit A." For the most part, the Hospitals would respectfully refer Your Honor to their prior submission to Judge Laws, but also wish to reply to a few of the arguments set forth by the Opposition.

None of the cases summarized by the General Counsel (see GC Opposition, page 13, fn. 16) included even an allegation, let alone a finding that CHS, Inc. or CHSPSC was involved in the case in any way. Indeed, the General Counsel concedes that "there are no prior unfair labor practice findings against [CHS] directly related to these Respondent Hospitals." See GC Opposition, page 19. Nor is there, incidentally, any unfair labor practice finding against CHS, Inc. or CHSPSC related to any other entity. The fact is that, whereas unfair labor practice litigation between hospitals owned by CHS, Inc. and various labor organization goes back to at least 2003[4], with

[4] See Jackson Hospital Corp. d/b/a Kentucky River Medical Center, 340 NLRB 536 (2003).

General Counsels appointed by both political parties holding office during the ensuing years, the single employer theory was not pursued before (now-former) General Counsel Richard Griffin took office, and whether rightly or wrongly, plainly placed an emphasis on the prosecution of alleged unfair labor practices against large corporations (*e.g.*, McDonalds). In any case, for purposes of the Independent Stave analysis, any previous violation of the Act by any of the Hospitals is completely irrelevant. See UPMC, 365 NLRB No. 153, slip op. *10, fn. 13.

The General Counsel's contention of a "pervasive pattern of unlawful conduct" is also based upon the Orders that some U.S. District Courts have issued under Section 10(j) of the Act. See GC Opposition, page 13, fn. 16; page 16; see also Union Opposition, pages 5 – 6. Under Independent Stave, a 10(j) Order should carry virtually no probative value. Ironically enough, as part of the effort to obtain these Orders, the General Counsel emphasized that the role of the Court was **not** to adjudicate the merits of the alleged unfair labor practices and the Court should even refrain from resolving any factual dispute between the parties. Similarly, the Hospitals had no opportunity before the Court to question the people who signed affidavits in support of the General Counsel's request for a 10(j) Order. Indeed, in each case, the 10(j) Order was issued in the absence of any evidentiary hearing.

In addition, the Opposition conveniently omits the fact that the General Counsel's contention that the sky is falling on the Hospitals' employees has rung hollow before, specifically, in the case of Bluefield and Greenbrier, where both 10(j) petitions were denied by the U.S. District Court.[5]

Lastly, and as a prime example of the lengths to which the General Counsel will go to preserve the full scope of the litigation, the General Counsel argues that the Hospitals' recidivism is evidenced by the fact they are currently defending other allegations in other cases (*e.g.*, CHS 1.0). See GC Opposition, page 13, fn. 16. These other allegations, no matter how numerous or serious, are precisely that, allegations, and like the 10(j) Orders, deserve virtually no weight in terms of the assessment of whether the Consent Order is reasonable.

In the end, the General Counsel's hackneyed assertions as they relate to the Hospitals' "recidivism" only demonstrate that the zeal to prosecute has once more taken the place of good faith advocacy. The Hospitals respectfully urge Your Honor to conclude that the General Counsel and the Union have not shown any history of violations of the Act by which the Independent Stave analysis would lean in favor of ongoing litigation.

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[5] The General Counsel responded to the dismissal of the 10(j) petitions with an appeal to the U.S. Court of Appeals for the Fourth Circuit, which has not yet issued its Decision.

CONCLUSION

For all the reasons set forth above, the Hospitals respectfully urge Your Honor to grant the Motion, enter the Consent Order and dismiss the related allegations.

Dated: Glastonbury, CT
April 4, 2018

Respectfully submitted,

/s/_____

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DHSC, LLC d/b/a AFFINITY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., HOSPITAL OF BARSTOW, INC., d/b/a BARSTOW COMMUNITY HOSPITAL, WATSONVILLE HOSPITAL CORPORATION d/b/a WATSONVILLE COMMUNITY HOSPITAL and / or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and / or joint employers and QUORUM HEALTH CORPORATION and QHCCS, LLC, successor employers and NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC) and CALIFORNIA NURSES ASSOCIATION (CNA), NATIONAL NURSES UNITED	08-CA-167313, *et al*.

CERTIFICATE OF SERVICE

The Undersigned, Bryan T. Carmody, being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that, on April 4, 2018, the document above was served upon the following *via* email:

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Dated: Glastonbury, CT
April 4, 2018

Respectfully submitted,

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EXHIBIT A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
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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 CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES ORGANIZING COMMITTEE (CNA / NNOC) and UNITED STEEL, PAPER AND FORESTRY RUBBER, MANUFACTURING, ENERGY ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO	08-CA-117890, *et al*.

RESPONDENT HOSPITALS' REPLY TO GENERAL COUNSEL'S OPPOSITION TO CHS, INC. AND CHSPSC, LLC'S REVISED MOTION TO ADOPT MODIFIED CONSENT ORDER

As Respondents in the above-captioned cases, DHSC, LLC d/b/a Affinity Medical Center, Hospital of Barstow, Inc. d/b/a Barstow Community Hospital, Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, Fallbrook Hospital Corporation formerly d/b/a Fallbrook Hospital, Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center and Watsonville Hospital Corporation d/b/a Watsonville Community Hospital (hereafter, collectively, the "Hospitals") hereby reply, by and

through the Undersigned Counsel, to the Opposition (hereafter, the "Opposition") filed by the General Counsel to the Revised Motion to Adopt Modified Consent Order (hereafter, the "Motion") filed by CHS, Inc. and CHSPSC, LLC.

In the Opposition, the General Counsel urges Your Honor to deny the Motion because the Order proposed by CHS, Inc. and CHSPSC, LLC does not provide for a corporate-wide cease and desist remedy. In large part, the General Counsel argues that such a remedy is appropriate because, supposedly, the Hospitals are "recidivist actors" with "an extensive history of pervasive unlawful conduct, and "flagrant disregard for Board decisions and court orders." See Opposition, page 11; see also page 14 ("General Counsel submits that a corporate-wide order is appropriate in the context of the recidivist history of the Respondent Hospitals"). The Hospitals respectfully request an opportunity to provide Your Honor with the actual history of unfair labor practices, as opposed to the hyperbolic version manufactured by the General Counsel.

As a preliminary matter, however, the Hospitals should address the Orders that have been issued by U.S. District Courts under Section 10(j) of the National Labor Relations Act, as amended (hereafter, the "Act"), as they

are used by the General Counsel for a delusory purpose.[1] In every one of these cases, the General Counsel stressed to the Court that the role of the Court was **not** to decide whether any unfair labor practice had, in fact, taken place. Instead, the role of the Court was only to decide whether there was "reasonable cause" for the General Counsel to believe that the given facility had violated the Act, and if so, whether the interim remedy available under Section 10(j) of the Act was necessary in order to preserve the ability of the Board to remedy any unfair labor practice later found by the Board to have actually taken place at the facility. As part of the ongoing effort to frustrate the ability of CHS, Inc. and CHSPSC, LLC to resolve the disputes before Your Honor, however, the General Counsel has presented the 10(j) Orders as evidence of the Hospitals' repeated violations of the Act, or in a word, their supposed "recidivism." The fact that the General Counsel previously urged

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[1] In the case of Affinity, a 10(j) Order was entered by the U.S. District Court for the Northern District of Ohio on January 24, 2014 and expired with the issuance of the Board's related Decision and Order on April 30, 2015. Case No. 5:13-CV-01538 (JRA). In the case of Barstow, a 10(j) Order was entered by the U.S. District Court for the Central District of California on June 24, 2013 and expired with the issuance of the Board's related Decision and Order on August 29, 2014. Case No. 5:13-CV-00933 (CAS). A new 10(j) Order was entered by the same Court on August 29, 2016 and presently remains in place. Case No. 5:16-CV-01600 (CAS). In the case of Fallbrook, a 10(j) Order was entered by the U.S. District Court for the Southern District of California on June 7, 2013 and expired with the issuance of the Board's related Decision and Order on April 14, 2014. Case No. 3:13-CV-01159 (GPC).

the Courts to refrain from any review of the merits of the alleged unfair labor practices, but now presents the 10(j) Orders as effectively the final word on these disputes, exposes an argument that is far more contrived than convincing.

The Hospitals should also note that, even though the 10(j) Orders cover a collective period of time of roughly three and a half years, and in spite of the notion that the Hospitals have engaged in seemingly perpetual violations of the Act, the General Counsel has not once returned to any of these Courts and alleged any failure or refusal of the given facility to comply with the Order. In the end, therefore, the take away from the 10(j) proceedings is that the Hospitals respect and comply with the law.

The Hospitals now turn to the Decisions and Orders previously issued by the Board, which do not provide any basis to characterize any of the Hospitals as a "recidivist."

1.) Affinity Medical Center

Affinity is the subject of one, and only one, Decision and Order in which the Board determined that the Hospital violated the Act. In DHSC, LLC d/b/a Affinity Medical Center, 362 NLRB No. 78 (April 30, 2015), the Board determined that Affinity violated Section 8(a)(1) by virtue of statements made and actions taken by one of the Hospital's (former)

managers, and the exclusion of one of the Union's organizers from the Hospital's facility. The Board also determined that Affinity's termination of one employee, and a related report to the Board of Nursing in the State of Ohio, violated Section 8(a)(3) of the Act. Lastly, the Board found that Affinity's refusal to recognize and bargain with the Union, which was undertaken by the facility in order to challenge the Certification of Representative, violated Section 8(a)(5) of the Act. 362 NLRB No. 78, *19. In response to the Board's Decision and Order, on November 17, 2015, Affinity filed a Petition for Review with the U.S. Court of Appeals for the District of Columbia Circuit, which remains pending before the Court. See D.C. Cir. Case No. 15-1426.[2]

2.) Barstow Community Hospital

Like Affinity, Barstow is the subject of one, and only one, Decision and Order in which the Board determined that the Hospital violated the Act. Unlike Affinity, Barstow's violations were confined to Section 8(a)(5) of the Act. In Hospital of Barstow, Inc. d/b/a Barstow Community Hospital, 361 NLRB No. 34 (August 29, 2014), the Board determined that Barstow

[2] The proceedings before the Court of Appeals have been placed into abeyance, given the fact that the outcome of Affinity's challenge to the Certification of Representative will likely be determined by the outcome of Barstow's challenge to the Certification of Representative that covers its RNs, and is before the same Court. See footnote 3, *infra*.

violated Section 8(a)(5) of the Act by the refusal to make any proposals before the presentation of the Union's proposals, the declaration of an impasse because of the Union's refusal to cease distribution of "Assignment Despite Objection" forms, and changes to a policy related to RN education. 361 NLRB No. 34, *1-2. In response to the Board's Decision and Order, Barstow filed a Petition for Review with the U.S. Court of Appeals for the District of Columbia Circuit.[3]

3.) Bluefield Regional Medical Center

Here also, Bluefield is the subject of one, and only one, Decision and Order, which arises from the Hospital's challenge to the Certification of Representative that was issued in the Union's favor. In Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, 361 NLRB No. 154 (December 16, 2014), the Board rejected Bluefield's challenge to the Certification of Representative and the other grounds on which the Hospital

[3] On April 29, 2016, the Court of Appeals vacated the Board's Decision and Order due to the Board's failure to review Barstow's challenge to the Certification of Representative on the merits. Hospital of Barstow, Inc. d/b/a Barstow Community Hospital v. NLRB, 820 F.3d 440. On July 15, 2016, the Board issued a Supplemental Decision and Order in which the panel validated the Certification of Representative and re-adopted the findings and conclusions set forth by the Decision and Order vacated by the Court of Appeals. 364 NLRB No. 52. The Supplemental Decision and Order is currently before the Court of Appeals by virtue of a new Petition for Review filed by Barstow. D.C. Cir. Case No. 16-1343.

had relied to decline to recognize and bargain with the Union.[4] Bluefield did not pursue any federal court review of the Board's rulings. Instead, the Hospital recognized the Union and offered dates for the commencement of the parties' negotiations. In the meantime, the Board pursued an Application for Enforcement, which was later granted by the U.S. Court of Appeals for the Fourth Circuit. See NLRB v. Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, *et al*., 821 F.3d 534 (2016).

4.) Fallbrook Hospital

Once more, like the other Hospitals reviewed above, Fallbrook is the subject of one, and only one, Decision and Order issued by the Board. In Fallbrook Hospital Corporation d/b/a Fallbrook Hospital, 360 NLRB No. 73 (April 14, 2014), which was a case originally before Your Honor, the Board determined that Fallbrook had engaged in bad faith bargaining in connection with the parties' negotiations toward a collective bargaining agreement. The Board also determined that Fallbrook failed to bargain over, and failed to provide information related to, the termination of two employees. 360 NLRB No. 73, *15. In response to the Decision and Order, Fallbrook filed a

[4] Bluefield Hospital Company, LLC was a consolidated proceeding that also encompassed the challenges that Greenbrier Valley Medical Center had pursued in connection with the Certification of Representative issued in the Union's favor.

Petition for Review with the Court of Appeals (see D.C. Cir. Case No. 14-1056), but only as to the remedy awarded by the Board.

5.) Greenbrier Valley Medical Center

As noted above (see fn. 4), Bluefield Hospital Company, LLC, 361 NLRB No. 154, also encompassed Greenbrier's challenge to the Certification of Representative issued in the Union's favor as to the RNs employed by Greenbrier. The Board rejected Greenbrier's challenge and other arguments. Like Bluefield, in response to the Decision and Order, Greenbrier recognized the Union and offered dates for the commencement of the parties' negotiations. The Application for Enforcement referenced above, and the Decision later issued by the U.S. Court of Appeals for the Fourth Circuit, also covered Greenbrier.

Greenbrier was the subject of one other Decision and Order issued by the Board. In Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center, 360 NLRB No. 127 (May 29, 2014), the Board determined that Greenbrier violated Section 8(a)(3) of the Act by virtue of a performance improvement plan, written warning and schedule change related to a particular employee, namely Mr. James Blankenship. 360 NLRB No. 127, * 10. The Hospital did not pursue any federal court challenge, but rather, fully complied with the Board's Decision and Order. As confirmed by the

Board's e-docket, the case was closed nearly two years ago on account of the Hospital's compliance. See Case No. 10-CA-094646.

6.) Watsonville Community Hospital

Zero. That is the number of occasions on which the Board has found Watsonville, a facility with long-standing collective bargaining relationships with four (**4**) different labor organizations, in violation of the Act.[5]

* * *

In summary, any argument by the General Counsel that a sweeping corporate-wide remedy is necessary because of the Hospitals' avowed recidivism is, simply, a house of cards. Indeed, as noted just above, the argument is patently frivolous as to Watsonville. In the case of Bluefield, the argument borders upon the frivolous. As viewed through the fog of the General Counsel's advocacy, the action perceived by the General Counsel to violate the Act so egregiously was, in reality, merely the exercise of the Hospital's fundamental right to challenge the outcome of the election, which, as Your Honor surely knows, can only be pursued by a "technical" refusal to bargain. When the Board rejected the challenge, Bluefield

[5] Incidentally, though to a lesser degree, the same point should be made on behalf of Barstow in connection with the facility's collective bargaining relationship with SEIU United Healthcare Workers – West, which goes back to 2012. The Board has never found any unfair labor practices to have taken place as part of the relationship between Barstow and the SEIU.

recognized the Union and negotiations got underway. When, as part of the same case, the Board rejected the challenges pursued by Greenbrier, the Hospital responded in the very same way. Likewise, in response to the Board's findings related to Mr. Blankenship, the Hospital duly performed each and every remedy ordered by the Board. So much for the General Counsel's claim that the Hospitals have an "**extensive history**" of "**flagrant disregard for Board decisions**." See Opposition, page 11 (emphasis added).

In the case of Affinity, Barstow and Fallbrook, the history of unfair labor practices is undeniably shallow. In the particular case of Fallbrook, given the closure of the facility nearly two years ago, the General Counsel lacks a basis to put together any case of recidivism. Presumably, even the extremity of the General Counsel's position does not go so far as to imagine the ability of Fallbrook to violate the Act from the grave. In terms of Affinity and Barstow, as noted above, the Hospitals are the subject of one, and only one, Decision and Order issued by the Board, neither of which have been enforced by a Court of Appeals. Thus, aside from the fact that the Board does not follow a "one strike and you're out" approach toward recidivism, the General Counsel should not be allowed to define recidivism in a way that calls for predictions of the future (*i.e.*, favorable outcomes

before the Court of Appeals) on top of shamelessly revised versions of history.

Dated: Glastonbury, CT
November 2, 2016

Respectfully submitted,

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
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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 CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES ORGANIZING COMMITTEE (CNA / NNOC)	08-CA-117890, *et al*.

CERTIFICATE OF SERVICE

The Undersigned, Bryan T. Carmody, being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that, on November 2, 2016, the document above was served upon the following *via* email:

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Dated: Glastonbury, CT
November 2, 2016

Respectfully submitted,

/s/_____

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EXHIBIT K

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DHSC, LLC d/b/a AFFINITY MEDICAL CENTER, *et al.* and NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), *et al.*	08-CA-167313, *et al.*

CHSPSC, LLC AND COMMUNITY HEALTH SYSTEMS, INC.'S REPLY MEMO SUPPORTING RENEWED AND MODIFIED MOTION FOR CONSENT ORDER AND FOR PARTIAL DISMISSAL

I. INTRODUCTION

The Corporate Respondents tailored their Consent Order to *UPMC* because in *UPMC* the Board endorsed a common-sense approach of single/joint resolution via guarantee. *UPMC*, 365 NLRB No. 153 (2017). The proffered guarantee equates to a single/joint outcome because it provides, without the need for further litigation, a *de facto* single/joint remedy. Under *Independent Stave,* the general question is whether the proffered settlement is "reasonable," evaluated based on "all factors present in the case to determine whether it will effectuate the purposes and policies of the Act to give effect to the settlement." *Independent Stave*, 287 NLRB 740, 743 (1987). The Consent Order meets the *Independent Stave* test for reasonableness and should be adopted to resolve the single/joint allegations in this case. As explained below, the opposing memoranda do not indicate otherwise.

II. ARGUMENT

A. The Presence of CHSI in the Consent Order Should Not Bar Its Adoption.

CHSI is a company which holds stock and has no employees. (Ex. 1). It can accept a resolution, as provided in the proposed Consent Order. By appointing CHSPSC as its agent to

effectuate compliance, CHSI joined in the Consent Order and its *UPMC* guarantee. However, to the extent that Your Honor finds this commitment to be insufficient, the commitment can be adjusted or CHSI can be deleted from the Consent Order. Its remaining provisions should be accepted as a resolution of the single/joint allegations involving CHSPSC.

B. The Absence of QHCCS and QHC As Named Parties in the Consent Order Should Not Bar Its Adoption.

QHCCS, LLC ("QHCCS") and Quorum Health Corporation ("QHC") are not parties to this case. *Independent Stave* does not require the inclusion of non-parties within a consent order. With or without the Consent Order, the status of QHCCS and QHC as successors to the guarantee can be heard in compliance, if necessary. The Consent Order should be adopted because it reasonably resolves specific single/joint allegations made against the Corporate Respondents. A consent order cannot be rejected because it fails to include non-parties.

C. Incorrect Allegations of Recidivism Should Not Bar Adoption of the Consent Order.

The Corporate Respondents are not recidivists, having never been held by the Board to be single or joint employers. Moreover, as will be presented by Respondent Hospitals in their Reply Memo Supporting the Consent Order, the handful of adverse Board rulings for the five hospital entities involved in this case, none of which involved the Corporate Respondents, have been incorrectly characterized. Even if Respondent Hospitals had extensive, adverse records before the Board, recidivism for the Corporate Respondents has never been established and cannot now be established *nunc pro tunc.* This lack of recidivism supports the Corporate Respondents, having never previously been found to have violated the Act as single or joint employers, either with Respondent Hospitals or with any other affiliated entity.

D. Unpled Assertions of Corporate Respondent Direct Participation in Unfair Labor Practices Should Not Bar Adoption of the Consent Order.

Counsel for General Counsel and the Union argue against adoption of the Consent Order in the hope that further litigation will prove the Corporate Respondents engaged in direct participation violations of the Act. The Complaint presents no such allegations. The Corporate Respondents therefore, are not defending and are not seeking to resolve direct participation issues. Rather, the Corporate Respondents seek to resolve the pending single/joint allegations. As in *UPMC*, no direct participation have been alleged and none have been defended. Consent orders deal with settling actual complaint allegations. The hope that someday more allegations might be pled or proven should not bar entry of the proffered, reasonable Consent Order.

Even if General Counsel were to plead direct participation allegations, the remedial outcome of such allegations would effectively be the same as under the Consent Order. *Esmark, Inc. v. NLRB*, 887 F.2d 739, 753-759 (7th Cir. 1989) (acknowledging the high standard for direct participation and treating it as one of various concomitant liability theories for piercing a corporate veil, such as single/joint/alter-ego/direct participation, etc.); *Esmark, Inc.*, 315 NLRB 763 (1994)(denying direct participation liability). With direct participation, the Corporate Respondents would simply be added to any remedial order as additional, responsible parties, similar to the guarantee. The Consent Order therefore, reasonably resolves the single/joint allegations as well as any potential, future allegations.

E. The Stage of the Proceedings Favors Adoption of the Consent Order.

As in *UPMC*, the Corporate Respondents present their Consent Order prior to the commencement of the single/joint phase of litigation. This timing, combined with complexity, burden, and inherent delay of single/joint proceedings, confirms the Consent Order's efficacy. Litigating the single and/or joint employer issues will be expensive and time-consuming. The

analysis will be fact intensive and will necessarily include a review of CHSPSC and CHSI's alleged ownership, operations, management, and any labor relations connections with each of the Hospital Respondents. *Dow Chemical Co.,* 326 NLRB 288 (1998); *Masland Industries*, 311 NLRB 184, 186 (1993). No one factor will be controlling, and a single employer relationship will depend on "all the circumstances." *Id.* This proof, by definition, need have no connection with the pending unfair labor practice allegations. It need have no connection with actual remedies beyond the guarantee, other than causing remedial delay.

The effort to distinguish *UPMC* from the instant case with respect to subpoena disagreements, delay, and complexity is unavailing. Delay has not yet occurred because subpoenas in CHS I have not been ruled upon and subpoenas in CHS II have not been propounded. Respectfully, the parties face likely subpoena litigation, ESI requests, and enormous costs. Following the resolution of document issues, if CHSI must do so, it will litigate its status as a holding company and its relationship with each of Respondent Hospitals. If CHSPSC must do so, it will litigate its status as a professional services provider to each of Respondent Hospitals. Your Honor has heard testimony from only a handful of witnesses who work in management at Respondent Hospitals. Dozens of additional witnesses will need to testify. In this service provider and holding company context, the single/joint litigation phase will test the limits of existing law.

In addition, litigating single/joint status between the respective Corporate Respondents and five different, stand-alone, acute care hospitals, located in different parts of the country, will be a substantial undertaking. At least ten different alleged single/joint relationships will be the subject of proof. Each of Respondent Hospitals will present its own entity status with robust local management and control. A good faith estimate, assuming no undue delay, indicates at least thirty additional days of hearing will be necessary. Typical scheduling challenges suggest an additional

six month period of hearings will need to be populated with dates to begin following document dispute resolution. These circumstances can easily translate into a one-year delay, followed by additional exceptions and appeals. This predicament illustrates the merit of a *UPMC* path. A *UPMC*-based guarantee, if adopted, arrives at a reasonable remedial outcome today.

F. The Consent Order Impliedly Addresses Employee Notices, Consistent with *UPMC*.

Counsel for General Counsel argues the Consent Order should be rejected because it does not specifically address remedial notices. As in *UPMC*, the proposed Consent Order necessarily includes provisions for notices because it guarantees compliance, which will include notices for substantiated unfair labor practices. Respondent Hospitals will be notifying employees on terms set forth in any final order. Such notices at those Hospitals, as in *UPMC*, will suffice. Notices communicate to "those affected by a respondent's unfair labor practices…." *Pottsville Bleaching Co.*, 301 NLRB 1095 (1991), at n. 2. Confusion and redundancy should be avoided, with specific notices to be tailored to violations found at specific locations. *California Saw and Knife Works*, 320 NLRB 224, 344 (1995). The Corporate Respondents' guarantee satisfies reasonableness. The Corporate Respondents, in lieu of compliance or contempt, will of course do everything possible to assure Respondent Hospitals comply with notice posting requirements.

G. Changed Circumstances Favor the Consent Order's Reasonableness

The Corporate Respondents' reference to remedial realities associated with the divestiture of three of the five hospital entities in this case, one of which has since been closed, is consistent with Board law and favors the Consent Order's reasonableness. The Board has regularly recognized that changed circumstances which undermine the significance of formal remedies can render further litigation of alleged unfair labor practices unnecessary. *Bellinger Shipyards, Inc.*, 227 NLRB 620 (1976)(rescinding a rule constituted "voluntary action" which should be "encouraged,"

constituting a substantial remedy based on "subsequent conduct"); *American Federation of Musicians, Local 76*, 202 NLRB 620 (1973)(subsequent conduct, such as withdrawing a threat, makes a case "for all practical purposes, moot. . ."); *Kentile, Inc.,* 145 NLRB 135, 137 (1963)(litigating a bargaining unfair labor practice charge filed by one union, after another union's election, "would not effectuate the policies of the Act."); *Benvenutti, Rene,* 107 NLRB 905 (1954)(resumption of bargaining, with a successor agreement achieved, renders earlier bargaining charge subject to dismissal because litigating "would not effectuate the purposes of the Act. . ."). Litigating allegations which lack remedial significance does not further the purposes of the Act.

The Board also has regularly recognized changed circumstances which render remedies impossible or impractical militate against fully litigating an alleged unfair labor practice. *NLRB v. Grace Co.*, 184 F.2d 126 (8th Cir. 1950)(noting in context of a petition for enforcement of a bargaining order at a time the employer had closed its plant that an employer can't be punished for its "failure to do the impossible. . ."); *NLRB v. Globe Security Services, Inc.*, 548 F.2d 1115 (1977)(the Board may not enforce an order requiring a "vain and useless act" of ordering an employer to bargain with a unit which no longer exists).[1] Senseless litigation of such allegations, spanning several years, adds nothing of value with respect to remedies, disserving taxpayers, and the purposes of the Act.

Changed circumstances in this case favor resolution because the basic remedial outcomes at the respective divested or closed hospitals will be the same whether the Consent Order is accepted or whether the parties litigate. With respect to Affinity, the Corporate Respondents have

[1] *NLRB v. McMahon*, 428 F.2d 1213, 1214 (9th Cir. 1970)(refusal, on grounds of mootness, to enforce bargaining order directed to a defunct organization); *Cap Santa Vue, Inc. v. NLRB*, 424 F.2d 883, 886 (D.C. Cir. 1970)(order enforced only to the extent that sale of business has not made performance impossible); *NLRB v. Schnell Tool & Die Corp.*, 359 F.2d 39, 44 (6th Cir. 1966)(Board must determine that order is enforceable in practice before seeking judicial enforcement); *NLRB v. Reynolds Corp.*, 168 F.2d 877 (5th Cir. 1948)(cease and desist parts of Board order cannot be enforced where the employees at issue were no longer employed by the employer).

guaranteed financial remedies, if any, which certainly carries enhanced value at Affinity given its closure. Non-economic remedial aspects for the handful of alleged unfair labor practices at Affinity have become a nullity (i.e., there is nothing to rescind and nothing over which to bargain). The Corporate Respondents have issued a broad-based guarantee, consistent with *UPMC*, which will apply to Affinity's notice requirements, which is all that remains with respect to non-monetary remedies. If the parties fully litigated the single/joint allegations at Affinity, the relief at Affinity would be no more robust than the relief set forth in the Consent Order.

The same reasoning applies to the alleged unfair labor practices at the two divested hospital entities which still operate, Barstow and Watsonville. The Corporate Respondents are willing to delete the "subject to compliance" language from the proffered Consent Order, but remedial reality will nevertheless dictate a limited ability to effectuate non-monetary guarantee relief at those hospitals. That outcome will be the same whether the guarantee issues now or an order issues after several years of litigation. Lawful intervening circumstances have changed remedial realities. Entering the Consent Order now would be more reasonable than entering a similar order years later.

To the extent Your Honor has concerns about limitations of the Corporate Respondents' ability to effectuate non-monetary remedies, most of the allegations are concentrated at current affiliates Bluefield and Greenbrier. (Complaint Paragraphs 20-24, 37-49). The guarantee has clear monetary and non-monetary value, remedially equivalent to a single/joint finding. If Greenbrier or Bluefield, for example, breach a cease and desist order or fail to meet notice requirements, the Corporate Respondents will have breached their respective guarantees. Again, no meaningful remedial difference exists between the Consent Order and a finding on the Complaint's single/joint allegations.

H. Counsel for General Counsel's Request for a Nationwide Cease and Desist Order Does Not Preclude Adoption of the Consent Order.

The opposition memoranda rely heavily on Counsel for General Counsel's request for a nationwide cease and desist order, asserting that the mere request for such an order bars a *UPMC*-based consent order. For several reasons, this argument should be rejected. First, the request for a nationwide cease and desist order is inconsistent with the relationships pled in the Complaint. The Complaint alleges relationships and unfair labor practices at only five hospitals out of more than 200 entities associated with the Corporate Respondents. (Ex. 1). It involves approximately 250 employees out of more than 120,000 employees currently affiliated with the Corporate Respondents. (Ex. 1). It involves alleged unfair labor practices concentrated at only two currently operating hospital entity affiliates, Bluefield and Greenbrier, in two small units out of forty-six bargaining units among affiliated entities. (Ex. 1, Complaint Paragraphs 20-24, 37-49). General Counsel has persisted with an unprecedented effort to bootstrap a nationwide cease and desist order to unfair labor practice allegations which now relate primarily to two current corporate affiliates, potentially leapfrogging across employer entities to bind over forty other bargaining relationships. An unprecedented request of this nature should not bar entry of the Consent Order.

Second, the request for a nationwide cease and desist order lacks an unfair labor practice underpinning alleged in the Complaint. The Complaint does not assert the Corporate Respondents engaged in unfair labor practices nationwide. The Complaint does not request specific relief in the form of corporate-wide rescission of policies, posting, or other specific relief within potential single or joint employment relationships not named in this case. Rather, the Complaint alleges single/joint liability for specific unfair labor practices at specific, named hospital entities. A nationwide remedial request not tied to alleged nationwide unfair labor practices, disconnected

from the specifically pled single or joint relationships, equates to an effort to seek punitive, unsupported remedies. Such a request cannot bar entry of the Consent Order.

Third, the Board's remedial authority remains subject to applicable limits. The Supreme Court has indicated the Board should not issue a remedy beyond the relationships pled in a complaint. *Communications Wkrs. of America AFL-CIO v. NLRB*, 362 U.S. 479, 480 (1960)(cease and desist order requiring union to refrain from engaging in strike violations with "any other employer" was invalid); *Carpenters Local 60 (Mechanical Handling) v. NLRB,* 365 U.S. 651, 655 (1961)(order requiring disgorgement of dues beyond employees affected by union's unfair labor practices invalidated). The Board may only "remove the consequences of the violation." *Id.* at 655. It may not punish a respondent by interfering with respondent's relationships among employees who have not been subjected to wrongdoing. *Id.; See also, Sure–Tan, Inc. v. NLRB,* 467 U.S. 883, 900 (1984)(Board remedies must be tailored to the specific unfair labor practice pled, without estimation or speculation). A speculative request for a nationwide cease and desist order, unsupported by facts, pleading, or law, should not bar entry of the Consent Order.

Over eighty years after the Act's passage, no matter involving remotely similar allegations to the case at bar has led to a nationwide cease and desist order covering all future violations of the Act. In response, General Counsel's most familiar refrain includes offering vague statements about prior cases which do not apply to the Complaint. For example, most of the authority cited by General Counsel relates to a narrow line of cases involving personnel policies implemented corporate-wide.[2] The Complaint does not allege that the Corporate Respondents maintained a

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[2] *Ross Stores, Inc.*, 363 NLRB No. 79 (2015); *Flyte Time Worldwide*, 363 NLRB No. 107 (2016); and *Target Corp.*, 359 NLRB 953 (2013)(where corporations allegedly maintained an illegal arbitration policy); *MasTec Advanced Technologies*, 357 NLRB 103 (2011); *Guardsmark, LLC*, 344 NLRB 809, 812 (2005); and *Fresh & Easy Neighborhood Market, Inc.*, 356 NLRB 546 (2011)(where corporations faced allegations of maintaining illegal handbook policies nationwide). None of these cases involved a broad-based, nationwide cease and desist order.

policy or form, corporate-wide.[3] Neither *Independent Stave* nor *UPMC* require a respondent to offer items in a Consent Order to address unalleged acts.

General Counsel offers similar, general statements when relying upon cases which did not result in a broad-based, nationwide cease and desist order. In *Miller Group*, 310 NLRB 1235 (1993), the Board merely required the same corporation to post a notice at two locations which were part of the same bargaining unit. *Tradesman International*, 351 NLRB 399 (2007), involved a single hiring agency with dozens of substantiated 8(a)(3) violations, with the placement of non-discrimination language in contracts and a posting at one location. *HTH Corp.*, 361 NLRB No. 65 ("NTH II"), involved an order against a recidivist employer which merely applied to a single location and a single bargaining unit following prior litigation ("NTH I").

General Counsel has not presented a single decision supporting a corporate-wide cease and desist order based on the allegations pled in the Complaint. *J.P. Stevens & Co.*, 240 NLRB 33 (1979), involved a single company with fourteen prior Board decisions rendered against it, many of which involved hallmark violations, followed by multiple contempt citations. *Overnite Transportation*, 329 NLRB 990 (1999), involved one corporation subjected to multiple *Gissel* bargaining orders and hallmark unfair labor practices during a campaign at over fifty service centers, resulting in nationwide posting. *NLRB v. S.E. Nichols, Inc.*, 862 F.2d 952, 961 (2nd Cir. 1988), involved one named company which directly engaged in hallmark unfair labor practices of discharging groups of union adherents at multiple locations. The employer presented as a multiple recidivist with a "long history" of established violations of the Act over a "fifteen year period." *Id.*

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[3] Complaint Paragraph 19 addresses an item such as a form, but General Counsel has not alleged a corporate-wide practice.

at 961. Despite these facts, a limited access and posting remedy applied at only 8 of 43 stores. *Id.* at 954.

The Complaint presents none of the foregoing risk factors and none of them apply to the Corporate Respondents, who are subject to single/joint allegations, with no prior findings of having engaged in unfair labor practices. The Complaint, by presenting single/joint allegations, does not even rise to a *Burns Security Services* scenario, 300 NLRB No. 160, slip op. (Dec. 31, 1990). In *Burns Security Services*, the respondent actually engaged in unfair labor practices. Nevertheless, the Board rejected an ALJ-recommended nationwide cease and desist order in favor of a limited order covering only the three sites where the unfair labor practices occurred.

Fourth, the opposing memoranda proceed with respect to the requested nationwide cease and desist order remedy as if *USPS* were not overruled. Even if General Counsel's request for a nationwide cease and desist order were cognizable, which it is not, neither *Independent Stave* nor *UPMC* require a consent order to satisfy all available remedies. *UPMC*, 365 NLRB No. 153, slip op. *6; *Local 201, Electrical Workers (General Electric Co.)*, 188 NLRB 855 (1971) (consent order adopted despite failing to remedy a portion of the complaint); *Gourmet Toast Corp.,* 2011 WL 2433351 (NLRB Div. of Judges)(consent order approved despite having failed to meet 80% of General Counsel's damage estimate, relying upon other, similar cases approving consent orders); *Ribbon Sumyoo Corp.,* 1992 WL 1465636 (NLRB Div. of Judges)(consent order approved despite objections regarding amounts requested, a release entered into, and the absence of notice posting). The request for a nationwide cease and desist remedy does not bar entry of the Consent Order because *Independent Stave* does not require full satisfaction of any request, however whimsical. The test, one of reasonableness, has been met.

III. CONCLUSION

Independent Stave should be applied in a manner consistent with Board policy favoring settlements to effectively conserve administrative and taxpayer resources while promoting industrial peace.[4] Single/joint status remains primarily a remedial matter which can be resolved in compliance. It provides an entity, in addition to the site employer, to remedy an established unfair labor practice. If the site employer can remedy the unfair labor practice, litigating the existence of a compliance backup entity is, of course, unnecessary. With a guarantee, such litigation clearly fails to serve the purposes of the Act. Based on the foregoing, the Corporate Respondents respectfully request that the Consent Order be adopted.

Respectfully submitted,

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[4] *Independent Stave,* 287 NLRB 740, 743 (1987); *Poole Foundry & Machine Co. v. NLRB*, 192 F. 2d 740, 742 (4th Cir. 1951); *Hotel Holiday Inn de Isla Verde v. NLRB*, 723 F.2d 169, 173 fn. 1 (1st Cir. 1983); *Combustion Engineering*, 272 NLRB 215 (1984); *Coca-Cola Bottling Co.*, 243 NLRB 501, 502 (1979); *Texaco, Inc.*, 273 NLRB 1335, 1336-1337 (1985).

CERTIFICATE OF SERVICE

The undersigned attorney, Leonard W. Sachs, hereby certifies that on April 4, 2018, the foregoing was filed and served via e-mail upon:

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4824-5001-2512, v. 2

EXHIBIT 1

AFFIDAVIT OF BEN C. FORDHAM

STATE OF TENNESSEE)
) ss.
COUNTY OF WILLIAMSON)

Ben C. Fordham, being duly sworn, deposes and states as follows:

1. I am over eighteen years of age, and I have personal knowledge of the matters stated in this Affidavit. All the facts stated in this Affidavit are true and correct to the best of my knowledge, information, and belief.

2. I am presently Senior Vice President and Chief Litigation Counsel for CHSPSC, LLC ("CHSPSC"). CHSPSC provides certain consulting services to Community Health Systems, Inc. ("CHSI") in its role as a publicly traded company.

3. The principal place of business of CHSI is in Franklin, Tennessee. CHSI is a publicly traded holding company. At the time the Consolidated Complaint in this action was filed, CHSI indirectly owned interests in companies which owned or leased the hospitals involved in this case, including DHSC, LLC ("Affinity"); Hospital of Barstow, Inc. ("Barstow"); Bluefield Hospital Company, LLC ("Bluefield"); Fallbrook Hospital Corporation ("Fallbrook"); Greenbrier VMC, LLC ("Greenbrier"); Watsonville Community Hospital Corporation ("Watsonville") (collectively "Respondent Hospitals"). CHSI also indirectly owned an interest in CHSPSC, LLC ("CHSPSC"). CHSI is a stock holding company, and has no employees.

4. CHSPSC is a consulting and management services company with its principal place of business in Franklin, Tennessee. CHSPSC provided contracted management and consulting services to Respondent Hospitals. Respondent Hospitals constituted a small number of the corporate entities affiliated with CHSI and CHSPSC (collectively, the "Corporate Respondents"). Those entities included clinics, doctor groups, and many other types of ancillary service businesses. In addition to those entities, at the time the Consolidated Complaint in this case was filed, the Corporate Respondents were similarly affiliated with approximately 196 acute care hospitals in 29 states located across the country. The referenced entities collectively employed approximately 135,000 employees.

5. On April 29, 2016, 38 hospitals formerly affiliated with the Corporate Respondents were divested to form Quorum Health Corporation ("QHC"), also a publicly traded holding company. The Corporate Respondents remain affiliated with 159 acute care hospitals in 22 states, together with dozens of other businesses. Collectively, these entities employ more than 120,000 employees. As part of this divestiture, the Corporate Respondents have disassociated with Affinity, Watsonville, and Barstow ("the divested hospitals") which are now affiliates of QHC.

6. As a result of the divestiture of the entities, the divested hospitals have become indirectly owned by QHC. The Corporate Respondents have no ownership relationship with the divested hospitals. CHSPSC no longer serves as a management services company for the divested hospitals. As separate corporate entities, neither CHSI nor CHSPSC may compel QHC or its affiliates to undertake any particular remedial action, such as: complying with information requests; engaging in collective bargaining; or implementing revised personnel policies or procedures.

7. As a result of the divestiture, among Respondent Hospitals, only Fallbrook (which closed in 2014), Greenbrier, and Bluefield remain affiliated with the Corporate Respondents. Greenbrier and Bluefield employ a total of approximately 250 CNA represented employees. Collectively, following the QHC divestiture, the affiliated entities associated with the CHSI and CHSPSC Respondents have more than 120,000 employees, including 46 bargaining units represented by different unions.

8. As of the divestiture, Respondent Hospitals, with the exception of Fallbrook, continued to operate as acute care medical facilities, with substantial workforces and substantial resources, fully capable of remedying alleged unfair labor practices which could be remedied. This continues to be true with respect to the non-divested Respondent Hospitals Greenbrier and Bluefield.

9. CHSPSC has never been subject to an order or finding that it violated the National Labor Relations Act ("the Act"), nor has CHSPSC been subject to a single/joint employer finding under the Act. As a publicly traded holding company, with no employees, CHSI has not operated Respondent Hospitals and has never been subjected to a single or joint employer finding under the Act.

Further affiant sayeth naught.

Ben C. Fordham

Sworn to and subscribed before me this 28th day of July, 2016.

NOTARY PUBLIC

EN03072.Public-03072 4836-8713-0163v1

CINDY L. BARLOW
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY
My Comm. Expires May 23, 2018

EXHIBIT L

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

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

and	**CASES**	**08-CA-117890**
		08-CA-124398
		08-CA-131772
		08-CA-144212
		08-CA-153759
		08-CA-166039

NATIONAL NURSES ORGANIZING COMMITTEE
(NNOC)

- - - -

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JACKSON HOSPITAL CORPORATION d/b/a KENTUCKY RIVER MEDICAL CENTER,
COMMUNITY HEALTH SYSTEMS, INC., and/or
COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and/or joint employers

and	**CASES**	**09-CA-102403**
		09-CA-105751
UNITED STEEL, PAPER AND FORESTRY		**09-CA-129151**
RUBBER, MANUFACTURING, ENERGY		**09-CA-131638**
ALLIED INDUSTRIAL AND SERVICE		**09-CA-133951**
WORKERS INTERNATIONAL UNION, AFL-CIO-CLC		

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SECOND ORDER FURTHER CONSOLIDATING CASES,
SECOND AMENDED CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 08-CA-117890, 08-CA-124398, 08-CA-131772, 08-CA-144212, 08-CA-153759 and 08-CA-166039 which are based on charges filed by the National Nurses Organizing Committee, AFL-CIO (NNOC) and Case 08-CA-130717 based on a charge filed by California Nurses Association/National Nurses Organizing Committee, AFL-CIO (CNA/NNOC) against DHSC, LLC, d/b/a Affinity Medical Center (Respondent Affinity) and its single and/or joint employer Community Health Systems, Inc., (Respondent CHSI) and/or its single and/or joint employer Community Health Systems Professional Services Corp., LLC, also known as Community Health Systems Professional Services Corporation prior to January 1, 2015 (Respondent CHSPSC), and Cases 31-CA-116300, 31-CA-119831, 31-CA-124540, 31-CA-133880 and 31-CA-153504, which are based on charges filed by CNA/NNOC against Hospital of Barstow Inc., d/b/a Barstow Community Hospital (Respondent Barstow) and its single and/or joint employer Respondent CHSI and/or its single and/or joint employer Respondent CHSPSC, and Cases 10-CA-094403, 10-CA-110743, 10-CA-112255, and 10-CA-116246 filed by NNOC against Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center (Respondent Bluefield) and its single and/or joint employer Respondent CHSI and/or its single and/or joint employer Respondent CHSPSC, in which an Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing issued against Respondent Bluefield on December 31, 2013, and an Amendment to Second Consolidated Complaint issued against Respondent Bluefield on March 6, 2014 in Cases 10-CA-110743, 10-CA-112255 and 10-CA-094403, and in Cases 10-CA-117698, 10-CA-121156, 10-CA-126416, and 10-CA-124354 filed

by NNOC against Greenbrier, VMC, LLC d/b/a Greenbrier Valley Medical Center (Respondent Greenbrier) and its single and/or joint employer Respondent CHSI and its single and/or joint employer Respondent CHSPSC, in which an Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing issued on June 16, 2014 against Respondent Greenbrier in Cases 10-CA-117698 and 10-CA-121156, and Cases 21-CA-121480, 21-CA-124295, and 21-CA-134774 filed by CNA/NNOC against Fallbrook Hospital Corporation d/b/a Fallbrook Hospital (Respondent Fallbrook) and its single and/or joint employer Respondent CHSI and its single and/or joint employer Respondent CHSPSC, and Cases 09-CA-102403, 09-CA-105751, 09-CA-129151, 09-CA-131638 and 09-CA-133951 filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC, (United Steelworkers) against Jackson Hospital Corp., also known as Jackson Hospital Corporation d/b/a Kentucky River Medical Center (Respondent Kentucky River) and its single and/or joint employer Respondent CHSI and its single and/or joint employer,[1] Respondent CHSPSC, Cases 32-CA-120642, 32-CA-124332 filed by the California Nurses Association, National Nurses United (CNA) against Watsonville Community Hospital (Respondent Watsonville) and its single and/or joint employer Respondent CHSI and its single and/or joint employer Respondent CHSPSC, are consolidated. This Second Order Further Consolidating

[1] On March 3, 2016, Administrative Law Judge Eleanor Laws approved a settlement in Cases 09-CA-102403, 09-CA-105751, 09-CA-129151, 09-CA-131638 and 09-CA-133951 involving Charging Party United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC and Respondent Kentucky River and also approved a motion to sever those cases. Accordingly, the following allegations in the following paragraphs of the instant Order Further Consolidating Cases, Second Amended Consolidated Complaint and Notice of Hearing [Second Amended Consolidated Complaint] have been withdrawn: 6, 8(F), 14, 22, 24(F), 26(D), 71, 112 through 116. The reference to Jackson, Kentucky has been removed from paragraphs 8(H) and 8(I) and the references to Respondent Kentucky River have been removed from the remedial section of the instant Second Amended Consolidated Complaint.

Cases, Second Amended Consolidated Complaint and Notice of Hearing,[2] which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, by an Order of the Board in 364 NLRB No. 67 *slip op.* (Aug. 10, 2016) directing the General Counsel to issue a unified amended complaint, as well as by direction of the Administrative Law Judge hearing these proceedings, alleges that the respective Respondents have violated the Act as described below:

1. (A) The original charge in Case 08-CA-117890 was filed by the NNOC against Respondent Affinity on November 27, 2013, and a copy was served on Respondent Affinity by U.S. mail on November 27, 2013.

(B) The amended charge in Case 08-CA-117890 was filed by the NNOC against Respondent Affinity on December 17, 2014, and a copy was served on Respondent Affinity by U.S. mail on December 17, 2014.

(C) The second amended charge in Case 08-CA-117890 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 21, 2015.

(D) The third amended charge in Case 08-CA-117890 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on September 18,

[2] Pursuant to Section 102.17 of the Rules and Regulations of the Board, this Second Order Further Consolidating Cases, Second Amended Consolidated Complaint and Notice of Hearing supersedes the Order Further Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing that issued on February 5, 2016. On February 5, 2016, the Regional Director for Region 8 of the National Labor Relations Board also issued an Amended Complaint in Fallbrook Hospital Corporation d/b/a Fallbrook Hospital, in Case 21-CA-143512, based upon a charge filed by SEIU, United Healthcare Workers – West. On February 5, 2016, the Regional Director for Region 8 issued a Second Order Consolidating Cases in the above-captioned cases with Case 21-CA-143512. General Counsel amended the remedial paragraph of the Amended Complaint in Case 21-CA-143512 on the record on April 18, 2016. The allegations contained in the Amended Complaint in 21-CA-143512 are not specifically included herein in this Second Amended Consolidated Complaint.

2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on September 22, 2015.

(E) The original charge in Case 08-CA-124398 was filed by the NNOC against Respondent Affinity and Respondent CHSI on March 13, 2014, and a copy was served on Respondent Affinity and Respondent CHSI by U.S. mail on March 14, 2014.

(F) The first amended charge in Case 08-CA-124398 was filed by the NNOC against Respondent Affinity and Respondent CHSI on May 20, 2014, and a copy was served on Respondent Affinity and Respondent CHSI by U.S. mail on May 20, 2014.

(G) The second amended charge in Case 08-CA-124398 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 21, 2015.

(H) The original charge in Case 08-CA-130717 was filed by the CNA/NNOC against Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on June 13, 2014, and a copy was served on Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 13, 2014.

(I) The first amended charge in Case 08-CA-130717 was filed by the NNOC against Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on May 20, 2015, and a copy was served on Respondent Affinity, Respondent Barstow,

Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 21, 2015.

(J) The second amended charge in Case 08-CA-130717 was filed by the CNA/NNOC against Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, Respondent Watsonville, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 26, 2015.

(K) The original charge in Case 08-CA-131772 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on June 30, 2014, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 30, 2014.

(L) The first amended charge in Case 08-CA-131772 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on May 26, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 26, 2015.

(M) The original charge in Case 08-CA-144212 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on January 9, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on January 12, 2015.

(N) The first amended charge in Case 08-CA-144212 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on May 26, 2015, and

a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 26, 2015.

(O) The second amended charge in Case 08-CA-144212 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on July 21, 2015, and a copy was served by U.S. mail on Respondent Affinity, Respondent CHSI and Respondent CHSPSC on July 22, 2015.

(P) The original charge in Case 08-CA-153759 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on June 8, 2015 and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 9, 2015.

(Q) The first amended charge in Case 08-CA-153759 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on July 2, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on July 2, 2015.

(R) The second amended charge in Case 08-CA-153759 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on September 29, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on September 30, 2015.

(S) The third amended charge in Case 08-CA-153759 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on September 30, 2015, and a copy was served on Respondent Affinity, Respondent CHSI and Respondent CHSPSC by U.S. mail on October 1, 2015.

(T) The original charge in Case 08-CA-166039 was filed by the CNA/NNOC against Respondent Affinity, Respondent CHSI, Respondent CHSPSC, Respondent Watsonville, Respondent Barstow and Respondent Quorum Health Corporation on December 15, 2015, and a copy was served on Respondent Affinity, Respondent Watsonville, Respondent Barstow, Respondent CHSI, Respondent CHSPSC and Quorum Health Corporation by U.S. mail on December 15, 2015.

(U) The first amended charge in Case 08-CA-166039 was filed by the NNOC against Respondent Affinity, Respondent CHSI and Respondent CHSPSC on January 8, 2016, and a copy was served on Respondent Affinity, Respondent CHSI, and Respondent CHSPSC by U.S. mail on January 11, 2016.

2. (A) The original charge in Case 31-CA-116300 was filed by the CNA/NNOC against Respondent Barstow on October 31, 2013 and a copy was served on Respondent Barstow by U.S. mail on November 8, 2013 and November 26, 2013.

(B) The first amended charge in Case 31-CA-116300 was filed by the CNA/NNOC against Respondent Barstow on December 3, 2013, and a copy was served on Respondent Barstow by U.S. mail on December 9, 2013.

(C) The second amended charge in Case 31-CA-116300 was filed by the CNA/NNOC against Respondent Barstow on January 27, 2014 and a copy was served on Respondent Barstow by U.S. mail on February 3, 2014.

(D) The third amended charge in Case 31-CA-116300 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on May 26, 2015, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 28, 2015.

(E) The original charge in Case 31-CA-119831 was filed by the CNA/NNOC against Respondent Barstow on December 23, 2013 and a copy was served on Respondent Barstow by U.S. mail on January 6, 2014.

(F) The first amended charge in Case 31-CA-119831 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on May 22, 2015 and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 29, 2015.

(G) The original charge in 31-CA-124540 was filed by the CNA/NNOC against Respondent Barstow and Respondent CHSI on March 12, 2014, and a copy was served on Respondent Barstow and Respondent CHSI by U.S. mail on March 18, 2014.

(H) The first amended charge in 31-CA-124540 was filed by the CNA/NNOC against Respondent Barstow and Respondent CHSI on May 14, 2014, and a copy was served on Respondent Barstow and Respondent CHSI by U.S. mail on May 15, 2014.

(I) The second amended charge in 31-CA-124540 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on May 22, 2015, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 4, 2015.

(J) The original charge in 31-CA-133880 was filed by the CNA/NNOC against Respondent Barstow and Respondent CHSI on July 31, 2014, and a copy was served on Respondent Barstow and Respondent CHSI by U.S. mail on August 1, 2014.

(K) The first amended charge in 31-CA-133880 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on May 20, 2015, and

a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 2, 2015.

(L) The original charge in Case 31-CA-153504 was filed by the CNA/NNOC on June 1, 2015 against Respondent Barstow, Respondent CHSI and Respondent CHSPSC, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 4, 2015.

(M) The first amended charge in Case 31-CA-153504 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on July 16, 2015, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on July 17, 2015.

(N) The second amended charge in Case 31-CA-153504 was filed by the CNA/NNOC against Respondent Barstow, Respondent CHSI and Respondent CHSPSC on August 25, 2015, and a copy was served on Respondent Barstow, Respondent CHSI and Respondent CHSPSC by U.S. mail on August 26, 2015.

3. (A) The original charge in Case 10-CA-110743 was filed by the NNOC on August 7, 2013 against Respondent Bluefield, and a copy was served on Respondent Bluefield by U.S. mail on August 7, 2013.

(B) The first amended charge in Case 10–CA–110743 was filed by the NNOC against Respondent Bluefield on September 30, 2013, and a copy was served on Respondent Bluefield by U.S. mail on September 30, 2013.

(C) The second amended charge in Case 10-CA-110743 was filed by the NNOC against Respondent Bluefield and Respondent CHSI on March 19, 2014, and a copy was served on Respondent Bluefield and Respondent CHSI by U.S. mail on March 19, 2014.

(D) The third amended charge in Case 10-CA-110743 was filed by the NNOC against Respondent Bluefield and Respondent CHSI on May 21, 2015, and a copy was served on Respondent Bluefield and Respondent CHSI by U.S. mail on May 22, 2015.

(E) The original charge in Case 10-CA-112255 was filed by the NNOC against Respondent Bluefield on August 28, 2013, and a copy was served on Respondent Bluefield by U.S. mail on August 29, 2013.

(F) The first amended charge in Case 10-CA-112255 was filed by the NNOC against Respondent Bluefield on November 20, 2013, and a copy was served on Respondent Bluefield by U.S. mail on November 20, 2013.

(G) The second amended charge in Case 10-CA-112255 was filed by the NNOC against Respondent Bluefield on November 25, 2013, and a copy was served on Respondent Bluefield by U.S. mail on November 26, 2013.

(H) The third amended charge in Case 10-CA-112255 was filed by the NNOC against Respondent Bluefield on March 19, 2014, and a copy was served on Respondent Bluefield by U.S. mail on March 19, 2014.

(I) The fourth amended charge in Case 10–CA–112255 was filed by the NNOC against Respondent Bluefield, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(J) The original charge in Case 10-CA-094403 was filed by the NNOC against Respondent Bluefield on December 6, 2012, and a copy was served on Respondent Bluefield by U.S. mail on December 7, 2012.

(K) The first amended charge in Case 10-CA-094403 was filed by the NNOC against Respondent Bluefield on January 31, 2013, and a copy was served on Respondent Bluefield by U.S. mail on January 31, 2013.

(L) The second amended charge in Case 10-CA-094403 was filed by the NNOC against Respondent Bluefield, Respondent CHSI and its subsidiary Quorum Health Resources (Quorum Health Resources), Joint Employers, on September 10, 2013, and a copy was served on Respondent Bluefield, Respondent CHSI and Quorum Health Resources by U.S. mail on September 10, 2013.

(M) The third amended charge in Case 10-CA-094403 was filed by the NNOC on October 31, 2013 against Respondent Bluefield, Respondent CHSI and Respondent CHSPSC and a copy was served on Respondent Bluefield, Respondent CHSI, and Respondent CHSPSC by U.S. mail on October 31, 2013.

(N) The fourth amended charge in Case 10–CA–094403 was filed by the NNOC on March 13, 2014 against Respondent Bluefield and Respondent CHSI, and a copy was served on Respondent Bluefield and Respondent CHSI by U.S. mail on March 13, 2014.

(O) The fifth amended charge in Case 10–CA–094403 was filed by the NNOC on March 25, 2014 against Respondent Bluefield and Respondent CHSI, and a copy was served on Respondent Bluefield and Respondent CHSI on March 25, 2014.

(P) The sixth amended charge in Case 10–CA–094403 was filed by the NNOC on May 21, 2015 against Respondent Bluefield, Respondent CHSI and Respondent CHSPSC, and a copy was served on Respondent Bluefield, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(Q) The original charge in Case 10–CA–116246 was filed by the NNOC against Respondent Bluefield on November 1, 2013, and a copy was served on Respondent Bluefield by U.S. mail on November 4, 2013.

(R) The first amended charge in Case 10-CA-116246 was filed by the NNOC against Respondent Bluefield on December 18, 2013, and a copy was served on Respondent Bluefield by U.S. mail on December 18, 2013.

(S) The second amended charge in Case 10–CA–116246 was filed by the NNOC against Respondent Bluefield, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served by U.S. mail on Respondent Bluefield on May 22, 2015.

4. (A) The original charge in Case 21-CA-121480 was filed by the CNA/NNOC against Respondent Fallbrook and Respondent CHSI on January 28, 2014, and a copy was served on Respondent Fallbrook and Respondent CHSI by U.S. mail on January 29, 2014.

(B) The first amended charge in Case 21-CA-121480 was filed by the CNA/ NNOC against Respondent Fallbrook, Respondent CHSI and Respondent CHSPSC on June 5, 2015, and a copy was served on Respondent Fallbrook, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 9, 2015.

(C) The original charge in Case 21-CA-124295 was filed by the CNA/NNOC against Respondent Fallbrook and Respondent CHSI on March 12, 2014, and a copy was served on Respondent Fallbrook and Respondent CHSI by U.S. mail on March 12, 2014.

(D) The first amended charge in Case 21-CA-124295 was filed by the CNA/NNOC against Respondent Fallbrook and Respondent CHSI on May 7, 2014, and a copy was served on Respondent Fallbrook and Respondent CHSI by U.S. mail on May 8, 2014.

(E) The second amended charge in Case 21-CA-124295 was filed by the CNA/NNOC against Respondent Fallbrook, Respondent CHSI and Respondent CHSPSC on June 5, 2015, and a copy was served on Respondent Fallbrook, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 9, 2015.

(F) The original charge in Case 21-CA-134774 was filed by the CNA/NNOC against Respondent Fallbrook and Respondent CHSI on August 14, 2014, and a copy was served on Respondent Fallbrook and Respondent CHSI by U.S. mail on August 18, 2014.

(G) The first amended charge in Case 21-CA-134774 was filed by the CNA/NNOC against Respondent Fallbrook, Respondent CHSI and Respondent CHSPSC on June 5, 2015, and a copy was served on Respondent Fallbrook, Respondent CHSI and Respondent CHSPSC by U.S. mail on June 9, 2015.

5. (A) The original charge in Case 10-CA-117698 was filed by the NNOC against Respondent Greenbrier on November 22, 2013, and a copy was served on Respondent Greenbrier by U.S. mail on November 25, 2013.

(B) The first amended charge in Case 10-CA-117698 was filed by the NNOC against Respondent Greenbrier on January 17, 2014, and a copy was served on Respondent Greenbrier by U.S. mail on January 17, 2014.

(C) The second amended charge in Case 10-CA-117698 was filed by the NNOC against Respondent Greenbrier on January 30, 2014, and a copy was served on Respondent Greenbrier by U.S. mail on January 30, 2014.

(D) The third amended charge in Case 10-CA-117698 was filed by the NNOC against Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC on May 21, 2015,

and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(E) The original charge in Case 10-CA-121156 was filed by the NNOC against Respondent Greenbrier on January 23, 2014, and a copy was served on Respondent Greenbrier by U.S. mail on January 24, 2014.

(F) The first amended charge in Case 10-CA-121156 was filed by the NNOC against Respondent Greenbrier on February 26, 2014, and a copy was served on Respondent Greenbrier by U.S. mail on February 27, 2014.

(G) The second amended charge in Case 10-CA-121156 was filed by the NNOC against Respondent Greenbrier on June 13, 2014, and a copy was served on Respondent Greenbrier by U.S. mail on June 16, 2014.

(H) The third amended charge in Case 10–CA–121156 was filed by the NNOC against Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(I) The charge in Case 10-CA-126416 was filed by the NNOC against Respondent Greenbrier and Respondent CHSI on April 11, 2014, and a copy was served on Respondent Greenbrier and Respondent CHSI by U.S. mail on April 11, 2014.

(J) The first amended charge in Case 10–CA–126416 was filed by the NNOC against Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by regular mail on May 21, 2015.

(K) The charge in Case 10-CA-124354 was filed by the NNOC against Respondent Greenbrier and Respondent CHSI on March 13, 2014, and a copy was served on Respondent Greenbrier and Respondent CHSI by U.S. mail on March 13, 2014.

(L) The first amended charge in Case 10–CA–124354 was filed by the NNOC against Respondent Greenbrier and Respondent CHSI on May 7, 2014, and a copy was served on Respondent Greenbrier and Respondent CHSI by U.S. mail on May 8, 2014.

(M) The second amended charge in Case 10-CA-124354 was filed by the NNOC against Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Greenbrier, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

6. (A) The original charge in Case 09-CA-102403 was filed by the United Steelworkers against Respondent Kentucky River on April 9, 2013, and a copy was served on Respondent Kentucky River by U.S. mail on April 10, 2013.

(B) The first amended charge in Case 09-CA-102403 was filed by the United Steelworkers against Respondent Kentucky River on May 20, 2015, and a copy was served on Respondent Kentucky River by U.S. mail on May 22, 2015.

(C) The original charge in Case 09-CA-105751 was filed by the United Steelworkers against Respondent Kentucky River on May 22, 2013, and a copy was served on Respondent Kentucky River by U.S. mail on May 23, 2013.

(D) The first amended charge in Case 09-CA-105751 was filed by the United Steelworkers against Respondent Kentucky River on May 20, 2015, and a copy was served on Respondent Kentucky River by U.S. mail on May 22, 2015.

(E) The original charge in Case 09-CA-129151 was filed by the United Steelworkers against Respondent Kentucky River on May 21, 2014, and a copy was served on Respondent Kentucky River by U.S. mail on May 22, 2014.

(F) The first amended charge in Case 09-CA-129151 was filed by the United Steelworkers against Respondent Kentucky River, Respondent CHSI and Respondent CHSPSC, on May 20, 2015, and a copy was served on Respondent Kentucky River, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(G) The original charge in Case 09-CA-131638 was filed by the United Steelworkers against Respondent Kentucky River on June 25, 2014, and a copy was served on Respondent Kentucky River by U.S. mail on June 27, 2014.

(H) The first amended charge in Case 09-CA-131638 was filed by the United Steelworkers against Respondent Kentucky River on July 24, 2014, and a copy was served on Respondent Kentucky River by U.S. mail on July 28, 2014.

(I) The second amended charge in Case 09-CA-131638 was filed by the United Steelworkers against Respondent Kentucky River, Respondent CHSI and Respondent CHSPSC on May 20, 2015, and a copy was served on Respondent Kentucky River, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 22, 2015.

(J) The original charge in Case 09-CA-133951 was filed by the United Steelworkers against Respondent Kentucky River on August 1, 2014, and a copy was served on Respondent Kentucky River by U.S. mail on August 4, 2014.

(K) The first amended charge in Case 09-CA-133951 was filed by the United Steelworkers against Respondent Kentucky River on May 20, 2015, and a copy was served on Respondent Kentucky River by U.S. mail on May 22, 2015.

7. (A) The original charge in Case 32-CA-120642 was filed by the CNA against Respondent Watsonville on January 15, 2014, and a copy was served on Respondent Watsonville by U.S. mail on January 15, 2014.

(B) The first amended charge in Case 32-CA-120642 was filed by the CNA on May 20, 2015 against Respondent Watsonville, Respondent CHSI and Respondent CHSPSC and a copy was served on Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on May 21, 2015.

(C) The original charge in Case 32-CA-124332 was filed by the CNA against Respondent Watsonville on March 12, 2014, and a copy was served on Respondent Watsonville by U.S. mail on March 13, 2014.

(D) The first amended charge in Case 32-CA-124332 was filed by the CNA against Respondent Watsonville and Respondent CHSI on May 8, 2014, and a copy was served on Respondent Watsonville and Respondent CHSI by U.S. mail on May 9, 2014.

(E) The second amended charge in Case 32-CA-124332 was filed by the CNA against Respondent Watsonville, Respondent CHSI and Respondent CHSPSC on May 21, 2015, and a copy was served on Respondent Watsonville, Respondent CHSI and Respondent CHSPSC by U.S. mail on May 21, 2015.

8. (A) At all material times, Respondent Affinity, has been a Delaware limited liability company with an office and place of business in Massillon, Ohio, (Massillon facility or Affinity facility), and has been engaged in the operation of an acute care hospital providing inpatient and outpatient care.

(B) At all material times, Respondent Barstow has been a corporation with an office and place of business in Barstow, California (Barstow facility), and has been engaged in the operation of an acute care hospital providing inpatient and outpatient care.

(C) At all material times, Respondent Bluefield has been a limited liability company with an office and place of business in Bluefield, West Virginia (Bluefield facility), and has been engaged in the operation of an acute-care hospital providing inpatient and outpatient care.

(D) At all material times, Respondent Fallbrook has been a Delaware corporation, and until approximately December 31, 2014, it maintained its principal offices and place of business in Fallbrook, California (Fallbrook facility), and was engaged in the operation of an acute care hospital providing healthcare services.

(E) At all material times, Respondent Greenbrier has been a limited liability company with an office and place of business in Ronceverte, West Virginia (Greenbrier Valley Medical Center or Greenbrier facility), and has been operating an acute-care hospital providing inpatient and outpatient care.

(F) At all material times, Respondent Kentucky River has been a Kentucky corporation with an office and place of business in Jackson, Kentucky (Kentucky River facility), and has been operating a full service hospital providing inpatient and outpatient medical care.

(G) At all material times, Respondent Watsonville has been a Delaware corporation with an office and place of business in Watsonville, California, (Watsonville facility), and has been operating a hospital providing inpatient and outpatient medical care.

(H) At all material times, Respondent CHSI, which operates as a holding company, has been a Delaware corporation with its principal office and place of business in Franklin,

Tennessee, and with offices and places of businesses in Massillon, Ohio; Barstow, California; Bluefield, West Virginia; Fallbrook, California; Ronceverte, West Virginia; and Watsonville, California, where it is engaged in the operation of acute care hospitals providing inpatient and outpatient care.

(I) Since about January 1, 2015, Respondent CHSPSC has been a limited liability company and at all material times, Respondent CHSPSC has been a wholly owned subsidiary of Respondent CHSI with an office and place of business in Franklin, Tennessee, and with offices and places of businesses in Massillon, Ohio; Barstow, California; Bluefield, West Virginia; Fallbrook, California; Ronceverte, West Virginia; and Watsonville, California, where it is engaged in the operation of acute care hospitals providing inpatient and outpatient care.

9. (A) At all material times, Respondent Affinity and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 9(A), Respondent Affinity and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Affinity and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 9(C), Respondent Affinity and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

10. (A) At all material times, Respondent Barstow and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs,

information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 10(A), Respondent Barstow and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Barstow and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 10(C), Respondent Barstow and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

11. (A) At all material times, Respondent Bluefield and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 11(A), Respondent Bluefield and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Bluefield and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting,

physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 11(C), Respondent Bluefield and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

12. (A) At all material times, Respondent Fallbrook and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 12(A), Respondent Fallbrook and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Fallbrook and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other;

have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 12(C), Respondent Fallbrook and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

13. (A) At all material times, Respondent Greenbrier and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 13(A), Respondent Greenbrier and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Greenbrier and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 13(C), Respondent Greenbrier and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

14. (A) At all material times, Respondent Kentucky River and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory

programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 14(A), Respondent Kentucky River and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Kentucky River, with Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 14(C), Respondent Kentucky River and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

15. (A) At all material times, Respondent Watsonville and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting, physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 15(A), Respondent Watsonville and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

(C) At all material times, Respondent Watsonville and Respondent CHSPSC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services and electronic health records programs, reimbursement programs, purchasing, construction projects, procurement and materials management, facilities management, pharmaceuticals management, financial reporting,

physician support, as well as billing and case management; and have held themselves out to the public as a single-integrated business enterprise.

(D) Based on its operations described above in paragraph 15(C), Respondent Watsonville and Respondent CHSPSC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

16. (A) At all material times, Respondent CHSPSC and Respondent CHSI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged management personnel with each other; have interrelated operations with common human resources and centralized control of labor relations, compliance and regulatory programs, information technology services; and have held themselves out to the public as a single-integrated business enterprise.

(B) Based on its operations described above in paragraph 16(A), Respondent CHSPSC and Respondent CHSI constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

17. (A) (1) At all material times, Respondent CHSI and Respondent Affinity have been parties to a contract which provides that Respondent Affinity is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Affinity, and administered a common labor policy for Respondent Affinity's employees.

(3) At all material times, Respondent CHSI and Respondent Affinity have been joint employers of the employees of Respondent Affinity.

(B) (1) At all material times, Respondent CHSPSC and Respondent Affinity have been parties to a management services agreement which provides that Respondent Affinity is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Affinity, and administered a common labor policy for Respondent Affinity's employees.

(3) At all material times, Respondent CHSPSC and Respondent Affinity have been joint employers of the employees of Respondent Affinity.

18. (A) (1) At all material times, Respondent CHSI and Respondent Barstow have been parties to a contract which provides that Respondent Barstow is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Barstow and administered a common labor policy for Respondent Barstow's employees.

(3) At all material times, Respondent CHSI and Respondent Barstow have been joint employers of the employees of Respondent Barstow.

(B) (1) At all material times, Respondent CHSPSC and Respondent Barstow have been parties to a management services agreement which provides that Respondent Barstow is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Barstow and administered a common labor policy for Respondent Barstow's employees.

(3) At all material times, Respondent CHSPSC and Respondent Barstow have been joint employers of the employees of Respondent Barstow.

19. (A) (1) At all material times, Respondent CHSI and Respondent Bluefield have been parties to a contract which provides that Respondent Bluefield is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Bluefield and administered a common labor policy for Respondent Bluefield's employees.

(3) At all material times, Respondent CHSI and Respondent Bluefield have been joint employers of the employees of Respondent Bluefield.

(B) (1) At all material times, Respondent CHSPSC and Respondent Bluefield have been parties to a management services agreement which provides that Respondent Bluefield is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Bluefield and administered a common labor policy for Respondent Bluefield's employees.

(3) At all material times, Respondent CHSPSC and Respondent Bluefield have been joint employers of the employees of Respondent Bluefield.

20. (A) (1) At all material times, Respondent CHSI and Respondent Fallbrook have been parties to a contract which provides that Respondent Fallbrook is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Fallbrook and administered a common labor policy for Respondent Fallbrook's employees.

(3) At all material times, Respondent CHSI and Respondent Fallbrook have been joint employers of the employees of Respondent Fallbrook.

(B) (1) At all material times, Respondent CHSPSC and Respondent Fallbrook have been parties to a management services agreement which provides that Respondent Fallbrook is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Fallbrook and administered a common labor policy for Respondent Fallbrook's employees.

(3) At all material times, Respondent CHSPSC and Respondent Fallbrook have been joint employers of the employees of Respondent Fallbrook.

21. (A) (1) At all material times, Respondent CHSI and Respondent Greenbrier have been parties to a contract which provides that Respondent Greenbrier is the agent of Respondent CHSI, in connection with the operation of the acute care hospitals providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Greenbrier and administered a common labor policy for Respondent Greenbrier's employees.

(3) At all material times, Respondent CHSI and Respondent Greenbrier have been joint employers of the employees of Respondent Greenbrier.

(B) (1) At all material times, Respondent CHSPSC and Respondent Greenbrier have been parties to a management services agreement which provides that Respondent Greenbrier is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Greenbrier and administered a common labor policy for Respondent Greenbrier's employees.

(3) At all material times, Respondent CHSPSC and Respondent Greenbrier have been joint employers of the employees of Respondent Greenbrier.

22. (A) (1) At all material times, Respondent CHSI and Respondent Kentucky River have been parties to a contract which provides that Respondent Kentucky River is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Kentucky River and administered a common labor policy for Respondent Kentucky River's employees.

(3) At all material times, Respondent CHSI and Respondent Kentucky River have been joint employers of the employees of Respondent Kentucky River.

(B) (1) At all material times, Respondent CHSPSC and Respondent Kentucky River have been parties to a management services agreement which provides that Respondent Kentucky River is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Kentucky River and administered a common labor policy for Respondent Kentucky River's employees.

(3) At all material times, Respondent CHSPSC and Respondent Kentucky River have been joint employers of the employees of Respondent Kentucky River.

23. (A) (1) At all material times, Respondent CHSI and Respondent Watsonville have been parties to a contract which provides that Respondent Watsonville is the agent of Respondent CHSI, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSI has possessed and exercised control over the labor relations policies of Respondent Watsonville and administered a common labor policy for Respondent Watsonville's employees.

(3) At all material times, Respondent CHSI and Respondent Watsonville have been joint employers of the employees of Respondent Watsonville.

(B) (1) At all material times, Respondent CHSPSC and Respondent Watsonville have been parties to a management services agreement which provides that Respondent Watsonville is the agent of Respondent CHSPSC, in connection with the operation of the acute care hospital providing inpatient and outpatient care.

(2) At all material times, Respondent CHSPSC has possessed and exercised control over the labor relations policies of Respondent Watsonville and administered a common labor policy for Respondent Watsonville's employees.

(3) At all material times, Respondent CHSPSC and Respondent Watsonville have been joint employers of the employees of Respondent Watsonville.

24. (A) (1) Annually, Respondent Affinity, in conducting its business operations described above in paragraph 8(A), has derived gross revenue in excess of $250,000.

(2) Annually, Respondent Affinity, in conducting its business operations described above in paragraph 8(A), purchases and receives at its Massillon facility goods valued in excess of $50,000 directly from points outside the State of Ohio.

(3) At all material times, Respondent Affinity has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(B) (1) Annually, Respondent Barstow, in conducting its business operations described above in paragraph 8(B), has derived gross revenue in excess of $250,000.

(2) Annually, Respondent Barstow in conducting its business operations described above in paragraph 8(B), purchases and receives at its Barstow facility products, goods and materials valued in excess of $50,000 directly from points outside the State of California.

(3) At all material times, Respondent Barstow has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(C) (1) Annually, Respondent Bluefield, in conducting its business operations described above in paragraph 8(C), has derived gross revenue in excess of $250,000.

(2) Annually, Respondent Bluefield in conducting its business operations described above in paragraph 8(C), purchases and receives at its Bluefield facility, goods and materials valued in excess of $50,000 directly from points outside the State of West Virginia.

(3) At all material times, Respondent Bluefield has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(D) (1) Annually, Respondent Fallbrook, in conducting its business operations described above in paragraph 8(D), has derived gross revenue in excess of $250,000.

(2) During the 12-month period ending December 31, 2014, a representative period, Respondent Fallbrook, in conducting its business operations described above in paragraph 8(D), purchased and received at the Fallbrook facility, goods valued in excess of $50,000 directly from points outside the State of California.

(3) At all material times, Respondent Fallbrook has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(E) (1) Annually, Respondent Greenbrier, in conducting its business operations described above in paragraph 8(E), has derived gross revenue in excess of $250,000.

(2) Annually, Respondent Greenbrier in conducting its business operations, purchases and receives at its Greenbrier facility, goods and materials valued in excess of $50,000 directly from points outside the State of West Virginia.

(3) At all material times, Respondent Greenbrier has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(F) (1) Annually, Respondent Kentucky River, in conducting its business operations described above in paragraphs 8(F), has derived gross revenue in excess of $250,000.

(2) At all material times, Respondent Kentucky River during the past 12-month period ending July 1, 2015, in conducting its business operations described above in paragraph 8(F), purchased and received at its Jackson, Kentucky facility goods and materials valued in excess of $50,000 directly from points outside the Commonwealth of Kentucky.

(3) At all material times, Respondent Kentucky River has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(G) (1) Annually, Respondent Watsonville, in conducting its business operations described above in paragraph 8(G), has derived gross revenue in excess of $250,000.

(2) During the past twelve months, Respondent Watsonville, in the course and conduct of its business operations, purchased and received goods at its Watsonville, California facility valued in excess of $50,000, directly from points outside the State of California.

(3) During the past twelve months, Respondent Watsonville in conducting its business operations as described above in paragraph 8(G), received federal Medicare funds in excess of $5,000.

(4) At all material times, Respondent Watsonville has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(H) (1) At all material times, Respondent CHSI, in conducting its business operations as described above in paragraph 8(H), has derived gross revenues in excess of $250,000.

(2) At all material times, Respondent CHSI, in conducting its business operations as described above in paragraph 8(H), has purchased and received at its Franklin, Tennessee office and place of business, goods and materials valued in excess of $5000, directly from points located outside the State of Tennessee.

(3) At all material times, Respondent CHSI has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

(I) (1) At all material times, Respondent CHSPSC, in conducting its business operations as described above in paragraph 8(I), has derived gross revenues in excess of $250,000.

(2) At all material times, Respondent CHSPSC, in conducting its business operations as described above in paragraph 8(I), has purchased and received at its Franklin, Tennessee office and place of business, goods and materials valued in excess of $5000, directly from points located outside the State of Tennessee.

(3) At all material times, Respondent CHSPSC has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

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

(B) At all material times, the CNA/NNOC has been a labor organization within the meaning of Section 2(5) of the Act.

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

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

26. (A) At all material times, an unnamed attorney has been an agent of Respondent Affinity within the meaning of Section 2(13) of the Act.

(B) At all material times, an unnamed attorney has been an agent of Respondent Barstow within the meaning of Section 2(13) of the Act.

(C) At all material times, an unnamed attorney has been an agent of Respondent Fallbrook within the meaning of Section 2(13) of the Act.

(D) At all material times, an unnamed attorney has been an agent of Respondent Kentucky River within the meaning of Section 2(13) of the Act.

(E) At all material times, an unnamed attorney has been an agent of Respondent CHSI within the meaning of Section 2(13) of the Act.

(F) At all material times, an unnamed attorney has been an agent of Respondent CHSPSC within the meaning of Section 2(13) of the Act.

27. (A) At all material times the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondent Affinity within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

Angela Boyle	Vice President of Human Resources
Paula Zinsmeister	Manager, Orthopedics and Rehabilitation
Susan Kress	Director, Critical Care Services (From about October 2012 to a time presently unknown) Director, Acute Inpatient Services (From a time presently unknown to the present)
William (Bill) Osterman	Chief Nursing Officer
Nancy Davis	Intensive Care Unit Manager
Maureen Piersol	Nurse Supervisor

(B) At all material times, Kiley Drake held the position of Human Resources Generalist, and has been an agent of Respondent Affinity within the meaning of Section 2(13) of the Act.

(C) At all material times, Jan Ellis held the position of Director, Employee Relations and/or Human Resources Representative, and has been an agent of Respondent Affinity, Respondent CHSI and/or an agent of Respondent CHSPSC, within the meaning of Section 2(13) of the Act.

(D) At all material times, the following individuals held positions set forth opposite their respective names and have been supervisors of Respondent CHSPSC within the meaning of Section 2(11) of the Act and agents of Respondent CHSPSC within the meaning of Section 2(13) of the Act:

Thomas D. Miller	President, Division V
Martin J. Bonick	Vice President of Division Operations
Marvin L. "Bud" Wood, Jr.	Division Director of Human Resources
Robert A. Horrar	Vice President, Administration
Sammy Cantrell	Vice President, Deployment – Information Systems
Michael Yzerman	Vice President, Deployment – Information Systems
Bruce W. Hamilton	Senior Human Resources Director, Division V

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

Thomas D. Miller	President, Division V
Martin J. Bonick	Vice President of Division Operations
Marvin L. "Bud" Wood, Jr.	Division Director of Human Resources
Robert A. Horrar	Vice President, Administration
Sammy Cantrell	Vice President, Deployment – Information Systems
Michael Yzerman	Vice President, Deployment – Information Systems
Bruce W. Hamilton	Senior Human Resources Director,

Division V

28. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Barstow within the meaning of Section 2(11) of the Act and/or agents within the meaning of Section 2(13) of the Act.

Laura Elliot	Human Resources Director
Gwen Alford	Human Resources Generalist
Jeana Christensen	Human Resources Generalist
Michelle Miller	Human Resources Director
Carrie Howell	Chief Financial Officer
Amy Trapp	Assistant Director, Critical Care Services
Donna Smith	Chief Nursing Officer

29. (A) At all material times, an unnamed attorney has been the chief negotiator on behalf of Respondent Barstow in collective bargaining, and has been an agent within the meaning of Section 2(13) of the Act.

(B) At all material times, Jan Ellis held the position of Director, Employee Relations and/or Human Resources Representative, and has been an agent of Respondent Barstow, Respondent CHSI and/or an agent of Respondent CHSPSC within the meaning of Section 2(13) of the Act.

30. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Bluefield within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

William Hawley	CEO
Richard Cox	Director, Facilities Management
Laura Martin	Human Resources Director
Nancy Hawkins	Director, Medical/Surgical, Three South
Sandy Moretz	Chief Nursing Officer
Paula Thompson	Director of Surgical Services
Alisha Miller	Director of Occupational Medicine
Tammy Yost	Assistant Director, Outpatient Surgery
Brenda Scruggs	Manager, Outpatient Surgery
Frances Grouse	Shift Director
Betty Price	Shift Director
Angie Davidson	Quality Risk Manager
Jerry Cumby	Supervisor, Environmental Services
Kathy Glover	Nurse Manager OB

31. At all material times, a security guard working at Bluefield's facility, whose name is presently unknown, has been an agent of Respondent Bluefield within the meaning of Section 2(13) of the Act.

32. (A) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Fallbrook within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

Debra Hodges	Director of Inpatient Services
Janet Colvart	Chief Nursing Officer
Kirkpatrick (Kapua) Conley	Chief Executive Officer

(B) At all material times, the following individuals held the positions set forth opposite their respective names and agents of Respondent Fallbrook, Respondent CHSI and/or an Respondent CHSPSC within the meaning of Section 2(13) of the Act:

Jan Ellis	Director, Employee Relations and/or Human Resources Representative
John Coker	Division IV Human Resources Director

33. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Greenbrier within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

Connie Rose	Emergency Department Director
Charlene Warren	Chief Nursing Officer
Paul Hanna	Human Resources Director
Tammy Lilly	Intensive Care Unit Director
Tom Flis	Nursing Director, Medical/Surgical/Pediatrics
Bobbi Lockard	Nursing Manager, Medical/Surgical/Pediatrics

34. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Kentucky River within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

James Carmody	Senior Director, Human Resources & Employee Relations
Naomi Mitchell	Human Resources Director

35. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Watsonville within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

Audra Earl	Chief Executive Officer
Jeri Gilbert	Human Resources Director

36. (A) The following rule has been maintained and is contained in Employee Handbooks, under the heading "Solicitation and Distribution of Literature":

> Employees who are not on working time (e.g., those on lunch or breaks) may not solicit, including by e-mail or other telephone communication systems, employees who are on working time for any cause or distribute literature of any kind to them. Furthermore, employees may not distribute literature or printed material of any kind in working areas at any time. The term "working areas" refers to any area of the Hospital in which any employee regularly performs his or her assigned job duties.

(1) By Respondent Affinity since on or about June 4, 2014.

(2) By Respondent Barstow since on or about June 6, 2014.

(3) By Respondent Fallbrook since on or about June 4, 2014.

(4) By Respondent Greenbrier since on or about June 9, 2014.

(5) By Respondent Watsonville since on or about June 5, 2014.

(B) The following rule has been maintained and is contained in Employee Handbooks, under the heading "E-mail, Internet & Electronic Systems Access":

> E-mail and Internet resources are shared by all CHSI affiliated entities, and shall be used only by authorized users in the performance of their assigned job duties. Responsible, incidental personal use is acceptable provided (1) it does not interfere with the performance of your job duties or another employee's job duties, (2) the resources are not used in a manner that limits or

> impedes their use or access for legitimate business purposes, or (3) it does not violate this or any other facility policy. […]
>
> Without prior written permission from the Facility CEO the facility's electronic systems, including e-mail and Internet , may not be used for the dissemination or storage of commercial or personal advertisements, solicitations, promotions, destructive programs (i.e., viruses or self-replicating code), political material, or any other unauthorized use. Material that is …embarrassing … intimidating, defamatory or ... inappropriate may not be sent by the facility's computer system, including email, or accessed by the facility's computer system, including any internet connection provide by the facility, or displayed on or stored in facility computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor.
>
> (1) By Respondent Affinity since on or about June 4, 2014.
>
> (2) By Respondent Barstow since on or about June 6, 2014.
>
> (3) By Respondent Fallbrook since on or about June 4, 2014.
>
> (4) By Respondent Greenbrier since on or about June 9, 2014.
>
> (5) By Respondent Watsonville since on or about June 5, 2014.

(C) The following rule has been maintained and is contained in Employee Handbooks, under the heading "Personal Web Sites and Blogs":

> Employees may use personal web sites and web logs (blogs) during their personal (non-work) time. If an employee chooses to identify himself or herself as an employee on a personal web site or web log (blog), he or she must adhere to the following guidelines:
>
> - That the views expressed are solely the employee's and not necessarily those of the Facility.
>
> (1) By Respondent Affinity since about June 4, 2014.
>
> (2) By Respondent Barstow since on or about June 6, 2014.

(3) By Respondent Fallbrook since on or about June 4, 2014.

(4) By Respondent Watsonville since on or about June 5, 2014.

(D) The following rule has been maintained and is contained in Employee Handbooks under the heading "Conduct That May Result in Disciplinary Action":

> It is not possible to list all acts or misconduct that may result in disciplinary action. The following list is merely a guideline of some of the more obvious types of acts or misconduct which may result in disciplinary action, up to and including termination. […]
>
> Other behavior that will result in disciplinary action, up to and including termination: […]
>
> • Inappropriate use of e-mail, Internet access, personal web sites and web logs (blogs).

(1) By Respondent Affinity since on or about June 4, 2014.

(2) By Respondent Barstow since on or about June 6, 2014.

(3) By Respondent Fallbrook since on or about June 4, 2014.

(4) By Respondent Watsonville since on or about June 5, 2014.

37. At all material times until about June 4, 2014, Respondent Affinity has:

(A) Maintained in the Affinity Employee Handbook, under the heading "Solicitation and Distribution of Literature" the following rule, in relevant part:

> Employees who are not on working time (e.g., those on lunch or breaks) may not solicit employees who are on working time for any cause or distribute literature of any kind to them. This also prohibits solicitations via e-mail or other telephonic communication systems.

(B) Maintained in the Affinity Employee Handbook, under the heading "E-mail, Internet & Electronic Systems Access" the following rule, in relevant part:

> E-mail and Internet resources are shared by all CHSI affiliated entities, and shall be used only by authorized users in the performance of their assigned job duties. Responsible, incidental personal use is acceptable provided (1) it does not interfere with the performance of your job duties or another employee's job duties, (2) the resources are not used in a manner that limits or impedes their use or access for legitimate business purposes, or (3) it does not violate this or any other facility policy. […]
>
> Without prior written permission from the CHSPSC Chief Information Officer, the facility's computer system, including the e-mail and Internet facilities, may not be used for the dissemination or storage of … solicitations … political material […]. Material that is fraudulent, harassing . . . embarrassing, sexually explicit, profane, obscene, intimidating, defamatory, or otherwise unlawful or inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed on or stored in facility computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor or the CHSPSC Chief Information Officer.

(C) Maintained in the Affinity Employee Handbook, under the heading "Personal Web Sites and Blogs, the following rule, in relevant part:

> Employees may use personal web sites and web logs (blogs) during their personal time but not during work hours. If an employee chooses to identify himself or herself as an employee of a CHSI affiliated entity on a personal web site or web log (blog), he or she must adhere to the following guidelines: […]
>
> • Avoid making defamatory statements about CHSI affiliated entity [sic], its employees, clients and others, including competitors.
>
> • Blogging (writing an employee's own blog or reading those created by others) is prohibited during working hours.
>
> If CHSPSC or Affinity Medical Center determines, in its sole discretion, that blogging activity may compromise CHSPSC or Affinity Medical Center, the employee may be asked to

> immediately cease such commentary and the employee may be subject to disciplinary action, up to and including termination.

(D) Maintained in the Affinity Employee Handbook under the heading "Conduct That May Result in Disciplinary Action" the following rule, in relevant part:

> It is not possible to list all acts or misconduct that may result in disciplinary action. The following list is merely a guideline of some of the more obvious types of acts or misconduct which may result in disciplinary action, up to and including termination.
>
> Behavior that will result in immediate termination: […]
>
> • Violation of patient confidentiality or disclosure of confidential employee records […]
>
> Other behavior that will result in disciplinary action, up to and including termination: […]
>
> • Inappropriate use of e-mail, Internet access, personal web sites and web logs (blogs).

(E) Maintained in the Affinity Code of Conduct under the heading "Electronic Media, Records and Documents," the following rule, in relevant part:

> […] Unless authorized, never send or forward such information via email unless approval has been granted by the CHSPSC Security Officer. Colleagues must not use the organization's electronic media to distribute or transmit any threatening, malicious, false or obscene materials.

(F) Maintained in the Community Health Systems Code of Conduct under the heading "Electronic Media, Records and Documents," the following rule, in relevant part:

> […] Unless authorized, never send or forward confidential information via email unless approval has been granted by the Corporate Security Officer. Colleagues may not use the organization's electronic media to distribute or transmit any ... false... materials.

38. Since about August 22, 2013, Respondent Affinity has maintained and enforced the following rule:

> All hospital employees and staff have the responsibility to exercise the chain of command during any event or situation that does not meet established guidelines or that places patients, guests or employees at risk….Employees with concerns or issues are to notify the shift supervisor/manager.

39. At all material times, Respondent Affinity has maintained in its Employee Handbook under the heading "Community Cares Customer Service," the following rule, in relevant part:

> Our patients are our customers, and they should be treated as welcome guests in our facilities. The facility expects employees to show courtesy, compassion and respect for all guests. In particular, employees should adhere to the following: […]
>
> - Never make negative comments of any kind where patients can hear.

40. Since about March 12, 2014, Respondent Barstow has maintained the following rules in its Employee Handbook:

(A) The "Solicitation and Distribution of Literature" rule that provides, in relevant part:

> Employees who are not on working time (e.g., those on lunch or breaks) may not solicit employees who are on working time for any cause or distribute literature of any kind to them. This also prohibits solicitations via e-mail or other telephonic communication systems.

(B) The "E-mail, Internet & Electronic System Access" rule that provides, in relevant part:

> E-mail and Internet resources shared by all CHS facilities, and shall be used only by authorized users in the performance of their

> assigned job duties. Responsible, incidental personal use is acceptable […]. Without prior written permission from CHS Chief Information Officer, the facility's computer system, including the e-mail and Internet facilities, may not be used for the dissemination or storage of commercial or personal advertisements, solicitations, promotions, destructive programs (i.e. viruses or self-replicating code), political material, or any other unauthorized use. Material that is fraudulent, harassing, embarrassing, sexually explicit, profane, obscene, intimidating, defamatory, or otherwise unlawful or inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed on or stored in CHS computers.

(C) The "Personal Websites and Blogs" rule that provides, in relevant part,

> CHS respects the right of employees to use personal web sites and web logs (blogs) during their personal time but not during work hours. If an employee chooses to identify himself or herself as an employee of CHS or an affiliate on a personal web site or web log (blog), he or she must adhere to the following guidelines:
>
> […]
>
> Avoid making defamatory statements about CHS, its affiliates, employees, clients and others, including competitors.
>
> […]
>
> Blogging (writing an employee's own blog or reading those created by others) is prohibited during working hours.
>
> […]
>
> If CHS determines, in its sole discretion, that blogging activity may compromise CHS or an affiliate, CHS may request an immediate cessation of such commentary and the employee may be subject to disciplinary action, up to and including termination.

(D) The "Conduct That May Result in Disciplinary Action" rule that provides, in relevant part:

> Other behavior that will result in disciplinary action, up to and including termination:

> […]
>
> Immoral or indecent conduct, in the judgment of the facility
>
> […]
>
> Inappropriate use of e-mail, Internet access, personal web sites and web logs (blogs).

(E) The "Community Cares Culture" rule that provides, in relevant part:

> Our patients are our customers, and they should be treated as welcome guests in our facilities. The facility expects employees to show courtesy, compassion and respect for all guests. In particular, employees should adhere to the following: […] Never make negative comments of any kind where patients can hear.

41. (A) Since about March 12, 2014 through around May 20, 2014, Respondent Barstow has maintained the "Electronic Media, Records, and Documents" rule which is contained in the Community Health Systems Code of Conduct, that provides, in relevant part,

> Colleagues must not use the organization's electronic media to distribute or transmit any threatening, malicious, false, or obscene materials.

(B) Since about March 12, 2014, Respondent Barstow has maintained the "Electronic Media, Records, and Documents" rule in the Community Health Systems Code of Conduct, in relevant part:

> […] Personal electronic devices are not to be used for any recording or photography absent prior written approval by facility management for each instance.

42. (A) At all material times, Respondent Bluefield maintained in its Employee Handbook, under the heading "Solicitation and Distribution of Literature," the following rule, in relevant part:

> [E]mployees may not distribute literature or printed material of any kind in working areas at any time.

(B) At all material times, Respondent Bluefield maintained in its Employee Handbook, under the heading "Email, Internet and Electronic Systems Access," the following rule, in relevant part:

> Without prior written permission from the CHSPSC Chief Information Officer, the facility's computer system, including the email and internet facilities, may not be used for the dissemination or storage of commercial or personal advertisements, solicitations, promotions, destructive purposes (i.e. viruses or self-replicating code), political material, or any other unauthorized use. Material that is … harassing, embarrassing … intimidating … defamatory, or otherwise unlawful or inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed on or stored in CHS computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor or the CHSPSC Chief Information Officer.

(C) At all material times, Respondent Bluefield maintained in its Code of Conduct, under the heading "Electronic Media, Records and Documents," the following rule, in relevant part:

> Colleagues must not use the organization's electronic media to distribute or transmit any … false… materials.

(D) At all material times, Respondent Bluefield has maintained in its Employee Handbook, under the heading "Email, Internet and Electronic Systems Access," the following rule, in relevant part:

> Without prior permission from the CHSPSC Chief Information Officer, the facility's computer system, including the e-mail and Internet facilities, may not be used for the dissemination or storage of commercial or personal … solicitations … political material … or any other unauthorized use.

(E) At all material times, Respondent Bluefield has maintained in its Employee Handbook, under the heading "Personal Web Sites and Blogs," the following rule, in relevant part:

> BRMC respects the right of employees to use personal web sites and web logs (blogs) during their personal time but not during work hours. If an employee chooses to identify himself or herself as an employee of a CHSI affiliated entity on a personal web site or web log (blog), he or she must adhere to the following guidelines:
> …
> • Avoid making defamatory statements about CHSI affiliated entity, employees, clients and other, including competitors.
> • Blogging (writing an employee's own blog or reading those created by others) is prohibited during working hours.
>
> If CHSPSC or the facility determines, in its sole discretion, that blogging activity may compromise CHSPSC or a CHSI affiliate, the employee may be asked to immediately cease such commentary and the employee may be subject to disciplinary action, up to and including termination.

(F) Since about June 4, 2014, Respondent Bluefield maintained unlawfully broad work rules.

(G) At all material times, Respondent Bluefield has maintained on its intranet under the heading "Harassing and Intimidating or Disruptive Behavior" the following rule, in relevant part:

> Disruptive and/or Intimidating Behavior: This behavior may include: … Outbursts of anger…Inappropriate responses, language or behaviors; Rudeness; …. Exhibiting uncooperative behaviors

43. Since at least on or about September 12, 2013, to about June 4, 2014, Respondent Fallbrook, maintained in its Employee Handbook, the following "Solicitation and Distribution of Literature" rule:

> In the interest of maintaining a proper business environment and preventing interference with work and inconvenience to others, employees may not distribute literature or printed materials of any kind, sell merchandise, solicit financial contributions, or solicit for any cause during working time. Employees who are not on working time (e.g., those on lunch or breaks) may not solicit employees who are on working time for any cause or distribute literature of any kind to them. This also prohibits solicitations via email or other telephonic communication systems. Furthermore, employees may not distribute literature or printed material of any kind in working areas at any time.
>
> Individuals not employed by the facility may not solicit or distribute literature on Facility premises at any time, except for persons engaged in bona fide business-related activities such as pharmaceutical and medical equipment sales as permitted by the facility.

44. Since at least on or about September 12, 2013, to about June 4, 2014, Respondent Fallbrook, maintained in its Employee Handbook, the following "E-mail, Internet & Electronic Systems Access" rule:

> E-mail and Internet resources are shared by all CHSI affiliated entities, and shall be used only by authorized users in the performance of their assigned job duties. Responsible, incidental personal use is acceptable provided (1) it does not interfere with the performance of your job duties or another employee's job duties, (2) the resources are not used in a manner that limits or impedes their use or access for legitimate business purposes, or (3) it does not violate this or any other facility policy.
>
> [...]
>
> Without prior written permission from the CHSPSC Chief Information Officer, the facility's computer system, including the e-mail and Internet facilities, may not be used for the dissemination or storage of commercial or personal advertisements, solicitations, promotions, destructive programs (i.e., viruses or self-replicating code), political material, or any other unauthorized use. Material that is fraudulent, harassing, embarrassing, sexually explicit, profane, obscene, intimidating, defamatory, or otherwise unlawful or inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or

> displayed on or stored in facility computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor or the CHSPSC Chief Information Officer.

45. Since at least on or about November 8, 2013, to about June 4, 2014, Respondent Fallbrook maintained in its Employee Handbook, the following "Conduct That May Result in Disciplinary Action" rule:

> It is not possible to list all acts or misconduct that may result in disciplinary action. The following list is merely a guideline of some of the more obvious types of acts or misconduct which may result in disciplinary action, up to and including termination.
> Behavior that will result in immediate termination:
>
> - Violation of patient confidentiality or disclosure of confidential employee records.

46. Since at least on or November 8, 2013, Respondent Fallbrook maintained in its Employee Handbook, the following "Community Cares Customer Service" rule:

> Our patients are our customers, and they should be treated as welcome guests in our facilities. The facility expects employees to show courtesy, compassion and respect for all guests. In particular, employees should adhere to the following:
>
> - Never make negative comments of any kind where patients can hear.

47. Since at least on or about September 12, 2013, to about June 4, 2014, Respondent Fallbrook, maintained in the Community Health Systems Code of Conduct, the following "Electronic Media, Records, and Documents" rule:

> "[...] Colleagues must not use the organization's electronic media to distribute or transmit any threatening, malicious, false or obscene materials."

48. (A) At all material times until on or about June 9, 2014, Respondent Greenbrier maintained in its Employee Handbook, under the heading "Solicitation and Distribution of Literature," the following rule, in relevant part:

> Employees who are not on working time (e.g., those on lunch or breaks) may not solicit employees who are on working time for any cause or distribute literature of any kind to them. This also prohibits solicitations via e-mail or other telephonic communication systems. Furthermore, employees may not distribute literature or printed material of any kind in working areas at any time.

(B) At all material times until about June 9, 2015, Respondent Greenbrier maintained in its Employee Handbook, under the heading "Email, Internet, and Electronic System Access," the following rule, in relevant part:

> Without prior written permission from the Facility CEO, electronic systems, including e-mail and the Internet, may not be used for the dissemination or storage of … solicitations … political material […]. Material that is ... embarrassing ... intimidating, defamatory, … or inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed or stored in Facility computers. Users encountering or receiving this kind of material should immediately report the incident to their supervisor.

49. At all material times, Respondent Greenbrier maintained in its Employee Handbook, under the heading "Community Cares Customer Service," the following rule, in relevant part:

> Patients and visitors are customers to be treated as welcome guests. Employees are expected to show courtesy, compassion and respect to all patients and visitors.... Never make negative comments of any kind where patients can hear.

50. At all material times until about May 20, 2014, Respondent Greenbrier maintained its Code of Conduct, under the heading "Electronic Media, Records, and Documents," the following rule, in relevant part:

> Colleagues must not use the organization's electronic media to distribute or transmit any...false...materials.

51. Since about March 13, 2014 to about June 5, 2014, Respondent Watsonville, maintained at its Watsonville facility, the following rules in the Watsonville Community Hospital Employee Handbook:

(A) The "Solicitation and Distribution of Literature" rule, in relevant part:

> Employees who are not on working time (e.g., those on lunch or breaks) may not solicit employees who are on working time for any cause or distribute literature of any kind to them. This also prohibits solicitations via e-mail or other telephonic communication systems.

(B) The "E-Mail, Internet & Electronic Systems Access" rule, in relevant part:

> E-mail and Internet are shared resources and shall be used only by authorized users in the performance of their assigned job duties. Responsible, incidental personal use is acceptable provided (1) it does not interfere with the performance of your job duties or another employee's job duties, (2) the resources are not used in a manner that limits or impedes their use or access for legitimate business purposes, or (3) it does not violate this or any other facility policy. […]
>
> Without prior written permission from the Corporate Chief Information Officer, the facility's computer system, including the e-mail and Internet facilities, may not be used for the dissemination or storage of … solicitations … political material […]. Material that is … embarrassing, … intimidating, …defamatory, or otherwise … inappropriate may not be sent by e-mail or other form of electronic communication (such as bulletin board systems, newsgroups, chat rooms) or displayed on or stored in computers. Users encountering or receiving this kind of material

should immediately report the incident to their supervisor or the Corporate Chief Information Officer.

(C) The "Personal Web Sites and Blogs" rule, in relevant part:

We respect the right of employees to use personal web sites and web logs (blogs) during their personal time but not during work hours. If an employee chooses to identify himself or herself as an employee of Facility or affiliated with CHS on a personal web site or web log (blog), he or she must adhere to the following guidelines: […]

• Avoid making false statements about the Facility, it [sic] affiliates, clients and others, including competitors.

• Blogging (writing an employee's own blog or reading those created by others) is prohibited during working hours.

(D) The "Conduct That May Result in Disciplinary Action" rule, in relevant part:

It is not possible to list all acts or misconduct that may result in disciplinary action. The following list is merely a guideline of some of the more obvious types of acts or misconduct which may result in disciplinary action, up to and including termination.

Behavior that will result in immediate termination: […]

• Violation of patient confidentiality or disclosure of confidential employee records […]

Other behavior that will result in disciplinary action, up to and including termination: […]

• Inappropriate use of e-mail, Internet access, personal web sites and web logs (blogs).

(E) The "Community Cares" rule, in relevant part:

Our patients are our customers, and they should be treated as welcome guests in our facilities. The facility expects employees to show courtesy, compassion and respect for all guests. In particular, employees should adhere to the following: […]

- Never make negative comments of any kind where patients can hear.

52. Since about March 13, 2014 to about June 5, 2014, Respondent Watsonville maintained the following rule in the Community Health Systems Code of Conduct, in relevant part:

> […] Unless authorized, never send or forward such information via email unless approval has been granted by the CHSPSC Security Officer. Colleagues must not use the organization's electronic media to distribute or transmit any threatening, malicious, false or obscene materials.

53. About September 18, 2013, Respondent Affinity, by Nancy Davis, at its Massillon facility:

(A) Coercively removed 'assignment despite objection' forms from employees' mailboxes.

(B) Coercively informed an employee that she removed 'assignment despite objection' forms from employees' mailboxes.

54. (A) During the period from about June 13, 2013 to June 26, 2014, Respondent Barstow filed and maintained a Complaint against the CNA/NNOC in the United States District Court for the Central District of California (District Court) in the matter of *Hospital of Barstow, Inc. vs. California Nurses Association/National Nurses Organizing Committee*, case number 5:13-cv-01063(DTB) (lawsuit) in a cause of action arising under Section 301 of the Labor Management Relations Act that sought to sanction the CNA/NNOC for filing unfair labor practice charges and preclude the CNA/NNOC from filing or processing such charges.

(B) (1) The lawsuit, described above in paragraph 54(A), sought to enforce an unwritten purported agreement to arbitrate between the CNA/NNOC and Respondent Barstow.

(2) The lawsuit, described above in paragraph 54(A), is baseless and failed to plead the existence of the purported unwritten agreement between the CNA/NNOC, as described above in paragraph 54(B)(1).

(3) The lawsuit, described above in paragraph 54(A), asserted that the CNA/NNOC breached the purported unwritten agreement to arbitrate, as described above in paragraph 54(B)(1), because the CNA/NNOC filed unfair labor practice charges with the Board.

(C) Respondent Barstow filed the lawsuit, described above in paragraphs 54(A) and 54(B) and its subparagraphs, with a retaliatory motive because it seeks to enjoin activity protected by the Act.

(D) The lawsuit, described above in paragraphs 54(A) and 54(B) and its subparagraphs, was baseless as set forth in paragraphs 54(B)(1) and (2).

(E) The lawsuit, described above in paragraphs 54(A) and 54(B) and its subparagraphs, had an unlawful objective as set forth in paragraph 54(B)(3).

55. Respondent Bluefield, by the individuals named below, at Bluefield's facility, on about the dates opposite their names, prohibited employees from engaging in distribution during non-working time in outside non-work areas:

	Agent	Date
(A)	Frances Grouse	May 20, 2013

(B)	Jerry Cumby	May 20, 2013 and July 22, 2013
(C)	Richard Cox	July 31, 2013

56. Respondent Bluefield, by the individuals named below, on about the dates and at the specific location in or around Bluefield's facility, opposite their names, engaged in the surveillance of employees' union activities:

	Agent	Date	Location
(A)	Unnamed Security Guard	May 20, 2013	Inside areas of the Medical Center
(B)	Jerry Cumby	May 20, 2013 and July 22, 2013	Inside and outside areas of the Medical Center
(C)	Richard Cox	July 31, 2013	Outside areas of the Medical Center

57. Respondent Bluefield, by the individuals named below, at Bluefield's facility, on about the dates opposite their names, denied its off-duty employees access to parking lots and other outside non-working areas:

	Agent	Date
(A)	Frances Grouse	May 20, 2013
(B)	Jerry Cumby	July 22, 2013
(C)	Richard Cox	July 31, 2013

58. Respondent Bluefield, by the individuals named below, at Bluefield's facility, on about the dates opposite their names, disparately denied its off-duty employees access to inside non-working areas:

	Agent	Date
(A)	Jerry Cumby	May 20, 2013 and July 22, 2013
(B)	Unnamed Security Guard	May 20, 2013
(C)	Richard Cox	July 31, 2013

59. About August 1, 2013, Respondent Bluefield, by Nancy Hawkins, at Bluefield's facility, prohibited employees from talking about the union during working time while permitting employees to talk about other non-work subjects.

60. About August 2012, Respondent Bluefield, by Paula Thompson, at Bluefield's facility, directed employees not to talk about the union while they were at work.

61. (A) About January 23, 2014, Respondent Fallbrook, by Debra Hodges, at the Fallbrook facility, denied the request of a union representative on behalf of employee Veronica Poss to be represented by the CNA/NNOC during an interview.

(B) Respondent Fallbrook's employee Poss had reasonable cause to believe that the interview described above in paragraph 61(A) would result in disciplinary action.

(C) About January 23, 2014, Respondent Fallbrook, by Debra Hodges and John Coker, at the Fallbrook facility, conducted the interview described above in paragraph 61(A), even though Respondent denied the union representative's request on behalf of employee Poss for union representation as described above in paragraph 61(A).

62. (A) About early February, 2014, Respondent Greenbrier, by Tom Flis, at the Greenbrier facility, threatened employees with unspecified reprisals for engaging in protected concerted and union activity, and prohibited employees from engaging in protected concerted or union activity.

(B) About February 21, 2014, Respondent Greenbrier, by Connie Rose, at Greenbrier's facility, threatened employees with unspecified reprisals for engaging in protected concerted and union activity, and prohibited employees from engaging in protected concerted or union activity.

63. (A) On or about August 23, 2013, Respondent Affinity disciplined its employee Michelle Custer.

(B) (1) In or around early August 2013, the exact date being unknown, employee Michelle Custer complained about understaffing, and completed an 'assignment despite objection' form.

(2) The activities described above in paragraph 63(B)(1) concern employees' terms and conditions of work, are protected concerted activities, and/or implicate the concerns underlying Section 7 of the Act.

(3) Respondent Affinity enforced the rule, as described above in paragraph 38, by disciplining employee Custer, as described above in paragraph 63(A), because of employee Custer's activities, as described above in paragraphs 63(B)(1) and 63(B)(2).

(4) Respondent Affinity's conduct described above in paragraph 63(B)(3) interferes with, restrains and discourages employees from engaging in activities as described above in paragraphs 63(B)(1) and 63(B)(2).

(C) Respondent engaged in the conduct described above in paragraph 63(A) because the named employee formed, joined, assisted the NNOC and engaged in concerted activities, and to discourage employees from engaging in these activities.

64. (A) About August 2012, Respondent Bluefield issued a verbal warning to its employee Terri Kosinar.

(B) About November 9, 2012, Respondent Bluefield issued a written warning to its employee Terri Kosinar.

(C) About October 24, 2012, employee Terri Kosinar engaged in concerted activities with other employees for the purposes of mutual aid and protection by speaking out in a group meeting concerning Respondent Bluefield's hourly rounding policies.

(D) The subject described above in paragraph 64(C) relates to wages, hours, and other terms and conditions of employment of the Bluefield Unit and is a mandatory subject for the purposes of collective bargaining.

(E) Respondent Bluefield engaged in the conduct described above in paragraph 64(B) because Terri Kosinar violated the rule described above in Paragraph 42(G), and because she engaged in the conduct described above in paragraph 64(C), and to discourage employees from engaging in these or other concerted activities.

(F) Respondent Bluefield engaged in the conduct described above in paragraphs 64(A) and 64(B) because Terri Kosinar assisted the NNOC and engaged in union and/or concerted activities, and to discourage employees from engaging in these activities.

65. (A) About January 17, 2014 and on about January 23, 2014, Respondent Greenbrier's employee Tara Evans concertedly complained to media outlets about the wages, hours and working conditions of Respondent Greenbrier's employees, specifically regarding Respondent Greenbrier's equipment, staffing levels, and safety issues.

(B) About April 4, 2014, Respondent Greenbrier failed to transfer its employee Tara Evans to a position in its Emergency Department.

(C) Respondent Greenbrier engaged in the conduct described above in paragraph 65(B) because Tara Evans engaged in the conduct described above in paragraph 65(A), and to discourage employees from engaging in these or other concerted activities.

(D) Respondent Greenbrier engaged in the conduct described above in paragraph 65(B) because Tara Evans assisted the NNOC and engaged in concerted activities, and to discourage employees from engaging in those activities.

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

> All full-time and regular part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Affinity at its 875 Eighth Street N.E., Massillon, Ohio facility, but excluding all other employees, including managers, confidential employees, physicians, employees of outside registries and other agencies supplying labor to Respondent Affinity, already represented employees, guards and supervisors as defined in the Act, as amended.

(B) On October 5, 2012, the Board certified the NNOC as the exclusive collective bargaining representative of the Affinity Unit.

(C) At all times since October 5, 2012, based on Section 9(a) of the Act, the NNOC has been the exclusive collective-bargaining representative of the Affinity Unit.

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

> **INCLUDED**: All full-time, regular part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Barstow at its facility located at 820 East Mountain View St., Barstow California 92311.

> **EXCLUDED:** All other employees, including managers, confidential employees, physicians, employees of outside registries and other agencies supplying labor to Respondent Barstow, already represented employees, guards and supervisors as defined in the Act, as amended.

(B) On June 29, 2012, the Board certified the CNA/NNOC as the exclusive collective-bargaining representative of the Unit.

(C) At all times since June 29, 2012, based on Section 9(a) of the Act, the CNA/NNOC has been the exclusive collective-bargaining representative of the Barstow Unit.

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

> All full-time, regular part-time and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Bluefield at its 500 Cherry Street, Bluefield, West Virginia hospital; excluding all other employees, including managers, confidential employees, physicians, technical employees, service and maintenance employees, employees of outside registries and other agencies supplying labor to Respondent Bluefield, and guards and supervisors as defined in the Act.

(B) On August 29, 2012, a representation election was held pursuant to a consent election agreement, and on September 25, 2012, the Board certified the NNOC as the exclusive collective-bargaining representative of the Bluefield Unit.

(C) At all times since September 25, 2012, based on Section 9(a) of the Act, the NNOC has been the exclusive collective-bargaining representative of the Bluefield Unit.

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

> All full-time, regular part-time, and per diem registered nurses, including those who serve as relief charge nurses, employed by Respondent Fallbrook at its facility located at 624 East Elder Street, Fallbrook, California; excluding all other employees, managers, confidential employees, physicians, employees of outside registries and other agencies supplying labor to Respondent Fallbrook, already represented employees, guards and supervisors as defined in the Act.

(B) On May 24, 2012, the Board certified the CNA/NNOC as the exclusive collective-bargaining representative of the Fallbrook Unit.

(C) At all times since May 24, 2012, based on Section 9(a) of the Act, the CNA/NNOC has been the exclusive collective-bargaining representative of the Fallbrook Unit.

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

> All full-time, regular part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by Respondent Greenbrier at its 202 Maplewood Avenue, Ronceverte, West Virginia hospital; excluding all other employees, including managers, confidential employees, physicians, technical employees, service and maintenance employees, employees of outside registries and other agencies supplying labor to Respondent Greenbrier, guards and supervisors as defined in the Act.

(B) On August 30, 2012, a representation election was held pursuant to a consent election agreement, and on September 25, 2012, the Board certified the NNOC as the exclusive collective-bargaining representative of the Greenbrier Unit.

(C) At all times since September 25, 2012, based on Section 9(a) of the Act, the NNOC has been the exclusive collective-bargaining representative of the Greenbrier Unit.

71. (A) The following employees of Respondent Kentucky River constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the Kentucky River Unit):

> All full-time and regular part-time Registered Nurses, the Team Leader and the Continuing Education Coordinator, nonprofessional employees, including the Medical Records employees, Admissions employees and Purchasing employees; and technical employees, including Certified Respiratory Therapy Technicians, X-Ray Technicians, Licensed Practical Nurses, the DRG Coordinator, Medical Lab Technicians and the Physical Therapy Assistant employed by Respondent Kentucky River at its 540 Jetts Drive, Jackson, Kentucky facility, but excluding the Registered Respiratory Therapists, Medical Technologists, Utilization Review Nurses, business office clerical employees, confidential employees and all other professional employees, guards and supervisors as defined in the Act.

(B) On about June 8, 1998, the United Steelworkers was certified as the exclusive collective-bargaining representative of the Kentucky River Unit as described above in paragraph 71(A).

(C) At all material times, Respondent Kentucky River and the United Steelworkers maintained and enforced a collective-bargaining agreement with effective dates from January 28, 2013 through January 31, 2014, covering the terms and conditions of employment of the Kentucky River Unit, including a grievance and arbitration procedure at Article 7.

(D) At all times since June 8, 1998, based on Section 9(a) of the Act, the United Steelworkers has been the exclusive collective-bargaining representative of the Kentucky River Unit.

72. (A) The following employees of Respondent Watsonville constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act (the Watsonville Unit):

> All employees described in and performing work covered by "Article 1. Recognition" of the July 27, 2011 through September 30, 2013 collective-bargaining agreement between the CNA and Respondent Watsonville (the Agreement); excluding all other employees, guards, and supervisors as defined in the Act.

(B) Since at least 2005, and at all material times, Respondent Watsonville has recognized the CNA as the exclusive collective-bargaining representative of the Watsonville Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from July 27, 2011 through September 30, 2013.

(C) At all material times since at least 2005, based on Section 9(a) of the Act, the CNA has been the exclusive collective-bargaining representative of the Watsonville Unit.

73. (A) Since on or about June 4, 2014, Respondent Affinity and Respondent CHSPSC, through Robert A. Horrar, Bud Wood, Bruce Hamilton and/or an unknown agent, unilaterally imposed new work rules in Affinity's Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 73(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Affinity and Respondent CHSPSC engaged in the conduct described above in paragraph 73(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with respect to this conduct and the effects of this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective bargaining agreement.

74. (A) Since on or about June 6, 2014, Respondent Barstow unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 74(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Barstow engaged in the conduct described above in paragraph 74(A) without prior notice to the CNA/NNOC, without affording the CNA/NNOC an opportunity to bargain with Respondent Barstow with respect to this conduct and the effects of this conduct, and without bargaining with the CNA/NNOC to an overall good-faith impasse for a collective bargaining agreement.

75. (A) Since on or about June 4, 2014, Respondent Bluefield unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 75(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Bluefield engaged in the conduct described above in paragraph 75(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Bluefield with respect to this conduct and the effects of this conduct, and without bargaining with the NNOC to an overall good-faith impasse for a collective bargaining agreement.

76. (A) Since on or about June 4, 2014, Respondent Fallbrook unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 76(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Fallbrook engaged in the conduct described above in paragraph 76(A) without prior notice to the CNA/NNOC, without affording the CNA/NNOC an opportunity to bargain with Respondent Fallbrook with respect to this conduct and the effects of

this conduct, and without bargaining with the CNA/NNOC to an overall good-faith impasse for a collective bargaining agreement.

77. (A) Since on or about June 5, 2014, Respondent Greenbrier unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 77(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Greenbrier engaged in the conduct described above in paragraph 77(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Greenbrier with respect to this conduct and the effects of this conduct, and without bargaining with the NNOC to an overall good-faith impasse for a collective bargaining agreement.

78. (A) Since on or about June 4, 2014, Respondent Watsonville unilaterally imposed new work rules in its Employee Handbook and Code of Conduct.

(B) The work rules contained in the Employee Handbook and Code of Conduct as described above in paragraph 78(A) are terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Watsonville engaged in the conduct described above in paragraph 78(A) without prior notice to the CNA, without affording the CNA an opportunity to bargain with Respondent Watsonville with respect to this conduct and the effects of this conduct, and without bargaining with the CNA to an overall good-faith impasse for a successor collective bargaining agreement.

79. (A) About June 12, 2013, the NNOC requested that Respondent Affinity bargain collectively about the implementation of the Cerner Electronic Health Records System (CERNER) at the Affinity facility.

(B) About June 2013, Respondent Affinity and Respondent CHSPSC, through Sammy Cantrell and/or unknown agents, unilaterally implemented CERNER at the Affinity facility.

(C) About June 12, 2014, the NNOC requested that Respondent Affinity bargain collectively about the implementation of CERNER Computer Physician Order Entry System (CPOE) at its Affinity facility.

(D) About July 26, 2014, Respondent Affinity and Respondent CHSPSC, through Michael Yzerman and/or unknown agents, unilaterally implemented CPOE at the Affinity facility.

(E) The subjects set forth above in paragraphs 79(A), 79(B), 79(C), and 79(D) relate to the wages, hours, and other terms and conditions of employment of the Affinity Unit and are mandatory subjects for the purposes of collective bargaining.

(F) Respondent Affinity and Respondent CHSPSC engaged in the conduct described above in paragraphs 79(B) and 79(C) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Affinity and Respondent CHSPSC with respect to the effects of this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective bargaining agreement.

(G) Respondent Affinity and Respondent CHSPSC engaged in the conduct described in paragraphs 79(B) and 79(D) without providing the NNOC with the necessary and relevant information requested as described below in paragraph 91, and its subparagraphs.

80. (A) In or about the first quarter of 2014, Respondent Affinity and Respondent CHSPSC, through Bud Wood, Bruce Hamilton and/or unknown agents, unilaterally discontinued the practice of granting merit wage increases.

(B) Since about mid to late December 2014, Respondent Affinity unilaterally changed the procedure for assigning patients to various floors at its Affinity facility, including but not limited to, the telemetry, ICU and medical surgical floors.

(C) The subjects set forth in paragraphs 80(A) and 80(B) concern employees' wages and other terms and conditions of employment, and are mandatory subjects for the purposes of collective bargaining.

(D) Respondent Affinity and Respondent CHSPSC engaged in the conduct described above in paragraph 81(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Affinity and Respondent CHSPSC with respect to this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective-bargaining agreement.

(E) Respondent Affinity engaged in the conduct described above in paragraph 80(B) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Affinity with respect to the effects of this conduct, and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

81. (A) Since about October 5, 2012, the NNOC and Respondent Affinity have not reached an initial collective bargaining agreement, and have not agreed upon an interim grievance procedure.

(B) On or about August 8, 2013, Respondent Affinity issued a disciplinary suspension to its employee Tracy Shay.

(C) On or about August 12, 2013, the NNOC, in writing, requested that Respondent Affinity bargain collectively about the discretionary discipline issued to its employee Shay.

(D) The terms and conditions of employment described above in paragraph 81(B) are mandatory subjects for the purposes of collective bargaining.

(E) Since on or about August 8, 2013, Respondent Affinity has refused to bargain collectively with the NNOC about the subjects set forth in paragraph 81(B).

(F) Respondent Affinity engaged in the conduct described above in paragraph 81(B), which does not have an immediate impact on employees' tenure, status and/or earnings without providing the NNOC with notice and an opportunity to bargain over the discretionary action and the effects of the discretionary action.

82. (A) On or about August 23, 2013, the NNOC, in writing, requested that Respondent Affinity bargain collectively over an investigatory suspension issued to its employee Michelle Custer, as described above in paragraph 63(A).

(B) About February 12, 2015, Respondent Affinity issued a performance improvement plan to its employee Michelle Custer.

(C) About February 12, 2015, Respondent Affinity issued a second written warning/two-day suspension to its employee Michelle Custer.

(D) About March 13, 2015, Respondent Affinity terminated its employee Michelle Custer.

(E) About March 13, 2015, Respondent Affinity issued to its employee Michelle Custer, a retroactive unpaid suspension from about February 26, 2015 to about March 13, 2015.

(F) The subjects set forth above in paragraphs 63(A), 82(B), 82(C), 82(D), and 82(E) relate to wages, hours, and other terms and conditions of employment of the Affinity Unit and are mandatory subjects for the purposes of collective bargaining.

(G) Respondent Affinity exercised its discretion in imposing the disciplinary actions described above in paragraphs 63(A), 82(B), 82(C), 82(D), and 82(E).

(H) Respondent Affinity engaged in the conduct described above in paragraphs 82(C), 82(D), 82(E) and 82(G), which has an immediate impact on employees' tenure, status and/or earnings, without prior notice to NNOC and/or without affording NNOC an opportunity to bargain over the discretionary actions and the effects of the discretionary actions.

(I) (1) Since about August 23, 2013, Respondent Affinity failed and refused to bargain collectively with the NNOC about the discretionary subject set forth in paragraph 63(A) and the effects of this conduct.

(2) Since about February 12, 2015, Respondent Affinity failed and refused to bargain collectively with the NNOC about the discretionary subject set forth in paragraph 82(B) and the effects of this conduct.

83. (A) About February 18, 2015, Respondent Affinity issued a two-day disciplinary suspension to its employee Frederick MacWithey.

(B) On or about February 25, 2015 the NNOC, in writing, requested that Respondent Affinity bargain collectively about the discretionary discipline issued to its employee MacWithey.

(C) About March 6, 2015, Respondent Affinity terminated its employee Scott Rhoades.

(D) About March 6, 2015, Respondent Affinity issued its employee Scott Rhoades, a retroactive unpaid suspension from about February 24, 2015 to March 6, 2015.

(E) The subjects set forth above in paragraphs 83(A), 83(C), and 83(D) relate to wages, hours, and other terms and conditions of employment of the Affinity Unit and are mandatory subjects for the purposes of collective bargaining.

(F) Respondent Affinity exercised its discretion in imposing the disciplinary actions described above in paragraphs 83(A), 83(C), and 83(D).

(G) Since about March 5, 2015, Respondent Affinity failed and refused to bargain collectively with the NNOC about the discretionary subjects set forth in paragraphs 83(A), 83(C), and 83(D).

(H) Respondent Affinity engaged in the conduct described above in paragraphs 83(A), 83(C), 83(D), and 83(E) which has an immediate impact on employees' tenure, status and/or earnings, without prior notice to NNOC and/or without affording NNOC an opportunity to bargain over the discretionary actions and the effects of the discretionary actions.

84. (A) On about September 2, 2015, Respondent Affinity notified the NNOC that it intended to terminate its employee Michelle Hastings.

(B) On about September 2, 2015, the NNOC, in writing, requested that Respondent Affinity bargain collectively about issuing a termination to its employee Michelle Hastings.

(C) On about September 3, 2015, Respondent Affinity, in writing, unilaterally conditioned bargaining with the NNOC over the termination of Michelle Hastings, as described below in paragraph 84(E), and unilaterally conditioned providing the information requested, as described below in paragraph 94 on NNOC's agreement to indemnify Respondent Affinity.

(D) On about September 28, 2015, Respondent Affinity reiterated its response, in writing, as described above in paragraph 84(C), and informed NNOC that it planned to terminate its employee Michelle Hastings.

(E) In or around late September 28, 2015, the exact date being unknown, Respondent Affinity terminated its employee Michelle Hastings.

(F) The subjects set forth above in paragraphs 84(E) relate to wages, hours, and other terms and conditions of employment of the Affinity Unit and are mandatory subjects for the purposes of collective bargaining.

(G) Respondent Affinity exercised its discretion in imposing the disciplinary actions described above in paragraph 84(E).

(H) Respondent Affinity engaged in the conduct described above in paragraph 84(E) and 84(G), which has an immediate impact on employees' tenure, status and/or earnings without providing the NNOC with notice and an opportunity to bargain over the discretionary action and the effects of the discretionary action.

85. (A) On about November 12, 2015, Respondent Affinity notified the NNOC that it intended to terminate its employee Tara Magrell.

(B) On about November 13, 2015, the NNOC, in writing, requested that Respondent Affinity bargain collectively about issuing a termination to its employee Tara Magrell.

(C) On about November 16, 2015, Respondent Affinity, in writing, unilaterally conditioned bargaining with the NNOC over the termination of Tara Magrell, as described in paragraph 85(D) and unilaterally conditioned providing the information requested below in paragraph 95 on NNOC's agreement to indemnify Respondent Affinity.

(D) In or around November 2015, the exact date being unknown, Respondent Affinity terminated its employee Tara Magrell.

(E) The subjects set forth above in paragraphs 85(A) relate to wages, hours, and other terms and conditions of employment of the Affinity Unit and are mandatory subjects for the purposes of collective bargaining.

(F) Respondent Affinity exercised its discretion in imposing the disciplinary actions described above in paragraph 85(D).

(G) Respondent Affinity engaged in the conduct described above in paragraph 85(D) and 85(F), which has an immediate impact on employees' tenure, status and/or earnings without providing the NNOC with notice and an opportunity to bargain over the discretionary action and the effects of the discretionary action.

86. (A) About August 5, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the discipline issued to its employee Lisa Quick:

(1) The letter from the ambulance company regarding the incident involving employee Quick;

(2) All documents related to Respondent Affinity's investigation into the incident leading to the discipline of employee Quick;

(3) All documents related to discipline issued to employees for having attitude;

(4) All prior verbal and written warnings issued to employee Quick;

(5) All policies or procedures related to orienting new RN's;

(6) The RN Code of Conduct;

(7) The RN discipline policy;

(8) Policies and procedures related to Respondent Affinity's use of 'anecdotal notes'.

(B) About August 12, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the suspension of its employee Tracy Shay:

(1) Documents related to the decision to suspend employee Shay;

(2) Documents related to any prior disciplinary actions against employee Shay.

(C) About August 12, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the termination of its employee Brenda Dallacheisa:

(1) The results of the random drug screen administered to employee Dallacheisa;

(2) Employee Dallacheisa's pre-test disclosure form;

(3) All disciplinary actions of employees related to random drug screening;

(4) All prior disciplinary actions against employee Dallacheisa;

(5) Policies and/or procedures for random drug screening;

(6) Documents showing provisions for employees' rehabilitation opportunities.

(D) On or about August 23, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the discipline issued to its employee Michelle Custer:

(1) The discipline issued to employee Custer;

(2) All documents related to any prior disciplinary actions against employee Custer;

(3) Any discipline issued to any RN for the failure to follow the "chain of command" rule;

(4) The Affinity Medical Center staffing plan.

(E) On or about September 6, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the discipline issued to its employee Bridget Borojevich:

(1) All documents related to the decision to discipline employee Borojevich;

(2) All documents related to any prior disciplinary actions against employee Borojevich;

(3) Documents relied on to approve employee Borojevich's transfer to the emergency department;

(4) All documents related to employee Borojevich's transition to care, including orientation materials, the preceptor program, the mentorship program;

(5) All guidance documents, policies or procedures as recommended by the Board of Nursing outlining the transition of newly graduated RNs to care programs;

(6) CHS Community Cares Policy, harassment/disruptive behavior policy.

(F) Since about October 14, 2013, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the discipline issued to its employee Mary Beth Steed:

(1) The discipline issued to employee Steed;

(2) Documents related to prior disciplinary actions against employee Steed;

(3) Employee Steed's 90 day evaluation;

(4) The Affinity Medical Center staffing plan and ICU staffing plan;

(5) The ICU assignment sheets for any dates related to employee Steed's discipline, including the names of ancillary staff working in the ICU on the date of the incident;

(6) Documents related to Respondent Affinity's investigation leading up to employee Steed's discipline;

(7) The report from the telemetry monitoring system for employee Steed's patient on the date of the incident that lead to the discipline and the quality testing reports performed on the telemetry monitoring system.

(G) The information requested by the NNOC, as described above in paragraphs 86(A) through 86(F), and their subparagraphs, is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective bargaining representative of the Affinity Unit.

(H) Since about August 5, 2013, Respondent Affinity has failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 86(A).

(I) Since about August 12, 2013, Respondent Affinity failed and refused to furnish the NNOC with the requested information described above in paragraphs 86(B) and 86(C).

(J) Since August 23, 2013, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraphs 86(D).

(K) Since about September 6, 2013, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 86(E).

(L) Since about October 14, 2013, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 86(F).

87. (A) Since about May 28, 2014, the NNOC, by letter, attached as Exhibit A, requested that Respondent Affinity furnish the NNOC with relevant information regarding merit wage increases.

(B) The information requested by the NNOC, as described above in paragraph 87(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) Since about May 28, 2014, Respondent Affinity failed and refused to furnish the information requested, as described in paragraph 87(A), in Exhibit A at paragraph 10 regarding Respondent CHSI's and/or Respondent CHSPSC's approval process to determine which employees, groups, or facilities were entitled to a wage increase.

(D) From about May 28, 2014 to about August 19, 2014, Respondent Affinity unreasonably delayed in furnishing the NNOC with the requested information as set forth in paragraph 87(A), in Exhibit A at paragraphs 1, 2, 3 and 11.

(E) From about May 28, 2014 to about August 28, 2014, Respondent Affinity unreasonably delayed in furnishing the NNOC with the following requested information as set forth in paragraph 87(A):

(1) The 2011-2013 documentation showing the aggregate amount of wage increases for registered nurses as requested in paragraph 6 of Exhibit A;

(2) The information requested in paragraphs 8 and 9 of Exhibit A;

(3) Information pertaining to Respondent Affinity's approval process regarding the decision whether an individual, group, or facility is entitled to a wage increase as set forth in paragraph 10 of Exhibit A.

(F) From about May 28, 2014 to about August 28, 2014, Respondent Affinity failed to inform the NNOC that the information described above in paragraph 87(A), specifically at paragraphs 5 and 7 of Exhibit A does not exist.

(G) From about May 28, 2014 to about October 3, 2014, Respondent Affinity failed to inform the NNOC that the information described above in paragraph 87(A), specifically at paragraph 4 of Exhibit A does not exist.

88. (A) Since about June 19, 2014, the NNOC, by letter, requested that Respondent Affinity furnish the NNOC with the following information pertaining to the discipline issued to its employee Brenda Haught:

(1) Employee Haught's employment file;

(2) The discipline issued to employee Haught;

(3) Documents reflecting the Respondent Affinity's investigation into the incident leading to employee Haught's suspension;

(4) The ICU staffing grid and assignment sheet for June 18, 2014;

(5) Documents reflecting policies and procedures for providing care on suicide precautions;

(6) The name of the person who was available to provide 1:1 care while nurses carried out necessary duties, such as telephone calls with physicians, obtaining supplies and medications;

(7) Documents reflecting the plan in place to ensure RN's providing care for patients are relieved for breaks and lunch;

(8) Documentation showing the breaks and meals taken by nurses in the ICU on June 18, 2014, and proof of payment for time worked to nurses who did not receive a meal break, free from patient care responsibilities.

(9) Documentation showing the RN's who accepted assignments to provide break relief, as well as verification that nurses who provided break relief did not exceed safe patient limits.

(10) Documents that reflect management goals or guidelines for sending nurses home during "flex down staffing".

(B) The information requested by the NNOC, as described above in paragraphs 88(A)(1) through 88(A)(10) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) From about June 19, 2014 to about September 3, 2014, Respondent Affinity unreasonably delayed in furnishing the NNOC with the information as described above in paragraphs 88(A)(1) and 88(A)(5).

(D) Since about June 19, 2014, Respondent Affinity failed and refused to furnish the NNOC with the information as described above in paragraphs 88(A)(2), 88(A)(3), 88(A)(4), 88(A)(6), 88(A)(7), 88(A)(8), 88(A)(9) and 88(A)(10).

89. (A) Since about June 10, 2014, the NNOC requested, in writing, that Respondent Affinity furnish it with any relevant medical records, paper or electronic, including audit trails and meta data, used to make a decision to issue discipline to its employee Barbara Rowe.

(B) The information requested by the NNOC as described above in paragraph 89(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) Since about June 10, 2014, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 89(A).

90. (A) Since about June 27, 2014, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information:

(1) Medical records reviewed with employee Barbara Rowe;

(2) Just in time communications regarding CERNER updates;

(3) Documents chronicling help tickets or complaints;

(4) Documents reflecting RN notification of wrong patient coming up erroneously in the Cerner system;

(5) Educational materials provided to RN's and the date of the class on care planning in the Cerner system.

(B) The information requested by the NNOC, as described above in paragraph 90(A)(1) through 90(A)(5) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) Since about June 27, 2014, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraphs 90(A)(1) through 90(A)(5).

91. (A) Since about June 12, 2014, the NNOC requested, in writing, that Respondent Affinity furnish it with the information as set forth in Exhibit B.

(B) Since about June 23, 2014, NNOC requested, in writing, that Respondent Affinity furnish it with the information as set forth in Exhibit C.

(C) On or about July 21, 2014, the NNOC, in writing, repeated its information requests as described above in paragraphs 91(A) and 91(B).

(D) Since on or about July 21, 2014, the NNOC, in writing, requested that Respondent Affinity furnish it with the information as set forth in Exhibit D.

(E) The information requested by the NNOC, as described above in paragraphs 91(A), 91(B), and 91(D) is necessary for and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(F) Since about June 12, 2014, Respondent Affinity failed and refused to furnish the NNOC with the following information requested by it as described above in paragraph 91(A):

(1) The information requested in Exhibit B, paragraphs 2, 3, 5, 6, 7, 13, 16, 17, 18, 19, 21, 22, and 23;

(2) The names of the individuals responsible for health information technology at Affinity Medical Center as set forth in Exhibit B, paragraph 1;

(3) The written plans or policies for making changes to the Cerner Systems at the Affinity facility and CHS Region, as set forth in Exhibit B, paragraph 4;

(4) The name of the individual responsible for overseeing the pre-flight testing of CPOE as requested in Exhibit B, paragraph 14.

(G) Since about June 23, 2014, Respondent has failed and refused to furnish the NNOC with the following information requested by it as described above in paragraph 90(B):

(1) The information requested in Exhibit C, paragraphs 1, 4, 5, 6, 7, 10, 12, 13, 15, 18, 19, 22, 26, 32, 35 and 36;

(2) The specific nursing departments that decided the training needs were either greater than or less than the two training days recommended by CERNER as requested in Exhibit C, paragraph 21.

(H) Since about July 21, 2014, Respondent Affinity failed and refused to furnish the NNOC with the following information requested by it as described above in paragraph 91(D):

(1) The information requested in paragraph 10 of Exhibit D, referencing the June 12 information request, addressing CPOE training for registered nurses.

(2) The information requested in paragraph 24 of Exhibit D referencing the June 12 information request, addressing the event reporting system, including an overview of the system and the individuals involved in supervising or administering the system.

(3) The documents shared with CAST team members as part of CAST team minutes, including documents related to the standing agenda item 4.0 "Change List Summary" and item 7.0 "Protocols and Procedures," as requested in paragraph 11 of Exhibit D, referencing the June 23, 2014 information request.

(4) Information pertaining to selection of "Super Users," as requested in paragraph 16 of Exhibit D, referencing the June 23, 2014 information request.

(5) The sign-in sheets for each registered nurse for CERNER training sessions, as requested in paragraph 20 of Exhibit D, referencing the June 23, 2014 information request.

(6) Information pertaining to additional CERNER training, as requested in paragraph 21 of Exhibit D, referencing the June 23, 2014 information request.

(7) Reports and/or other documentation from the "Event Reporting System" showing adverse events related to the implementation of the electronic health record system, as requested in paragraph 27 of Exhibit D, referencing the June 23, 2014 information request.

(8) The information requested in paragraph 32(a) through 32(j) of Exhibit D, referencing the June 23, 2014 information request, specifically requesting documents and responses to explain the CPOE Flow Chart, Clinical Systems Change Management Process.

(9) Documents related to performance issues of employee Jan Volk related to CERNER, as requested in paragraph 34 of Exhibit D, referencing the June 23, 2014 information request.

92. (A) Since about August 20, 2014, the NNOC, in writing, requested that Respondent Affinity provide all notices and/or other communication from Respondent CHSI and/or Respondent CHSPSC approving the budget.

(B) The information requested by the NNOC, as described above in paragraph 92(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) Since about August 20, 2014, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 92(A).

93. (A) Since about January 16, 2015, and again on January 21, 2015, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information related to the investigatory suspension issued to its employee Michelle Custer:

(1) Anticipated duration of the investigation into employee Custer's conduct;

(2) All documents related to the Custer investigation;

(3) Patient records related to the incident under investigation;

(B) Since about February 5, 2015, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information related to an investigatory suspension issued to its employee Custer:

(1) The daily assignment sheet for floor 2200 for the period from December 19, 2015 through January 19, 2015[sic];

(2) The complete medical records, including the audit trail for patients involved in the investigation for the period from 24 hours before and 24 hours after care was administered by employee Custer;

(3) A complete report of all pain documentation for all nurses in medical/surgical areas of the hospital (2100/2200/ortho) from December 19, 2015 through January 19, 2015[sic];

(4) All Medication Administration Events from December 19, 2015 through January 19, 2015[sic].

(C) Since about February 25, 2015, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information related to an investigatory suspension issued to its employee Scott Rhoades:

(1) All medical records for the time period from 24 hours before and 24 hours after the care administered by employee Rhoades that was the subject of the investigation;

(2) A complete report of all Medication Administration Events for the period from September 1, 2014 to February 27, 2015;

(D) Since about April 22, 2015, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information related to its employee Richele Angstadt:

(1) Logs maintained to report time variances for floor 2200 for the preceding 13 months;

(2) All records reflecting employee Angstadt's absences;

(3) Complete time records, including Kronos reports, occurrence logs or any record maintained in paper or electronic formats reflecting absences and tardies of all RNs who work on floor 2200 for the preceding 13 months;

(4) Documents showing the number of hours exceeding 24 that Richele Angstadt worked by week for the past 90 days.

(E) The information requested by the NNOC, as described above in paragraphs 93(A) through 93(D), and their subparagraphs, is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(F) Since about January 21, 2015, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 93(A).

(G) Since about February 5, 2015, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 93(B).

(H) Since about February 27, 2015, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 93(C).

(I) Since about April 22, 2015, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 93(D).

94. (A) Since about September 2, 2015, the NNOC, in writing, and again on about September 25, 2015 requested that Respondent Affinity furnish the NNOC with the following information:

(1) The termination request it intends to issue to Michelle Hastings;

(2) Any prior disciplinary actions in Michelle Hastings' employment record should they exist;

(3) Documents, correspondence, written notes or reports that support the employer's allegation in this matter;

(4) Any applicable policies relevant to the disciplinary matter.

(B) The information requested by the NNOC, as described above in paragraph 94(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) Since about September 3, 2015, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraphs 94(A).

95. (A) Since about November 13, 2015, the NNOC requested, in writing, that Respondent Affinity furnish the NNOC with the following information:

(1) The termination request notice it intends to issue to Tara Magrell;

(2) Any prior disciplinary actions in Tara Magrell's employment record should they exist;

(3) Documents, correspondence, written notes or reports that support the employer's allegation in this matter;

(4) Any applicable policies relevant to the disciplinary matter.

(B) The information requested by the NNOC, as described above in paragraph 95(A) is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Affinity Unit.

(C) Since about November 16, 2015, Respondent Affinity failed and refused to furnish the NNOC with the information requested by it as described above in paragraph 95(A).

96. (A) On or about September 1, 2015, September 3, 2015 September 28, 2015, and on November 16, 2015, Respondent Affinity, in writing, insisted, as a condition of bargaining and furnishing requested information that the NNOC execute an indemnification agreement, as described above in paragraphs 84(C) and 85(C).

(B) The condition described above in paragraph 96(A) is not a mandatory subject for the purposes of collective bargaining.

(C) About November 6, 2015, in support of the condition described above in paragraph 96(A), Respondent insisted to impasse and refused to bargain with the NNOC and refused to furnish the NNOC with requested information as described above in paragraphs 94 and 95.

97. (A) At various times from around February 21, 2014 through November 6, 2015, Respondent Affinity and the NNOC met for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment.

(B) During the period described above in paragraph 97(A), Respondent Affinity engaged in the following conduct: bargained with no intention of reaching an agreement, insisted upon proposals that were predictably unacceptable to the NNOC, made proposals aimed at depriving the NNOC of its representational role, displayed a repeated

unwillingness to adjust differences with the NNOC, expressed unwillingness to change its October 6, 2015 proposal, insisted to impasse on a non-mandatory subject of bargaining over discretionary discipline related to indemnification; unilaterally discontinued the practice of granting annual wage increases to employees; unilaterally imposed new work rules; unilaterally implemented CERNER and CERNER CPOE at its facility without bargaining with respect to the effects and to an overall good faith impasse; refused to bargain over discretionary discipline; conditioned bargaining and providing requested information on the NNOC's execution of an indemnification agreement; failed to furnish and/or unreasonably delayed in providing the NNOC with relevant and necessary information.

(C) By its overall conduct described above in paragraph 97(B), as well as in paragraphs 73, 79 through 96, and their subparagraphs, Respondent Affinity has failed and refused to bargain in good faith with the NNOC as the exclusive collective bargaining representative of the Affinity Unit.

98. (A) Since about May 23, 2013, Respondent Barstow by Human Resources Representative Gwen [surname unknown], in the human resources office at the Barstow facility, bypassed the CNA/NNOC and dealt directly with its employees in the Barstow Unit by soliciting employees to enter into agreements regarding the reimbursement of training expenses.

(B) The subject set forth above in paragraph 98(A) relates to the wages, hours, and other terms and conditions of employment of the Barstow Unit and is a mandatory subject for the purposes of collective bargaining.

99. (A) About June 2013, Respondent Barstow reduced the staffing levels of non-bargaining unit technicians in the emergency department.

(B) As a result of Respondent Barstow's conduct described above in paragraph 99(A), the workloads and responsibilities of bargaining unit employees increased.

(C) About February or March 2015, the exact date being unknown, Respondent Barstow implemented a new rule requiring employees in the Intensive Care Unit to perform additional electronic charting of patient head-to-toe assessments every four hours per patient.

(D) About April 2015, Respondent Barstow discontinued the practice of granting annual wage increases to employees.

(E) About mid-August 2015, Respondent Barstow implemented and/or made changes to a program which gives existing employees monetary bonuses for referring new qualified employees for employment at the Barstow facility.

(F) The subjects set forth above in paragraphs 99(A), 99(B), 99(C), 99(D), and 99(E) relate to wages, hours, and other terms and conditions of employment of the Barstow Unit and are mandatory subjects for the purposes of collective bargaining.

(G) Respondent Barstow engaged in the conduct described above in paragraphs 99(A) and 99(B) without prior notice to the CNA/NNOC, without affording the CNA/NNOC an opportunity to bargain with Respondent Barstow with respect to the effects of this conduct, and without bargaining with the CNA/NNOC to an overall good-faith impasse for a collective bargaining agreement.

(H) Respondent Barstow engaged in the conduct described above in paragraph 99(C) without prior notice to the CNA/NNOC, without bargaining with the CNA/NNOC over this conduct and/or the effects of this conduct, and without bargaining with the CNA/NNOC to an overall good-faith impasse for a collective bargaining agreement.

(I) Respondent Barstow engaged in the conduct described above in paragraph 99(D) and 99(E) without prior notice to the CNA/NNOC with respect to this conduct, without bargaining with the CNA/NNOC, and without bargaining with the CNA/NNOC to an overall good-faith impasse for a collective bargaining agreement.

100. (A) Since about July 2013, the CNA/NNOC and Respondent Barstow have not reached an initial collective bargaining agreement, and have not agreed upon an interim grievance procedure.

(B) About January 12, 2015, Respondent Barstow discharged its employee Katherine Painter.

(C) Respondent Barstow exercised its discretion in imposing the discharge described above in paragraph 100(B).

(D) The subject set forth above in paragraph 100(B) relates to wages, hours, and other terms and conditions for employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

(E) Respondent Barstow engaged in the conduct described above in paragraphs 100(B) and 100(C), which has an immediate impact on employees' tenure, status and/or earnings, without prior notice to the CNA/NNOC and without affording the CNA/NNOC an opportunity to bargain over the discretionary actions and the effects of the discretionary actions.

101. (A) Since about June 25, 2013 and at all material times, the CNA/NNOC, by Steve Matthews, in an email attached as Exhibit E, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(B) (1) Since about August 16, 2013, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit F, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(2) On or about November 12, 2013, the CNA/NNOC, by James Moy, orally, repeated the request for the information described above in paragraph 101(B)(1).

(C) (1) Since about October 28, 2013, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit G, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(2) On about November 12, 2013, the CNA/NNOC, by James Moy, orally repeated the request for information described above in paragraph 101(C)(1).

(D) Since about December 2, 2013, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit H, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(E) Since about December 12, 2013, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit I, requested that Respondent Barstow furnish the CNA/NNOC with information contained in paragraphs 9(d) and 9(e) of Exhibit I.

(F) The information requested by the CNA/NNOC, as described above in paragraphs 101(A), 101(B), 101(C), 101(D), and 101(E), and their subparagraphs, is necessary for, and relevant to, the CNA/NNOC's performance of its duties as the exclusive collective-bargaining representative of the Barstow Unit.

(G) Since about June 25, 2013, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 101(A).

(H) Since about August 16, 2013, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 101(B).

(I) Since about November 12, 2013, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 101(C).

(J) Since about December 2, 2013, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 101(D).

(K) Since about December 12, 2013, Respondent Barstow failed and refused to furnish the CNA/NNOC with the requested information set forth in paragraphs 9(d) and (e) of Exhibit I, as described above in paragraph 101(E).

102. (A) Since about December 10, 2014, and at all material times, the CNA/NNOC, by James Moy, orally requested that Respondent Barstow furnish the CNA/NNOC with the following information:

(1) Communications to employees and training materials and timelines regarding the implementation of Transfer Core Measures in existing Electronic Health Records Systems;

(2) The policy regarding physicians refusing to put in orders into the Computerized Physician Ordering Entry system;

(3) The written policy regarding mandatory call in the Obstetrics department.

(B) Since about June 16, 2014, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit J, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(C) Since about July 24, 2014, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit K, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(D) (1) Since about August 2, 2014, and at all material times, the CNA/NNOC, by James Moy, in paragraph 3 of an email attached as Exhibit L, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(2) On or about May 22, 2015, CNA/NNOC, by James Moy in a letter, reiterated its request for the information described above in paragraph 102(D).

(E) Since about November 26, 2014, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit M, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(F) Since about January 20, 2015, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit N, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(G) Since about August 14, 2015, and at all material times, the CNA/NNOC, by James Moy, in an email attached as Exhibit O, requested that Respondent Barstow furnish the CNA/NNOC with certain information.

(H) The information requested by the CNA/NNOC, as described above in paragraphs 102(A), and its subparagraphs, through 102(G), is necessary for, and relevant to, the CNA/NNOC's performance of its duties as the exclusive collective-bargaining representative of the Barstow Unit.

(I) Since about December 10, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraphs 102(A)(1) through 102(A)(3).

(J) Since about June 16, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 102(B).

(K) (1) Since about July 24, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested in paragraphs 1, 3, 5, 6, 8-13, and 15-51 of Exhibit K, as described above in paragraph 102(C).

(2) Since on or about July 24, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the names of the individuals responsible for Health Information Technology at the Barstow facility as set forth in paragraph 7 of Exhibit K, as described above in paragraph 102(C).

(L) Since about August 2, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 102(D)(1) and (2).

(M) Since about November 26, 2014, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 102(E).

(N) Since about January 20, 2015, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 102(F).

(O) Since about August 14, 2015, Respondent Barstow failed and refused to furnish the CNA/NNOC with the information requested by it as described above in paragraph 102(G).

103. (A) At various times from around July 2013 through August 2015, Respondent Barstow and the CNA/NNOC met for the purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment.

(B) During the period described above in paragraph 103(A), Respondent Barstow engaged in the following conduct: bargained with no intention of reaching an agreement, insisted upon proposals that were predictably unacceptable to the CNA/NNOC, made proposals aimed at depriving the CNA/NNOC of its representational role; displayed a repeated unwillingness to adjust differences with the CNA/NNOC; failed to cloak its representatives with the authority to enter into binding agreements; failed to schedule regular bargaining sessions with the CNA/NNOC; engaged in bargaining delay tactics; engaged in direct dealing by soliciting employees to enter into agreements regarding the reimbursement of training expenses; unilaterally reduced the staffing levels of technicians in the emergency department without engaging in effects bargaining with the CNA/NNOC; unilaterally discontinued the practice of granting annual wage increases to employees; unilaterally implemented a new rule requiring employees in the Intensive Care Unit to perform additional electronic charting of patient head-to-toe assessments; unilaterally implemented and/or made changes to a bonus referral program; imposed a discretionary discharge on its employee Katherine Painter without giving the

CNA/NNOC notice or the opportunity to bargain, and failed to furnish the CNA/NNOC with relevant and necessary information.

(C) By its overall conduct described above in paragraph 103(B), as well as in paragraphs 98, 99, 100, 101, and 102, and their subparagraphs, Respondent Barstow has failed and refused to bargain in good faith with the CNA/NNOC as the exclusive collective bargaining representative of the Barstow Unit.

104. (A) Since about May 1, 2013, Respondent Bluefield began requiring employees in Obstetrics and the Operating Room to take mandatory time off or approved paid time off on their regularly scheduled workdays if the employees were scheduled "on-call."

(B) The subjects set forth above in paragraph 104(A) relate to wages, hours, and other terms and conditions of employment of the Bluefield Unit and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Bluefield engaged in the conduct described above in paragraph 104(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Bluefield with respect to this conduct and the effects of this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective-bargaining agreement.

(D) As a result of Respondent Bluefield's conduct described above in paragraph 104(A), Respondent Bluefield reduced the hours and pay of its employees in Obstetrics and its Operating Room.

105. (A) About September 19, 2013, by electronic transmission, and about September 25, in writing by hand delivery, the NNOC requested that Respondent Bluefield furnish the NNOC with the following information:

(1) All hospital/CHS on-call policies and procedures previous to the recent change to the call policy;

(2) All hospital/CHS on-call policies and procedures starting in or around August 2013;

(3) The personnel file for Mike Adams, including all correspondence, disciplinary actions, and evaluations;

(4) Documents and notes related to the investigation into the incidents for which Mike Adams was disciplined on July 31, 2013;

(5) All documents related to discipline issued to all employees as a result of missed absences;

(6) All hospital/CHS policies and procedures related to attendance and absences;

(7) All hospital/CHS policies and procedures related to disciplining RNs.

(B) The information requested by the NNOC, as described above in paragraph 105(A)(1) through 105(A)(7) is necessary for, and relevant to, to the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Bluefield Unit.

(C) Since about September 19, 2013, Respondent Bluefield has failed and refused to furnish the NNOC with the information requested by it as described in paragraphs 105(A)(1) through 105(A)(7).

106. (A) About June 11, 2014, Respondent Fallbrook notified the CNA/NNOC of the anticipated closure of certain core services at the Fallbrook facility, including maternity care services.

(B) Since at least on or about June 12, 2014, the CNA/NNOC requested that Respondent Fallbrook bargain collectively about the effects of the decision to close Respondent Fallbrook's maternity care services.

(C) On or about September 3, 2014, Respondent Fallbrook closed its maternity care services unit.

(D) The subjects set forth above in paragraph 106(B), relate to the wages, hours, and other terms and conditions of employment of the Fallbrook Unit, and are mandatory subjects for the purposes of collective bargaining.

(E) Since at least on or about June 12, 2014, Respondent Fallbrook failed and refused to bargain collectively with the CNA/NNOC over the effects of the decision to close Respondent Fallbrook's maternity care services.

107. (A) About January 27, 2014, Respondent Fallbrook terminated its employee Veronica Poss.

(B) Respondent Fallbrook exercised its discretion in imposing the discipline described above in paragraph 107(A).

(C) The subjects set forth above in paragraphs 107(A) and 107(B) relate to wages, hours, and other terms and conditions of employment of the Fallbrook Unit and are mandatory subjects for the purposes of collective bargaining.

(D) Respondent engaged in the conduct described above in paragraphs 107(A) and 107(B), which has an immediate impact on employees' tenure, status and/or earnings, without prior notice to the CNA/NNOC and/or without affording the CNA/NNOC an opportunity to bargain with Respondent Fallbrook with respect to this conduct and the effects of this conduct.

108. (A) About November 2013, Respondent Greenbrier, by Tammy Lilly, at Respondent Greenbrier's facility, announced to employees that it was implementing a change in its extra call pay policy for the Intensive Care Unit (ICU).

(B) The subject set forth above in paragraph 108(A) relates to wages, hours, and other terms and conditions of employment of the Greenbrier Unit and is a mandatory subject for the purposes of collective bargaining.

(C) Respondent engaged in the conduct described above in paragraph 108(A) without prior notice to the NNOC and without affording the NNOC an opportunity to bargain with Respondent Greenbrier with respect to this conduct.

109. (A) Since about January 16, 2014, for a period of 60 days, Respondent Greenbrier implemented a change to its extra call pay policy for the Medical Surgical, Pediatric Surgical, and 2nd and 3rd floor nursing units.

(B) The subjects set forth above in paragraph 109(A) relate to the wages, hours, and other terms and conditions of employment of the Greenbrier Unit and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Greenbrier engaged in the conduct described above in paragraph 109(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with Respondent Greenbrier with respect to this conduct and the effects of this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective-bargaining agreement.

110. (A) On May 20, 2013, Respondent Greenbrier issued a warning to its employee Kelly Morgan.

(B) About August 16, 2013, in writing by hand delivery, and about August 21, 2013, September 5, 2013, and December 2, 2013, by electronic transmission, the NNOC requested that Respondent Greenbrier bargain collectively about the discretionary discipline issued to employee Morgan on May 20, 2013.

(C) The subject set forth above in paragraph 110(A) relates to the wages, hours, and other terms and conditions of employment of the Greenbrier Unit and is a mandatory subject for the purposes of collective bargaining.

(D) Since about August 16, 2013, Respondent Greenbrier has failed and refused to bargain collectively about the subject set forth above in paragraph 110(A).

(E) Respondent Greenbrier engaged in the conduct described above in paragraph 110(A) and imposed discretionary discipline on employee Morgan that does not have an immediate impact on employees' tenure, status, or earnings, without providing the Union with notice and an opportunity to bargain over this discretionary action and the effects of this discretionary action.

111. (A) About August 16, 2013, in writing by hand delivery, and about August 21, 2013, September 5, 2013, and December 2, 2013, by electronic transmission, the NNOC requested that Respondent Greenbrier furnish the NNOC with the following information:

(1) Employee Kelly Morgan's personnel file;

(2) Notes and information related to the incident causing employee Morgan's discipline;

(3) All documents related to employees disciplined for similar reasons;

(4) All hospital policies/procedures related to the care and monitoring of patients at risk for suicide in place prior to employee Morgan's discipline;

(5) Documentation regarding staffing policies for patients on suicide risk.

(B) The information requested by the NNOC, as described above in paragraphs 111(A)(1) through 111(A)(5), is necessary for, and relevant to, the NNOC's performance of its duties as the exclusive collective-bargaining representative of the Greenbrier Unit.

(C) Since about August 16, 2013, Respondent Greenbrier failed and refused to furnish the NNOC with the information requested by it as described above in paragraphs 111(A)(1) through 111(A)(5).

112. (A) Since about April 6, 2014, Respondent Kentucky River unilaterally failed to provide the Kentucky River Unit employees with a 2.5 percent wage increase in April 2014.

(B) The subjects set forth above in paragraph 112(A) relate to wages, hours, and other terms and conditions of employment of the Kentucky River Unit and are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Kentucky River engaged in the conduct described above in paragraph 112(A) without providing the United Steelworkers with prior notice or the opportunity to bargain and without first bargaining to an overall good-faith impasse for a successor collective-bargaining agreement.

113. (A) About March 18, 2013, Respondent Kentucky River failed to continue in effect all the terms and conditions of the agreement described above in paragraph 71(C) by

failing and refusing to accept or process all grievances that the United Steelworkers and/or Kentucky River Unit employees filed and/or attempted to file.

(B) The terms and conditions of employment described above in paragraph 113(A) are mandatory subjects for the purposes of collective bargaining.

(C) Respondent Kentucky River engaged in the conduct described above in paragraph 113(A) without the United Steelworkers' consent.

114. (A) At various times from about December 13, 2013 through June 23, 2014, Respondent Kentucky River and the United Steelworkers met for the purposes of negotiating a successor collective-bargaining agreement to the agreement described above in paragraph 71(C).

(B) During the period described above in paragraph 114(A), Respondent Kentucky River engaged in regressive bargaining regarding its proposals for the duration of the collective-bargaining agreement, specifically by proposing an 8-month contract.

115. (A) Since about March 26, 2013, the United Steelworkers requested in writing that Respondent Kentucky River furnish it with the specific reasoning for each change made to the February 7, 2013 seniority list originally posted after ratification of the agreement.

(B) The information requested by the United Steelworkers, as described above in paragraph 115(A) is necessary for, and relevant to, the United Steelworkers' performance of its duties as the exclusive collective-bargaining representative of the Kentucky River Unit.

(C) Since about April 13, 2013, Respondent Kentucky River, through Naomi Mitchell, in writing, failed and refused to furnish the United Steelworkers with the information requested by it as described above in paragraph 115(A).

116. (A) Since about July 25, 2014, the United Steelworkers requested in writing that Respondent Kentucky River furnish it with all information related to the possible sale of Kentucky River Medical Center to ARH or any other entity.

(B) The information requested by the United Steelworkers, as described above in paragraph 116(A) is necessary for, and relevant to, the United Steelworkers' performance of its duties as the exclusive collective-bargaining representative of the Kentucky River Unit.

(C) Since about August 20, 2014, Respondent Kentucky River failed and refused to furnish the United Steelworkers with the information requested by it as described above in paragraph 116(A).

117. (A) On about December 6, 2013, the CNA requested in writing that Respondent Watsonville furnish it with information regarding Respondent Watsonville's asserted obligations to a temporary staffing agency (the Staffing Information Request). A true and correct copy of the request for the Staffing Information Request is attached as Exhibit P.

(B) The Staffing Information Request at Paragraphs 1 through 5, 7, and 9(d) through 9(f) as set forth in Exhibit P seeks information that is necessary for, and relevant to, the CNA's performance of its duties as the exclusive collective-bargaining representative of the Watsonville Unit.

(C) Since about December 17, 2013, Respondent Watsonville failed and refused to furnish and/or timely furnish CNA with the Information.

(D) Since about December 17, 2013, Respondent Watsonville failed and refused to offer or bargain over any accommodation in lieu of furnishing the information to CNA, to the extent that it had raised any confidentiality concerns with respect to the information.

118. By the conduct described above in paragraphs 36 through 65, and their subparagraphs, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

119. By the conduct described in paragraphs 63, 64, and 65, and their subparagraphs, Respondent has been discriminating in regard to the hire, tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

120. By the conduct described above in paragraphs 73 through 117, and their subparagraphs, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Sections 8(a)(1) and (5) of the Act.

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

In view of the extensive history of repeated unfair labor practice violations found by the Board and courts to have been engaged in by Respondent CHSI, Respondent CHSPSC, Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier, and Respondent Watsonville as a single integrated enterprise and/or joint employers, together with the similarity of the prior violations to the unfair labor practices alleged above in paragraphs 36 through 66 and 73 through 120, the General Counsel seeks an Order requiring Respondent CHS, Respondent CHSPSC, Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier and Respondent Watsonville to: (1) post in all its facilities any Notice to Employees that may issue in this proceeding; (2) electronically post the Notice to Employees for employees at all its facilities if

the Respondents customarily use electronic means such as an electronic bulletin board, e-mail, website, or intranet to communicate with those employees; and (3) send a copy of any Board Order and Notice to Employees to all its supervisors at its Affinity, Barstow, Bluefield, Fallbrook, Greenbrier and Watsonville facilities.

The General Counsel also seeks a broad remedial order applicable to Respondent CHSI, Respondent CHSPSC, Respondent Affinity, Respondent Barstow, Respondent Bluefield, Respondent Fallbrook, Respondent Greenbrier and Respondent Watsonville, on a corporate-wide basis, in any and all locations where they are an employer within the meaning of Section 2(2) of the Act, as part of a single integrated enterprise, as joint employers, or otherwise, to cease and desist from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act in the manner alleged, or in any other manner, together with any and all relief as may be just and proper to remedy the unfair labor practices alleged.

AFFINITY:

As part of the remedy for the unfair labor practices alleged above in paragraphs 36-39, 53, 63, 73, 79 through 97, 118-120 and their subparagraphs, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondents' chief negotiator in collective bargaining read the notice to employees in English on worktime in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondents promptly have a Board agent read the notice to employees during worktime in the presence of Respondent Affinity's supervisors and agents identified above in paragraph 27. The General Counsel also seeks an order requiring the Respondents to mail the notice to all current employees, as well as to all individuals employed by Respondent Affinity since October 2012.

As part of the remedy for Respondent Affinity's unfair labor practices alleged above in paragraphs 82, 83, 84 and 85**,** 120 and their subparagraphs, the General Counsel seeks an order requiring Respondent Affinity to make Unit employees Michelle Custer, Frederick MacWithey, Scott Rhoades, Michelle Hastings and Tara Magrell whole for any losses incurred as a result of Respondent Affinity's unfair labor practices, including reinstatement with backpay and rescinding the discharges of Custer, Rhoades, Hastings and Magrell and rescinding the suspension of MacWithey.

As part of the remedy for Respondents' unfair labor practices alleged above in paragraphs 82, 83, 84 and 85**,** 120 and their subparagraphs, the General Counsel seeks an order requiring that the Respondent reimburse Unit employees Michelle Custer, Scott Rhoades, Michelle Hastings and Tara Magrell for all search-for-work and work-related expenses regardless of whether the employees received interim earnings in excess of these expenses, or at all, during any given quarter or during the overall backpay period.

In order to fully remedy the unfair labor practices set forth above, the General Counsel also seeks an Order requiring that Michelle Custer, Frederick MacWithey, Scott Rhoades, Michelle Hastings and Tara Magrell be made whole, including reasonable consequential damages incurred as a result of Respondent's unlawful conduct.

As part of the remedy for the unfair labor practices alleged above in paragraphs 73, 79 through 96, 120 the General Counsel seeks an Order requiring Respondent to: (1) bargain on request within 15 days of a Board Order; (2) bargain on request for a minimum of 15 hours a week until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining; (3) prepare written bargaining progress reports every 15 days and submit them to the Regional Director of Region 8 and also serve the reports on Respondent Affinity to provide the

NNOC with an opportunity to reply; and (4) make whole employee negotiators for any earnings lost while attending bargaining sessions.

As part of the remedy for Respondent's unfair labor practices alleged above in paragraphs 73, 79 through 96 and 120 the General Counsel seeks an Order requiring Respondent to bargain in good faith, on request, with the NNOC for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative of the Affinity Unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

BARSTOW:

As part of the remedy for the unfair labor practices alleged above in paragraphs 40, 41, 54, 74, 98 through 103, 118-120 and their subparagraphs, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent Barstow's chief negotiator in collective bargaining read the notice to employees in English on worktime in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondents promptly have a Board agent read the notice to employees during worktime in the presence of Respondent Barstow's supervisors and agents identified above in paragraphs 28 and 29. The General Counsel also seeks an order requiring the Respondents to mail the notice to all current employees, as well as to all individuals employed by Respondent Barstow since June 2012.

As part of the remedy for the unfair labor practices alleged above in paragraphs 98 through 103, 120, and their subparagraphs, the General Counsel seeks an Order requiring Respondents to reimburse the CNA/NNOC for its costs and expenses incurred in collective

bargaining for all negotiations during the relevant Section 10(b) period, including, for example, reasonable salaries, travel expenses, and per diems.

As part of the remedy for Respondent's unfair labor practices alleged above in paragraphs 98 through 103 and 120, and their subparagraphs, the General Counsel seeks an Order requiring Respondent to bargain in good faith, on request, with the CNA/NNOC for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative of the Barstow Unit.

As part of the remedy for Respondent Barstow's unfair labor practices alleged above in paragraphs 100 and 120 and their subparagraphs, the General Counsel seeks an order requiring Respondent Barstow to make Unit employee Katherine Painter whole for any losses incurred as a result of Respondent Barstow's unfair labor practices, including reinstatement with backpay and rescinding their discharges.

As part of the remedy for Respondent Barstow's unfair labor practices alleged above in paragraphs 100 and 120, and their subparagraphs, the General Counsel seeks an order requiring that the Respondent reimburse Unit employee Katherine Painter for all search-for-work and work-related expenses regardless of whether the employee received interim earnings in excess of these expenses, or at all, during any given quarter or during the overall backpay period.

In order to fully remedy the unfair labor practices set forth above, the General Counsel also seeks an Order requiring that Katherine Painter be made whole, including reasonable consequential damages incurred as a result of Respondent's unlawful conduct.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

BLUEFIELD:

As part of the remedy for the unfair labor practices alleged above in paragraphs 42, 55 - 60, 64, 75, 104-105, 118-120, and their subparagraphs, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent Bluefield's chief negotiator in collective bargaining read the notice to employees in English on work time in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondents promptly have a Board agent read the notice to employees during work time in the presence of Respondent Bluefield's supervisors and agents identified above in paragraphs 30 and 31. The General Counsel also seeks an Order requiring the Respondents to mail, at its own expense, the notice to all current employees, as well as to all individuals employed by Respondent Bluefield since August 2012.

As part of the remedy for Respondent's unfair labor practices alleged above in paragraphs 75, 104-105, 120 and their subparagraphs, the General Counsel seeks an Order requiring Respondent to bargain in good faith, on request, with the NNOC for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative of the Bluefield unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

FALLBROOK:

The General Counsel seeks an order requiring the Respondents to mail, at its own expense, the notice to all individuals employed by Respondent Fallbrook since May 2012 to the date it ceased operations on or about December 31, 2014.

As part of the remedy for the unfair labor practices alleged above in paragraphs 106, and 120, and their subparagraphs, the General Counsel seeks an order requiring that Respondent Fallbrook make whole the employees in the Fallbrook Unit in the manner set forth in *Transmarine Navigation Corp*., 170 NLRB 389 (1968).

As part of the remedy for Respondent Fallbrook's unfair labor practices alleged above in paragraphs 107 and 120, and their subparagraphs, the General Counsel seeks an order requiring Respondent Fallbrook to make Unit employee Veronica Poss whole for any losses incurred as a result of Respondent Fallbrook's unfair labor practices, including reinstatement with backpay and rescinding her discharge.

As part of the remedy for Respondents' unfair labor practices alleged above in paragraph 107 and 120, and their subparagraphs, the General Counsel seeks an order requiring that the Respondents reimburse Veronica Poss for all search-for-work and work-related expenses regardless of whether Veronica Poss received interim earnings in excess of these expenses, or at all, during any given quarter or during the overall backpay period.

In order to fully remedy the unfair labor practices set forth above, the General Counsel also seeks an Order requiring that Veronica Poss be made whole, including reasonable consequential damages incurred as a result of Respondent's unlawful conduct.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

GREENBRIER:

As part of the remedy for the unfair labor practices alleged above in paragraphs 48-50, 62, 65, 77, 108-111, 118-120, and their subparagraphs, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance,

Respondent Greenbrier's chief negotiator in collective bargaining read the notice to employees in English on work time in the presence of a Board agent. Alternatively, the General Counsel seeks an Order requiring that Respondents promptly have a Board agent read the notice to employees during work time in the presence of Respondent Greenbrier's supervisors and agents identified above in paragraph 33. The General Counsel also seeks an order requiring the Respondents to mail, at its own expense, the notice to all current employees, as well as to all individuals employed by Respondent Greenbrier since August 2012.

As part of the remedy for Respondent's unfair labor practices alleged above in paragraphs 77, 108-111, 120 and their subparagraphs, the General Counsel seeks an Order requiring Respondent to bargain in good faith, on request, with the NNOC for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative of the Greenbrier unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the second amended consolidated complaint. The answer must be **received by this office on or before September 2, 2016, or postmarked on or before September 1, 2016.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents,** enter the NLRB Case

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

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 19th day of September, 2016 at 10:00 a.m., in a hearing room at a place yet to be determined, and on consecutive days thereafter until concluded in accordance with already scheduled dates for hearing, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and

any other party to this proceeding have the right to appear and present testimony regarding the allegations in this second amended consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Cleveland, Ohio this 19th day of August 2016.

/s/ Allen Binstock

ALLEN BINSTOCK
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 8
1695 AJC FEDERAL OFFICE BLDG
1240 EAST NINTH ST
CLEVELAND, OH 44199

Attachments

Form NLRB-4338

(2-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Cases 08-CA-117890, et al.

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

WAYNE T. SMITH, CEO
COMMUNITY HEALTH SYSTEMS, INC., SINGLE EMPLOYER
4000 MERIDIAN BOULEVARD
FRANKLIN, TN 37067

RON BIERMAN, CEO
DHSC, LLC D/B/A AFFINITY MEDICAL CENTER
875 8TH ST NE
MASSILLON, OH 44646-8503

RACHEL A. SEIFERT
COMMUNITY HEALTH SYSTEMS, INC.,
AND/OR CHSPSC, LLC (PRIOR TO JANUARY 1, 2015 KNOWN AS COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION)
4000 MERIDIAN BOULEVARD
FRANKLIN, TN 37067

BLUEFIELD HOSPITAL COMPANY, LLC D/B/A BLUEFIELD REGIONAL MEDICAL CENTER AND ITS SINGLE AND/OR JOINT EMPLOYER COMMUNITY HEALTH SYSTEMS, INC., AND/OR ITS SINGLE AND/OR JOINT EMPLOYER CHSPSC, LLC (PRIOR TO JANUARY 1, 2015 KNOWN AS COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION)
4000 MERIDIAN BLVD.
FRANKLIN, TN 37067

WILLIAM HAWLEY, CEO
BLUEFIELD HOSPITAL COMPANY, LLC D/B/A BLUEFIELD
REGIONAL MEDICAL CENTER
500 CHERRY STREET
BLUEFIELD, WV 24701-3306

FALLBROOK HOSPITAL CORPORATION
4000 MERIDIAN BLVD.
FRANKLIN, TN 37067

FALLBROOK HOSPITAL CORPORATION,
d/b/a FALLBROOK HOSPITAL
c/o CORPORATION SERVICE COMPANY,
d/b/a CSC – LAWYERS INCORPORATING SERVICE
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SACRAMENTO, CA 95833

ROBERT M. CALHOUN, CEO
ROB FOLLOWELL, CEO
GREENBRIER VMC, LLC, D/B/A GREENBRIER VALLEY MEDICAL CENTER
202 MAPLEWOOD AVENUE
RONCEVERTE, WV 24970-1334

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HOSPITAL OF BARSTOW, INC., D/B/A BARSTOW COMMUNITY HOSPITAL
820 E MOUNTAIN VIEW ST
BARSTOW, CA 92311-3004

NAOMI MITCHELL, HR MANAGER
JACKSON HOSPITAL CORP. D/B/A KENTUCKY RIVER MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC. AND COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORP., LLC, /A SINGLE EMPLOYER AND/OR JOINT EMPLOYER
540 JETT DRIVE
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REGISTERED AGENT
QHCCS, LLC
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PRESIDENT & CEO
QUORUM HEALTH RESOURCES, LLC
105 CONTINENTAL PLACE
BRENTWOOD, TN 37027

C.E. (MICKEY) BILBREY
PRESIDENT & CEO
QUORUM HEALTH RESOURCES, LLC
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2711 CENTERVILLE ROAD, SUITE 400
WILMINGTON, DE 19808

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75 NEILSON ST
WATSONVILLE, CA 95076-2468

AUDRA EARLE, CEO
WATSONVILLE COMMUNITY HOSPITAL

75 NIELSON ST.
WATSONVILLE, CA 95076

CERTIFIED MAIL

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NATIONAL NURSES ORGANIZING COMMITTEE (NNOC)
225 W BROADWAY STE 500
GLENDALE, CA 91204-1331

MICHELLE MAHON, LABOR REPRESENTATIVE
NATIONAL NURSES ORGANIZING COMMITTEE
155 GRAND AVENUE
OAKLAND, CA 94612-2908

NATIONAL NURSES ORGANIZING COMMITTEE
CALIFORNIA NURSES ASSOCIATION/NATIONAL NURSES UNITED
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JAMES MOY, LABOR REPRESENTATIVE
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225 WEST BROADWAY, SUITE 500
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REGULAR MAIL

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JACOB J. WHITE, ESQ.
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BRUCE A. HARLAND, ESQ.
WEINBERG ROGER & ROSENFELD
800 WILSHIRE BLVD, STE 1320
LOS ANGELES, CA 90017-2623

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative**. If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link:
www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.
Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.
-

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence**: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not

submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

CALIFORNIA NURSES ASSOCIATION
National Nurses United
"A Voice for Nurses. A Vision for Healthcare."

OAKLAND
2000 Franklin Street
Oakland CA 94612
phone: 510-273-2200
fax 510-663-1625

SACRAMENTO
770 L Street
Suite 1480
Sacramento CA 95814
phone: 916-446-5021
fax: 916-446-6319

May 28, 2014

Mr. Don Carmody
Outside Counsel, Community Health Systems
P.O. Box 3310
Brentwood, TN 37024-3310

Mr. Ron Bierman
Chief Executive Officer
Affinity Medical Center
875 8th St NE
Massillon, OH 44646

Re: Annual Wage Increases at Affinity Medical Center

Dear Mr. Carmody and Mr. Bierman:

We are writing on behalf of the approximately 250 registered nurses represented by the National Nurses Organizing Committee (NNOC) at Affinity Medical Center in Massillon, Ohio.

In years past, including last spring, Affinity Medical Center provided a general wage increase to Affinity employees, including registered nurses. This year, however, the Employer has provided no notice that it intends to provide wage increases. To the contrary, several managers have told registered nurses represented by NNOC that there won't be wage increases "because the union won't let us." As you know, such statements are both untrue and unlawful.

This letter will serve as the Union's formal demand that Affinity Medical Center provide this spring, 2014, wage increases consistent with how the Employer has provided wage increases to registered nurses in the past, including make such increases retroactive if necessary to conform to past increases.

Toward that end, the Union requests the following information:

1. The date that the Employer intends to provide wage increases prospectively, and the date the wage increases were to take effect retroactively.
2. The total aggregate amount of the wage increase for the NNOC-represented nurses.
3. The across-the-board amount of the wage increase for the NNOC-represented nurses.

4. Documents, including meeting meetings, meeting agendas, and emails, including those among representatives of Affinity Medical Center and CHS corporate representatives in which the amount of wage increases was discussed and whether or not wage increases should be provided to NNOC-represented registered nurses.
5. Any CHS or Affinity Medical Center policy that sets forth the criteria that determines whether or not a facility is to provide wage increases.
6. The total aggregate amount of wage increases for registered nurses at Affinity in 2011, 2012, and 2013.
7. The across-the-board amount of wage increases for registered nurses at Affinity in 2011, 2012, 2013.
8. If the wage increases are based on performance evaluations, the percentage of registered nurses who had performance evaluations that would warrant a "merit" increase, based on the Employer's policy. This information should be provided for 2014, as well as for 2011, 2012, and 2013.
9. The criteria used to determine whether an employee's performance warrants a "merit" increase.
10. The approval process, including approval between Affinity Medical Center and CHS corporate, regarding the decision whether an individual, group, or facility is entitled to a wage increase.
11. The classifications of any Affinity Medical Center employees, including executives and/or managers who have received a wage increase from January 1, 2014 to the present.

It is also important to note that the Employer's compliance with its legal requirement to provide wage increases does not preclude the Union from making proposals regarding additional wage increases during the parties' contract negotiations.

We are next scheduled to meet with the Employer's bargaining team on June 16th and 17th, so we request receipt of the above-identified items by the close of business, Thursday, June 12, 2014.

Sincerely,

	Amy Pulley	*Pam Gardner*	*Debbie G. McKinny*
John Borsos	Amy Pulley, RN	Pam Gardner, RN	Debbie G. McKinny, RN
NNOC	Bargaining Team	Bargaining Team	Bargaining Team

Cc: Michelle Mahon, NNOC
NNOC FBC
Angie Boyle
Pam Ellis

Sincerely,

Michelle Mahon, RN
Labor Representative NNOC

cc: John Borsos
Bargaining Team
Bargaining Council

June 12, 2014

Angie Boyle, SPHR
Affinity Medical Center
875 Eight Street Northeast
Massillon, Ohio 44646

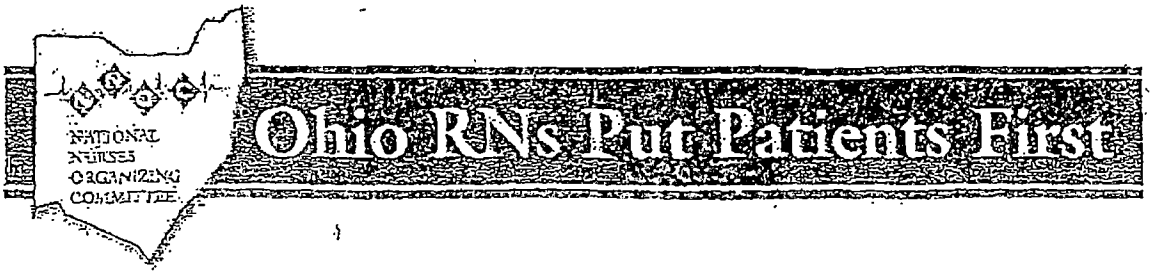
Dear Ms. Boyle,

It has come to the Union's attention that Affinity Medical Center intends to implement Cerner Computerized Physician Order Entry (CPOE) in the near future. NNOC hereby demands to bargain over the implementation of this system **PRIOR to implementation** as it will significantly impact the working conditions of registered nurses at Affinity.

Please provide the following information so that we may bargain over this issue:

1. Name(s) and Curriculum Vitae of people who are responsible for Health Information Technology at Affinity Medical Center
2. Name(s) of people who are responsible for the oversight of Health Information Technology for CHS in this region, including the name(s) of the Cerner representatives, and/or other advisor or consultants participating in this project.
3. A copy of the contract between CHS and Cerner for services as it relates to the Electronic Health Record and its application to Affinity Medical Center.
4. Any and all written plans or policies for making changes to the Cerner system at Affinity Medical Center, CHS Region and Cerner.
5. Any timeline which details the roll-out of the CPOE and/or additional phases of the Cerner EHR system at Affinity Medical Center.
6. The name of the persons employed by Affinity Medical Center/CHS who is responsible for decisions related to purchasing Health Information Technology.
7. Any and all educational material related to the Cerner CPOE system.
8. Date of planned implementation of CPOE system.
9. Any material which details the training component of the implementation of the CPOE system for registered nurses.
10. Schedules, including provision of relief, which spell out how the Employer proposes to train registered nurses on the CPOE system.
11. The process the hospital followed to determine the computer competencies of registered nurses.
12. The names of individuals who are accountable for oversight of safe transition to CPOE.
13. Any and all pharmacy policies and procedures related to the implementation of CPOE

Exhibit B



14. Date of planned pre- flight testing of the CPOE system and person responsible for overseeing this testing.
15. The name of the person who is responsible for ensuring that documentation in the Cerner system is designed to facilitate nursing practice;
16. Any document that reflects an evaluation of the Cerner system ensuring that data and information meet the needs of RN duty to comply with the Ohio Nurse Practice Act
17. A copy of contracts that describe service plans, technology support or similar arrangement between Affinity Medical Center/CHS and Cerner.
18. A copy of any and all documents provided by Cerner that explain or describe the features of the various Cerner products purchased by Affinity Medical Center/CHS.
19. Any and all user guides, handbook, instruction manuals or similar document that provides use instructions for all Cerner products used at Affinity Medical Center
20. A copy of the down time plan for providing care during outages of the electronic health record.
21. Any and all documents reflecting the method for auditing patient charts
22. A list of any and all quality measures that are being collected and evaluated using the Cerner system at Affinity Medical Center.
23. A list of benchmarks of nursing care which are being evaluated through the use of the Cerner system. Please include the detail level of the information being collected (i.e. System level, Unit level, provider level).
24. A description of which method is being used to evaluate the safety of the Cerner system at Affinity Medical Center, should any exist.
25. Any document that describes the facility plan for abiding by the SAFER guidelines for electronic health records issued by the Office of the National Coordinator of Health IT.

As you know, we are scheduled for contract negotiations on June 16-17, 2014, and by agreement at our last bargaining session, the parties agreed to negotiate over issues related to those portions of the electronic health record that the Union believes the Employer implemented unlawfully and which may inhibit the nurses' ability to provide the highest quality of care.

Based on the complexities of the issues, we expect the Employer to have representatives, preferably including those from Cerner, with the technical competency to address the nurses' concerns regarding these issues.

Because the Employer has announced its intention to implement potential changes in July, time is of the essence. Accordingly, please provide the above-requested information by June 16, 2014 so that we can begin meaningful negotiations on this issue on June 17th

CALIFORNIA NURSES ASSOCIATION
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A Voice for Nurses. A Vision for Healthcare.

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fax: 916-446-6319

June 23, 2014

Mr. Don Carmody
Outside Counsel, Community Health Systems
P.O. Box 3310
Brentwood, TN 37024-3310

Re: Request for Information on Electronic Health Record Implementation at Affinity Medical Center

Dear Don:

This letter will serve as a follow-up to our preliminary discussion on Monday, June 16, 2014 related to the hospital's unlawful implementation of the first phase of the Cerner electronic health record (EHR) system in June 2013. It is also a follow-up to Michelle Mahon's letter to Angie Boyle, dated June 12, 2014, regarding the Employer's announced intention to introduce its next phase, the Computerized Physician Order Entry (CPOE) in forthcoming months, a subject discussed briefly in negotiations on June 16th In order to bargain meaningfully over the implementation of the Cerner Electronic Health Record, and in order to begin to evaluate in an effort to offer responses to the Employer's proposals of June 16 related to proposed changes to several policies concerning implementation of the Cerner Electronic Health Record system, the Union hereby requests the following information:

1. A copy of the contract between CHS and Cerner related to the Electronic Health Record system at Affinity. As we understood the Employer's explanation in bargaining on June 16, 2014, the implementation of the Cerner EHR is part of a larger agreement between CHS and Cerner, rather than an agreement negotiated between Affinity and Cerner.
2. The alternatives to Cerner considered, and the rationale why Cerner was selected.
3. The amount of money paid to Cerner to date for services related to the Electronic Health Record at Affinity.
4. The names of the Cerner representatives who provide technical support for the EHR at Affinity.
5. Copies of the timelines that set forth the implementation of the Cerner EHR for Phase 1 (approximately June 2013) and Phase 2 (approximately August 2014).
6. The role of Kimberly Naggie, the CHS Regional Clinical Informaticist as it relates to the EHR at Affinity.
7. The role of Stephanie Martin of CHS in Franklin, Tennessee, as it relates to the EHR at Affinity.

8. The names of the individuals who are part of the CAST Team meeting as described by Beth Varner at our negotiations on June 16, 2014, responsible for providing oversight of the EHR program at Affinity.
9. Minutes of CAST Team meetings from their inception to the present.
10. The names of other committees and representatives who are responsible for oversight of the Electronic Health Record at Affinity, including those that may exist at the CHS system level. This also includes the weekly meetings described by Beth Varner at our negotiations on June 16, 2014 among management representatives of CareNet, PharmNet and PathNet.
11. Minute meetings of committee meetings described in Number 8 above that relate to the implementation on ongoing oversight of the EHR at Affinity Medical Center.
12. The names of the hospitals and their representatives that are part of Hub 1 as described by Beth Varner at our negotiations on June 16, 2014, with Affinity.
13. The names of the hospitals and their representatives who participate on the CHS system-wide calls related to the Cerner implementation, as described by Beth Varner at our negotiations on June 16, 2014.
14. A copy of response sent to CMS related to Stage 1 Meaningful Use Attestation for both Medicare and Medicaid. If the Stage 1 Meaningful Use Attestation for Medicaid was submitted to the State of Ohio, we are requesting that documentation as well.
15. The names of the "Super User" registered nurses as determined by Affinity.
16. The method by which the "Super Users" were selected.
17. The additional training provided to "Super Users."
18. Minutes of the bi-weekly meetings of the "Super Users" from their inception to the present.
19. The training curriculum that was designed for nurses prior to the implementation of the EHR in June 2013.
20. The training that each individual nurses received prior to the implementation of the EHR in June 2013.
21. The nursing departments that decided the training needs were either greater than or less than the two days' training recommended by Cerner, and the justification for the difference.
22. The times, dates, and offerings that the additional "skill labs" were offered to registered related to the implementation of the first phase of Cerner at Affinity in the summer of 2013.
23. The method by which the Employer used to determine the computer literacy of each individual nurse prior to and/or following the implementation of the EHR in June 2013.
24. Documentation of the additional training provided to nurses who may float beyond their regularly-assigned unit.
25. The scheduling changes the Employer provided to allow for the training of registered nurses on the Cerner, and the ongoing requirements of additional staff time allocated for documentation as a result of the EHR.
26. The number of "tickets that have been opened" to document an error or problem with the Cerner system and a log of those tickets.
27. The method by which the Employer evaluates the adverse events that have been captured by the opening of a ticket and/or other reporting method.

28. Additional documentation which capture concerns of EHR users that were captured via a method other than the opening of a ticket.
29. A copy of the Enhancement Requests that have been submitted to Cerner/CHS.
30. A list of the Enhancement Requests that have been denied by Cerner/CHS and the reason for the denial.
31. A list of the Enhancement Request that have been accepted and the date by which the Enhancement Request has been implemented.
32. The structure of review of Enhance Requests at the facility, Hub, and system level, as well as the review process between CHS and Cerner.
33. Any changes in employee policies related to performance as a result of the implementation of the Cerner EHR.
34. The names of any registered nurses who have been counseled, placed on a performance improvement plan or disciplined or who have retired because of alleged performance issues related to usage of the Cerner EHR.
35. Copies of the training modules and training schedules proposed by the Employer related to the second phase of the Cerner system implementation, specifically the CPOE.
36. Any documentation that provides details of the changes to the Cerner EHR system as a result of the proposed second phase, specifically the CPOE.

This letter is in addition to the information requested in Michelle Mahon's letter to Angie Boyle dated June 12, 2014 (and attached herein).

It should be noted that this request for information is preliminary and is likely to be complemented when negotiations get further underway related to the EHR at Affinity.

Additionally, as we made clear in negotiations on June 16, 2014, it is the Union's position that the first phase of the Electronic Health Record was unlawfully implemented at Affinity in June 2013 and those changes required and continue to require negotiations with the Union since they involve such a fundamental part of the nurses' working conditions.

This letter will also serve to reiterate Michelle Mahon's email to Angie Boyle dated today (June 23, 2014 and attached herein) in which the Union demands that the Employer cease and desist training, mandatory or otherwise, related to the implementation of the Computerized Physician Order Entry (CPOE) that apparently has been scheduled to begin on Wednesday, June 25, 2014, until the Union has been afforded the opportunity to negotiate over the training and related issues, including the time and scheduling of the training, the relief for nurses released for training, scheduling the training to accommodate nurses work times, the content of the training, and other issues, in addition to the broader related to the proposed roll-out of the CPOE system at Affinity.

As the Union made clear when we met on June 16th, any additional changes to need to be negotiated *prior* to any implementation.

As you know, the Union also offered to meet June 17th and possibly other days last week to negotiate over these issues and only today you offered dates of the Employer's availability the first of which is over two week's away, July 8th

Sincerely,

John Borsos

Cc: Bargaining Team
FBC
Michelle Mahon
Angie Boyle

June 12, 2014

Angie Boyle, SPHR
Affinity Medical Center
875 Eight Street Northeast
Massillon, Ohio 44646

Dear Ms. Boyle,

It has come to the Union's attention that Affinity Medical Center intends to implement Cerner Computerized Physician Order Entry (CPOE) in the near future. NNOC hereby demands to bargain over the implementation of this system **PRIOR to implementation** as it will significantly impact the working conditions of registered nurses at Affinity.

Please provide the following information so that we may bargain over this issue:

1. Name(s) and Curriculum Vitae of people who are responsible for Health Information Technology at Affinity Medical Center
2. Name(s) of people who are responsible for the oversight of Health Information Technology for CHS in this region, including the name(s) of the Cerner representatives, and/or other advisor or consultants participating in this project.
3. A copy of the contract between CHS and Cerner for services as it relates to the Electronic Health Record and its application to Affinity Medical Center.
4. Any and all written plans or policies for making changes to the Cerner system at Affinity Medical Center, CHS Region and Cerner.
5. Any timeline which details the roll-out of the CPOE and/or additional phases of the Cerner EHR system at Affinity Medical Center.
6. The name of the persons employed by Affinity Medical Center/CHS who is responsible for decisions related to purchasing Health Information Technology.
7. Any and all educational material related to the Cerner CPOE system.
8. Date of planned implementation of CPOE system.
9. Any material which details the training component of the implementation of the CPOE system for registered nurses.
10. Schedules, including provision of relief, which spell out how the Employer proposes to train registered nurses on the CPOE system.
11. The process the hospital followed to determine the computer competencies of registered nurses.
12. The names of individuals who are accountable for oversight of safe transition to CPOE.
13. Any and all pharmacy policies and procedures related to the implementation of CPOE

Sincerely,

Michelle Mahon, RN
Labor Representative NNOC

cc: John Borsos
Bargaining Team
Bargaining Council

CALIFORNIA NURSES ASSOCIATION
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July 21, 2014

Ms. Angie Boyle
Vice-President of Human Resources
Affinity Medical Center
875 Eighth Street, NE
Massillon, OH 44646

Re: Response to Your Email Communication of July 10, 2014

Dear Ms. Boyle:

On behalf of the approximately 250 registered nurses represented by the National Nurses Organizing Committee (NNOC) at Community Health System's Affinity Medical Center, this letter will serve as the response from NNOC related to the above-referenced email communication. Included in your email is Word document that is not dated, not addressed and not signed. Although it resembles the type of evasive and belligerent communications typically received from your outside counsel, since it was contained in your email we will assume it was meant to be attributed to you.

In your July 10th communication you purport to respond to a request from Michelle Mahon for information and demand to bargain dated June 12, 2014, and my follow-up request and reiteration of our demand to bargain dated June 23, 2014.

It remains the Union's contention--a position well-supported by NLRB precedent--that the implementation of an electronic health record system which the Employer (CHS and Affinity) has unlawfully begun is a mandatory subject of bargaining. It is worth noting that at no point do you assert, most likely because you are aware of the absurdity of such an assertion, that issues related to the implementation of an electronic health record are not mandatory subjects of bargaining. Once again, this letter will serve to reiterate the Union's demand to bargain over changes in working conditions for Affinity registered nurses represented by NNOC related to the Employer's implementation of the electronic health record, including but not limited to recent efforts to implement the Computerized Physician Order Entry (CPOE).

With regard to our June 16th bargaining session, it is the Union's position that the parties began negotiations over issues related to the previous, unlawful implementation of the Cerner electronic health record beginning in June 2013 and with numerous unlawful changes since then, and that we tried to begin negotiations related to the next phase of the Cerner implementation, namely the introduction of the CPOE.

EXHIBIT D

Indeed, the thirteen (13) proposed policy changes that you presented on June 16th, were not limited to informing us of policy changes that the Employer had made or was intending to make. In fact, you requested our response and potential counterproposals to those proposed changes, making note that time was of the essence. Your contorted attempt to revise what occurred creates a legal conundrum for you. If, as you now assert, you were merely informing us of policy changes and are not negotiating over those changes, then you are refusing to negotiate over a mandatory subject of bargaining that the Union has repeatedly demanded to bargain over.

Nevertheless, we all know what occurred: the Employer made thirteen (13) proposals related to changes in nursing policies and procedures, several directly related to the electronic health record. In response, the Union requested information and offered to meet the next day. The Employer rejected our offer. Your latest effort attempts to ignore the record and to circumvent your legal obligations to negotiate with the Union over mandatory subjects of bargaining, but it does not change that obligation, particularly in light of the Union's repeated and insistent demand to negotiate over those changes.

Below is the Union's response to your July 10 email.

With regard to the June 12, 2014 letter from Michelle Mahon to you which makes the following requests, the Union provides the following response:

(1) **Name(s) and Curriculum Vitae of people who are responsible for Health Information Technology at Affinity Medical Center**

The Union seeks this information to determine the qualifications, background, and experience of individuals who are shaping the outlines of a program that materially affects the working conditions of Affinity registered nurses. It will also enable the Union to determine who is responsible for the ongoing oversight of the electronic health record system.

(2) **Name(s) of people who are responsible for the oversight of Health Information Technology for CHS in this region, including the name(s) of the Cerner representatives, and/or other advisors or consultants participating in this project**

The Union seeks this information to determine the qualifications, background, and experience of individuals who are shaping the outlines of a program that materially affects the working conditions of Affinity registered nurses. It will also enable the Union to determine who is responsible for one aspect of the ongoing oversight of the electronic health record system. In the limited information provided by the Employer, included but not limited to the "Clinical Systems Change Management Process" that the Employer represents relates to the Cerner electronic health record system, there appears to be a critical role in the evaluation and the approval process for a representative from CHS as well as Cerner and potentially other vendors.

(3) **A copy of the contract between CHS and Cerner for services as it relates to the Electronic Health Record and its application to Affinity Medical Center.**

The Union seeks this information to understand the role that the local administration, the system and the vendor play in determining the working conditions of Affinity registered nurses. It is clear from the limited information provided that representatives from both Cerner and CHS play a significant role in the administration of Affinity's electronic health record system. For example, in the limited information provided by the Employer, a document represented by the Employer as the "CPOE Flow Sheet" entitled "Clinical Systems Change Management Process" Box B.5 "Within Vendor Scope" suggests certain changes that might affect the working conditions of registered nurses are specifically governed by the terms of the agreement between the Employer and its electronic health record vendors. We believe that contract would more clearly delineate those respective roles and enable the Union to make meaningful proposals related to this issue.

(4) **Any and all written plans or policies for making changes to the Cerner system at Affinity Medical Center, CHS Region and Cerner.**

The Union believes this information, which relates to the working conditions of registered nurses, is relevant and is necessary and vital for meaningful negotiations on this issue, particularly if decisions about the working conditions of Affinity RNs are being determined by representatives other than Affinity management.

(5) **Any timeline which details the roll-out of the CPOE and/or additional phases of the Cerner EHR system at Affinity Medical Center**

The information provided by the Employer on this issue is non-responsive--a single-page overview of a 4-hour training agenda. It's worth noting that nowhere on the document do the letters "CPOE" even appear. It is the Union's belief that documents responsive to this request exist and should be produced.

(6) **The name of the persons employed by Affinity Medical Center/CHS who is responsible for decisions related to purchasing Health Information Technology**

The information sought in this item relates to understanding how the Employer makes decisions concerning the electronic health records and their affect on the working conditions of the registered nurses, specifically which decisions are determined at a local level, and those that are determined at a system-wide level, and who plays that role in each setting.

(7) **Any and all educational material related to the Cerner CPOE system**

The information provided here also appears to be incomplete. For example, the IPOC document appears to 2.5 years old, and describes an "effective date of April 2010" well

before the effective date of the proposed Affinity implementation. The Union reiterates its request.

(8) **Date of planned implementation of CPOE system.**

The Employer provided a date of July 26, 2014. The Union reiterates its demand to bargain over changes in working conditions, including training, prior to implementation.

(9) **Any material which details the training component of the implementation of the CPOE system for registered nurses**

This information, as mentioned above in Item (5), is incomplete. For example, the Employer is refusing to provide the most basic information, including but limited to when training for staff will be conducted. The Union reiterates this request.

(10) **Schedules, including provision of relief, which spell out how the Employer proposes to train registered nurses on the CPOE system**

The Employer asserted there is no documentation responsive to this request and that Registered Nurses will be scheduled for training at times other than their regularly scheduled shifts and will be paid for such training schedules. The Employer should provide details that demonstrate how all registered nurses will receive training, and what accommodations will be made, for example, for nurses who have scheduled vacation and who may have conflicts to attend training beyond their regular schedules. The Union reiterates its request.

(11) **The process the hospital followed to determine the computer competencies of registered nurses.**

The Employer asserts that "Affinity did not need to make any independent determination of the 'computer competencies' of Registered Nurses. Registered Nurses routinely utilize computers in the performance of their daily work assignments." This is an area of concern for registered nurses and an issue the Union intends to negotiate over.

(12) **The names of individuals who are accountable for oversight of safe transition to CPOE**

The Employer asserts that "All Affinity staff share the responsibility for a safe transition to CPOE." In the absence of the Employer providing the names of those individuals, the Union is trying to determine those Affinity employees who play a leadership role in the accountability of this system, particularly if they serve on a committee where oversight of the CPOE is some functional component of such committee. The Union reiterates its request.

(13) **Any and all pharmacy policies and procedures related to the implementation of CPOE**

The Employer asserts there are none.

(14) **Date of planned pre- flight testing of the CPOE system and person responsible for overseeing this testing**

While the Employer provided a date of June 18, 2014, you refused to provide the names of those responsible for overseeing the testing. The Union reiterates its request.

(15) **The name of the person who is responsible for ensuring that documentation in the Cerner system is designed to facilitate nursing practice.**

The Employer notified the Union the person is Bill Osterman, CNO.

(16) **Any document that reflects an evaluation of the Cerner system ensuring that data and information meet the needs of RN duty to comply with the Ohio Nurse Practice Act**

The minutes of CAST committee provided by the Employer indicate that there has been extensive discussion related to the implementation of the electronic health record and current nurse practice policies and/or state law pertaining to nurse practice issues. These issues materially affect the working conditions of registered nurses and the Union reiterates its request for such material.

(17) **A copy of contracts that describe service plans, technology support or similar arrangement between Affinity Medical Center/CHS and Cerner**

The information is sought to understand and make proposals related to potential changes in the proposed electronic health record system and subsequent changes going forward, issues which are material to working conditions of registered nurses. The Union reiterates its request.

(18) **A copy of any and all documents provided by Cerner that explain or describe the features of the various Cerner products purchased by Affinity Medical Center/CHS**

The information is sought to understand and make proposals related to potential changes in the proposed electronic health record system and subsequent changes going forward, issues which are material to working conditions of registered nurses. The Union reiterates its request.

(19) **Any and all user guides, handbook, instruction manuals or similar document that provides use instructions for all Cerner products used at Affinity Medical Center**

The information provided does not appear to include instruction manuals or similar documents. The Union reiterates its request.

(20) **A copy of the down time plan for providing care during outages of the electronic health record**

The Union is reviewing the information provided, which may be followed by additional requests for information.

(21) **Any and all documents reflecting the method for auditing patient charts**

The Union is reviewing the information provided, which may be followed by additional requests for information.

(22) **A list of any and all quality measures that are being collected and evaluated using the Cerner system at Affinity Medical Center**

Your response, that the quality measures that were in place before Cerner are the same ones being used now, is incomplete and non-responsive. Please detail what those measures are, and how, if at all, the use of the Cerner electronic health record changes that.

(23) **A list of benchmarks of nursing care which are being evaluated through the use of the Cerner system. Please include the detail level of the information being collected (i.e. System level, Unit level, provider level)**

The Union is trying to understand the measurements the Employer is using, if any, to determine whether the use of the Cerner electronic health record system has improved or reduced the quality of patient care delivered at Affinity Medical Center.

(24) **A description of which method is being used to evaluate the safety of the Cerner system at Affinity Medical Center, should any exist**

The Employer asserts that Affinity evaluates the safety of the Cerner EHR through its "Event Reporting System." Please provide materials and further documentation that detail the Event Reporting System, including an overview of the system, the individuals involved in supervising or administering it, and any reports or material that the Employer has produced since January 1, 2013, through the Event Reporting System related to the electronic health record.

(25) **Any document that describes the facility plan for abiding by the SAFER guidelines for electronic health records issued by the Office of the National Coordinator of Health IT**

The Employer responded there is no documentation responsive to this request.

With regard your response to my letter of June 23, 2014 to Don Carmody, the Union offers the following response.

(1) **A copy of the contract between CHS and Cerner related to the Electronic Health Record system at Affinity**

We agree the request is essentially the same as that set forth in Item (3) of Michelle Mahon's June 12th request. But because the Employer has refused to provide it, we reiterate our request.

(2) **The alternatives to Cerner considered, and the rationale why Cerner was selected**

The Union believes the information sought in this item is presumptively relevant to negotiation over the effects of the implementation of the Cerner system and may permit the Union to make proposals that would enable improvements in the working conditions of registered nurses, particularly related to features of electronic health records offered by other vendors that may be more responsive to the needs of nurses and patients and do not compromise the professional judgment of registered nurses.

(3) **The amount of money paid to Cerner to date for services related to the Electronic Health Record at Affinity**

The Union believes the information sought in this item is presumptively relevant to negotiation over the effects of the implementation of the Cerner system and may permit the Union to make proposals that would enable improvements in the working conditions of registered nurses, particularly related to features of electronic health records offered by other vendors that may be more responsive to the needs of nurses and patients and do not compromise the professional judgment of registered nurses.

(4) **The names of the Cerner representatives who provide technical support for the EHR at Affinity.**

The Union believes the information sought in this item is presumptively relevant to negotiation over the effects of the implementation of the Cerner system and may permit the Union to make proposals that would enable improvements in the working conditions of registered nurses, particularly suggesting changes to features of the electronic health records systems that may be more responsive to the needs of nurses and patients and do not compromise the professional judgment of registered nurses.

(5) **Copies of the timelines that set forth the implementation of the Cerner EHR for Phase 1 (approximately June 2013) and Phase 2 (approximately August 2014)**

The information "provided" by the Employer on this issue is non-responsive. It does not address the Phase 1 implementation at all and its connection to the CPOE phase implementation, as addressed in our response to the June 12th request, Item (5) is also inadequate. The Union reiterates its request.

(6) **The role of Kimberly Naggie, the CHS Regional Clinical Informaticist as it relates to the EHR at Affinity**

Considering that a representative of CHS participates in Affinity's CAST committee and the overall role that CHS representatives play in determining components of the Affinity electronic health record that affects Affinity registered nurses,, the role that Ms. Naggie plays in determining working conditions for Affinity registered nurses is relevant. We reiterate our request.

(7) **The role of Stephanie Martin of CHS in Franklin, Tennessee, as it relates to the EHR at Affinity**

Considering that a representative of CHS participates in Affinity's CAST committee, the role that Ms. Martin plays in determining working conditions for Affinity registered nurses is relevant. We reiterate our request.

(8) **The names of the individuals who are part of the CAST Team meeting as described by Beth Vamer at our negotiations on June 16, 2014, responsible for providing oversight of the EHR program at Affinity**

The information provided does not set forth the full names of the Cast Team members.

(9) **Minutes of CAST Team meetings from their inception to the present**

The minutes of the August 12, 2013 CAST team meeting were not provided. The Union requests those minutes.

(10) **The names of other committees and representatives who are responsible for oversight of the Electronic Health Record at Affinity, including those that may exist at the CHS system level. This also includes the weekly meetings described by Beth Vamer at our negotiations on June 16, 2014 among management representatives of CareNet, PharmNet and PathNet**

The Union reiterates its request.

(11) **Minutes of committee meetings described in Number 9 above that relate to the implementation of ongoing oversight of the EHR at Affinity Medical Center**

See response to Item (9) above. In addition, the minutes of the CAST team suggest that the there were numerous documents shared with CAST team members as part of those meetings. The Union hereby requests those materials, in particular documents related to the standing agenda item 4.0 "Change List Summary" and item 7.0 "Protocols and Procedures."

(12) **The names of the hospitals and their representatives that are part of Hub 1 as described by Beth Varner at our negotiations on June 16, 2014, with Affinity**

The Union believes the information sought in this item is presumptively relevant to negotiation over the effects of the implementation of the Cerner system, since those hospitals and their representatives appear to play a role in determining the working conditions of Affinity registered nurses.

(13) **The names of the hospitals and their representatives who participate on the CHS system-wide calls related to the Cerner implementation, as described by Beth Varner at our negotiations on June 16, 2014**

The Union believes the information sought in this item is presumptively relevant to negotiation over the effects of the implementation of the Cerner system, since those hospitals and their representatives appear to play a role in determining the working conditions of Affinity registered nurses.

(14) **A copy of response sent to CMS related to Stage 1 Meaningful Use Attestation for both Medicare and Medicaid.**

The Employer provided this information.

(15) **The names of "Super User" registered nurses as determined by Affinity**

The information requested was not limited to the CPOE rollout and the Employer's response that there are no SuperUsers related to the CPOE is contradicted by the Employer's response to Item (32) below, which it represents as a CPOE "Flow Chart" entitled "Clinical Systems Change Management Process" which references "Hospital SuperUsers" [Box A.2]. In bargaining on June 16th, the Employer represented that Super Users had been selected by the Employer and used during the first phase of the Cerner electronic health record implementation. The Union reiterates its request. The limited information that you provided appears to be restricted to the more recent effort regarding implementation of the CPOE and it too appears to be incomplete. With regard to soliciting "volunteers" related to CPOE, the Union reiterates its demand to bargain over this issue.

(16) **The method by which the "Super Users" were selected.**

The Employer responded that "they volunteered." Was there additional criteria used to determine the suitability of a "volunteer"? For example, were there any volunteers who were rejected by the Employer? In addition, please provide information related to how the volunteers were solicited (e.g, in staff meetings, approached by individual managers, etc.).

(17) **The additional training provided to "Super Users"**

Your response contradicts the information provided by Ms. Varner at our bargaining on June 16th. She stated that in the first phase of the Cerner implementation, Super Users were selected and trained. We reiterate our request, and specifically request the training material used with the Super Users.

(18) **Minutes of the bi-weekly meetings of the "Super Users" from their inception to the present**

Your response that no minutes were kept, contradicts the information provided on June 16th where the Employer suggested that minutes were kept. The Union reiterates its request.

(19) **The training curriculum that was designed for nurses prior to the implementation of the EHR in June 2013**

The Union reiterates its request.

(20) **The training that each individual nurse received prior to the implementation of the EHR in June 2013**

The Employer responded: "Training consisted of up to 16 hours of Cerner training for which nurses were paid. The training received by RNs is described in information otherwise provided in your June 23 request." The information does not appear to be provided. The Union reiterates its requests, including but not limited to, the sign-in sheets for each registered nurse for training sessions, which would detail exactly which training each registered nurse received.

(21) **The nursing departments that decided the training needs were either greater than or less than the two days' training recommended by Cerner, and the justification for the difference**

The Employer's response —"Nursing departments received training based upon clinical needs of the department."—is non-responsive. Which specific departments received additional training, and what did that training consist of? What was specifically required

in terms of additional training for that particular unit beyond the 16 hours purportedly offered to all registered nurses?

(22) **The times, dates and offerings that the additional "skills labs" were offered to registered nurses related to the implementation of the first phase of Cerner at Affinity in the summer of 2013**

Are we to understand your response to mean that the additional "skills lab" offered to registered nurses consisted of a single skills lab on August 6, 2013?

(23) **The method which the Employer used to determine the computer literacy of each individual nurse prior to and/or following the implementation of the EHR in June 2013**

We agree that this request is the same as Item (11) in Michelle Mahon's June 12th letter. Our response is noted above.

(24) **Documentation of the additional training provided to nurses who may float beyond their regularly-assigned unit**

The Employer responded that no such documentation exists, which raises substantial concerns for the Union and will be a subject for negotiations.

(25) **The scheduling changes the Employer provided to allow for the training of registered nurses on the Cerner, and the ongoing requirements of additional staff time allocated for documentation as a result of the EHR.**

We understand the Employer's response to mean that the Employer contends it has made no changes to the staffing for registered nurses to accommodate for the increased time the use of the electronic health record takes registered nurses away from delivering direct patient care. This raises substantial concerns for the Union and will be a subject for negotiations.

(26) **The number of "tickets that have been opened" to document an error or problem with the Cerner system and a log of those tickets**

The minutes of the CAST meetings suggest such reviews of tickets that were opened were reviewed by the committee. The fact that the Employer can quantify how many tickets have been opened suggests there is a tracking method that can be provided. The Union reiterates its request.

(27) **The method by which the Employer evaluates the adverse events that have been captured by the opening of a ticket and/or other reporting method.**

The Employer responds that "Affinity evaluates such adverse effects through its 'Event Reporting System'. The Union hereby requests the reports and/or other documentation as part of the "Event Reporting System" that would capture the adverse events related to the implementation of the electronic health record system, as well as its continued operation to date.

(28) **Additional documentation which captures concerns of EHR users that were captured via a method other than the opening of a ticket**

The Employer's response that "No such documentation exists," thereby reinforces the materiality and relevancy of the Item (26) above related to the opening of tickets.

(29) **A copy of the Enhancement Requests that have been submitted to Cerner/CHS**

The Union is in receipt of this information and upon review may request additional information.

(30) **A list of the Enhancement Requests that been denied by Cerner/CHS and the reason for the denial**

The Union is in receipt of this information and upon review may request additional information.

(31) **A list of the Enhancement requests that been accepted and the date by which the enhancement request has been implemented**

The Union is in receipt of this information and upon review may request additional information.

(32) **The structure of review of Enhancement Requests at the facility, HUB, and system level as well as the review process between CHS and Cerner**

In response to this request, the Employer provided a document described as a "CPOE Flow Chart" and entitled "Clinical Systems Change Management Process." The documents warrants further explanation, which the Union is hereby requesting, including but not limited to:

a. Who comprises the "On-Site Support Optimization Team" [Box A.2]? How often does it meet? We further requests any minutes or other documents used in the team meetings.
b. The names, job titles and function of the "IS staff" identified in Box A.3.
c. The names and job titles of the Clinical Liason identified in Box A.4.
d. What is meant by "Change Request A.C." Box A.5.
e. An explanation of "RCI" in Box A.6. If RCI is a group of people, the names, job titles and function of those individuals make RCI up.
f. What is meant by "Corporate Request Business Partner Review" Box B.1?

g. The names, job titles, and functions of the "Design and Change Review Board" Box B.2.
h. An explanation regarding Box 8.0 regarding "Change Control from AIVS or Corporate Business Partner Via MyIS." What is AIVS? Who are the Corporate Business Partners? What is MyIS?
i. Who conducts the "Corporate Request Business Partner Review" referenced in Box B. 1? What is the criteria for undertaking such a review?
j. The names, job titles and functions of "Steering Committee" referenced in Box B.9.

(33) **Any changes in employee policies related to performance as a result of the implementation of the Cerner**

This response appears to contradict the limited information provided by the Employer, including but not limited to the minutes of the CAST team whereby Chief Nurse Officer Bill Osterman reports regularly on changes to nursing protocols and procedures. The Union hereby reiterates its request.

(34) **The names of any RNs who have been counseled, placed on a performance improvement plan or discipline or who have retired because of alleged performance issues related to usage of the Cerner**

Please provide any documentation related to the counseling, performance improvement plan or discipline of Jan Volk related to the alleged performance issues associated with the usage of Cerner.

(35) **Copies of the training modules and training schedules proposed by the Employer related to the second phase of the Cerner system implementation, specifically the CPOE**

The information "provided" by the Employer appears to be incomplete. The agenda, purporting to represent a 4-hour training session, makes no mention of CPOE. It does not include training modules, nor does it include the training schedules. We reiterate our request.

(36) **Any documentation that provides details of the changes to the Cerner EHR system as a result of the proposed second phase, specifically the CPOE**

The Employer's representation that "no such documentation exists," is absurd. The Employer is in the midst of comprehensive enhancement to its electronic health record system, with numerous committees and processes in place to oversee that enhancement making it hard to believe that "no such documentation exists." The Union reiterates its request.

It should be noted that after further evaluating this information and as more information is provided, the Union may supplement this request for information with additional requests for information. Furthermore, our ability to respond to and make meaningful proposals is subject to have necessary and relevant information provided in a timely way.

We expect the Employer to be prepared to discuss this information request and related issues when we meet for negotiations on Tuesday, July 22.

In the meantime, we reiterate our demand that no changes be made to the electronic health record, including the implementation of the CPOE until the Union has negotiated over those issues.

Sincerely,

John Borsos

Cc: Michelle Mahon
NNOC Bargaining Team
Facility Bargaining Council
Don Carmody
Jan Ellis

6/25/13

Mr. Don Carmody

Chief Negotiator

Barstow Community Hospital (CHS)

Dear Mr. Carmody

By this letter, CNA/NNOC confirms that we are scheduled to meet for collective bargaining on July 10, 2013. CNA/NNOC also demands bargaining on July 12, 2013. We further demand that within two weeks, you provide us with additional dates on which you are available for bargaining.

We demand a list of all unilateral changes to terms and conditions of work of bargaining unit members, including the date the change was implemented, a description of the change, and all documents related to the change.

Further, we demand that you cease and desist from making any further unilateral changes to wages, benefits or working conditions and/or changes to policies affecting Registered Nurses at Barstow Community Hospital. We demand a copy of all HR policies, nursing policies, Employee Handbook currently in effect and the date of each policies approval or last modification and signature(s) of who approved such change.

Further, we demand that you rescind the change to RNs regarding certifications including but not limited to "Heart code" and then bargain with the union regarding all terms and conditions of employment, including certification issues.

Sincerely

Steve Matthews
Chief Negotiator

C.N.A./NNOC

EXHIBIT E

Info Requests Barstow / Fallbrook - RN List Update

James Moy

Sent: Friday, August 16, 2013 7:55 AM

To: Laura_Elliott@chs.net; Smorzewski, Greg [Greg_Smorzewski@chs.net]; Ellis, Jan [Jan_Ellis@chs.net]

Cc: Stephen Matthews; Steve Matthews [sam52754@gmail.com]; Nicole Daro

---

Greg and Laura,

This is my usual monthly information request for an updated list of RNs. Please note that I have also requested date of original RN licensure as a data column. Thanks.

James Moy

August 16, 2013
Laura Elliott, Human Resources Director
Barstow Hospital
Barstow Community Hospital
820 E. Mountain View Street
Barstow, CA 92311

Sent Via Fax: 760 957 3299
Sent Via Email: Laura_Elliott@chs.net

Subject: Updated RN Bargaining Unit List

Dear Laura:

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

1) A list of all RNs who are eligible members of the CNA/NNOC Barstow Community Hospital RN Bargaining Unit as of the date of this correspondence. We request the list include Department, Shift, Status (FT, PT benefitted, PT non-benefitted, PRN, etc.), hire date, date of original RN licensure, and contact information (email, telephone, and mailing).

This is a routine request CNA/NNOC intends to periodically submit to keep our records current. Please provide the above-requested information within two (2) weeks of the date of this letter. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or jmoy@calnurses.org.

Sincerely,

EXHIBIT F

James Moy
California Nurses Association / National Nurses Organizing

Committee Labor Representative

CC: Stephen Matthews, CNA/NNOC Negotiator
Barstow Community Hospital RN Facility Bargaining Council
Jan Ellis, CHS HR

August 16, 2013
Greg Smorzewski, VP Human Resources
Fallbrook Hospital
524 East Elder Street
Fallbrook, CA 92028

Sent Via Email: Greg_Smorzewski@chs.net

Subject: RN List Update

Dear Greg:

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

An updated list of all current bargaining unit RNs including department, date of original RN date of original RN licensure, shift, status (FT, PT, PD, benefitted/nonbenfitted) unit, hire date, contact info (phone, email, address), and hourly wage rate.
If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at
818 433 2119 or
jmoy@calnurses.org.

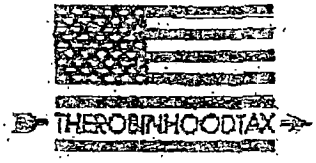
Sincerely,
James Moy
California Nurses Association / National Nurses Organizing

Committee Labor Representative

CC: Stephen Matthews, CNA/NNOC Negotiator
Fallbrook Hospital RN Facility Bargaining Council
Jan Ellis, CHS HR

California Nurses Association / National Nurses United
Organizer
225 W. Broadway, Suite 500
Glendale, CA 91204

818.637.7121 – Office
818.433.2119 – Cell
818.240.8336 - Fax



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Info Request re: Patient Care Plan and Staffing Logs

James Moy 451 541 361

Sent: Monday, October 28, 2013 7:06 PM

To: Smorzewski, Greg [Greg_Smorzewski@chs.net]; Laura_Elliott@chs.net

Cc: Ellis, Jan [Jan_Ellis@chs.net]; Stephen Matthews; Steve Matthews [sam52754@gmail.com]

Attachments: BCH Info Request Re Care ~1.docx (18 KB); FH Info Request Re Care P~1.docx (18 KB)

Laura and Gregg –

Attached please find an information request with the usual verbiage re: Patient Care Plan and Staffing Logs. If you have any questions I can be reached as usual at the below phone and email. Thanks.

James Moy

California Nurses Association / National Nurses United
Organizer
225 W. Broadway, Suite 500
Glendale, CA 91204
818.637.7121 – Office
818.433.2119 – Cell
818.240.8336 - Fax

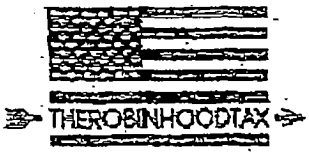

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EXHIBIT G

October 29th, 2013

Laura Elliott, Human Resources Director
Barstow Community Hospital
820 E. Mountain View Street
Barstow, CA 92311

Sent Via Email: Laura_Elliott@chs.net

Subject: Patient Classification System, Staffing Plan, and Staffing Logs

Dear Laura:

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

1. The patient classification system for determining nursing care needs of individual patients.
2. The written staffing plan based on patient care needs determined by the patient classification system.
3. The actual staff and staff mix provided, documented on a day-to-day, shift-by-shift basis for each unit during the months of August and September 2013.
4. The record of the actual registered nurse and other licensed nurses assignments by licensure category for each unit during the months of September 2013.

Please provide the above-requested information within two (2) weeks of the date of this letter. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline,

please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433-2119 or jmoy@calnurses.org.

Sincerely,

James Moy

California Nurses Association / National Nurses Organizing Committee
Labor Representative

CC: Stephen Matthews, CNA/NNOC Negotiator
Barstow Community Hospital RN Facility Bargaining Council
Jan Ellis, CHS HR

From: James Moy
Sent: Monday, December 02, 2013 8:25 AM
To: 'Laura_Elliott@chs.net'
Cc: 'Sean_Fowler@chs.net'; 'Ellis, Jan'; Stephen Matthews; Nicole Daro; Kathy Carder
Subject: Information Request and Due Diligence

December 2, 2013

Laura Elliott, Human Resources Director

Barstow Community Hospital
820 E. Mountain View Street
Barstow, CA 92311

Sent Via Email: Laura_Elliott@chs.net

Subject: Strike Staffing Plan

Dear Laura:

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information:

1. The written staffing plan for the hours of December 3, 2013, 7 AM through December 4, 2013 6:59 AM

EXHIBIT H

Due to the time constraints of this matter, I request a response before close of business on Monday, December 2, 2013. If I do not receive a response within that time frame, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or jmoy@calnurses.org.

We remind you that BCH is required by law to staff in accordance with the California Nursing Practice Act, Title 22, and that of course we will take any and all action necessary to ensure that our patients are cared for in accordance with the Act.

I have attached the offer we have previously submitted indicating that should a critically emergent situation arise at Barstow Community Hospital beginning at 6:00AM on December 3rd and running to 8:00PM on December 3rd, during the course of the one-day strike conducted by CNA at BCH, we have a Patient Protection Task Force in place.

Sincerely,

James Moy

California Nurses Association / National Nurses Organizing Committee Labor Representative

CC: Stephen Matthews, CNA/NNOC Negotiator

Barstow Community Hospital RN Facility Bargaining Council

Sean Fowler, Barstow Community Hospital CEO

Jan Ellis, CHS HR

James Moy

California Nurses Association / National Nurses United

Organizer

225 W. Broadway, Suite 500

Glendale, CA 91204

818.637.7121 – Office

818.433.2119 – Cell

818.240.8336 - Fax

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Information Request re: Lockout

James Moy

Sent: Thursday, December 12, 2013 2:06 PM

To: Laura_Elliott@chs.net

Cc: Stephen Matthews; Steve Matthews [sem52754@gmail.com]; Nicole Daro; Jane Lawhon

Attachments: -CNA Info Request BCH Lock~1.pdf (215 KB)

Dear Ms. Elliot,

Please see the attached information request, also sent by fax and certified mail. Thank you.

James Moy

California Nurses Association / National Nurses United
Organizer
225 W. Broadway, Suite 500
Glendale, CA 91204
818.637.7121 – Office
818.433.2119 – Cell
818.240.8336 - Fax

I have endorsed and support The Robin Hood Tax on Wall Street. Please support this campaign:
Get more info at the Campaign web site: www.robinhoodtax.org
Join the RHT Twitter campaign at: @RobinHoodTax
Like the Robin Hood Tax on Wall Street Facebook page at: goo.gl/rHKDxz
Endorse and Volunteer for the Robin Hood Tax on Wall street at: goo.gl/aJBzmB

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EXHIBIT I

CALIFORNIA NURSES ASSOCIATION
National Nurses United
A Voice for Nurses. A Vision for Healthcare.

OAKLAND
2000 Franklin Street
Oakland CA 94612
phone 510-273-2200
fax 510-663-2771

LOS ANGELES
225 West Broadway
Suite 500
Glendale CA 91204
phone 818-240-1900
fax 818-240-8336

VIA FACSIMILE (760 957 3048), Sent Via Email: (Laura_Elliott@chs.net) and Certified Mail

December 11, 2013

Laura Elliott, Human Resources Director
Barstow Community Hospital
820 E. Mountain View Street
Barstow, CA 92311

RE: Information Request – Agency Contract

Dear Ms. Elliott:

This is in response to Barstow Community Hospital/ CHS' letter of December 4, 2013, advising nurses that because they, "failed to report to work" during the California Nurses Association's lawfully noticed one-day strike, which commenced at 6:00 AM on Tuesday, December 3, 2013 and concluded at 6:59 AM December 4, it has "taken the requisite measure to engage a qualified worker to temporarily replace you."

CNA notified the Employer that all RNs would be on strike via the 10-day notice to the acute care facility. Nurses had no obligation to advise Barstow Community Hospital/CHS of their intention to honor the strike, nor were they obligated to report to work during the strike period. Yet the communication issued to Nurses following the conclusion of the strike advised that a lockout was being imposed because, "you failed to report to work to perform your scheduled, assigned duties due to participation in strike related activities. "

In your letter you claim that the contract with the agency requires Barstow Community Hospital/CHS to lock nurses out, inasmuch as we must fulfill certain obligations we have to the engagement of the nurse who has replaced you temporarily, you will be expected to report to work on Friday, December 6, 2013 to resume performance of your scheduled, assigned duties." The date of return to work varies by letter. Ostensibly in reliance on this lockout period, you appear to have suspended various existing terms and conditions of RN employment, including those covering Staffing and Call Off procedures (without having obtained our prior consent or agreement, of course.)

In order to evaluate the Employer's claim that its "obligations" to temporary replacements required it to lock out RNs and unilaterally suspend important contractual guarantees, I am requesting that you provide the following information immediately:

1. A true, correct and complete copy of any contract or other agreement with the temporary replacements or staffing agencies referred to in paragraph 2 of your December 4, 2013 letter.

2. Any and all documents relating in any way to the negotiation of the agreement described in Item 1, above, including but not limited to correspondence, notes, emails, drafts, proposals, counterproposals, memoranda and any other writing between employees, agents and/or representatives of Barstow Community Hospital, Community Health System, and the temporary staffing agency with whom the agreement was made.

3. True and correct copies of any and all advertising by Barstow Community Hospital and/or Community Health System, and/or any person or entity with whom it has contracted for purposes of soliciting temporary replacement workers to cover for the strike noticed to take place on December 3, 2013 and/or the lockout which commenced on December 4, 2013.

4. Any and all documents relating to the advertising described immediately above in Item 3, including but not limited to correspondence, emails, notes, invoices and any other writing relating to the procurement or placement of said advertising.

5. Copies of any and all contracts Barstow Community Hospital and/or Community Health System has entered into at any time within the past three years with any temporary employment agency or nurse registry for the provision of Registered Nursing services at its hospital in Barstow.

6. In your letter, you claim that the temporary replacement workers are "qualified" to perform bargaining unit work. As you know, the only Registered Nurses who may provide nursing services in this state are those possessing a valid California RN license. The Union has a right to verify your representations to determine whether the Employer has improperly engaged unqualified staff to perform bargaining unit work. Therefore, for each Registered Nurse scheduled to serve as a temporary replacement for locked out/striking workers at any time during the period of December 3, 2013 through December 10, 2013, provide the following information, as it becomes available:

(a) Name;
(b) State of residence;
(c) State(s) which have issued Registered Nursing license to said Registered Nurse;
(d) A list of all nursing related certifications;
(e) Any and all documents reflecting past service by the individual as a temporary strike replacement worker at any location; and
(f) A true and correct copy of the individual's application for temporary employment during the lockout/work stoppage scheduled for December 3, 2013 through December 10, 2013, whether or not that application was directly with Barstow Community Hospital, or an agent, representative, agency or entity acting on behalf of the employer.

7. Any and all documents reflecting an investigation and/or inquiry by Community Health System/Barstow Community Hospital of any and all temporary staffing agencies with whom it has consulted for purposes of procuring strike replacements at any time during October/November/December 2013, concerning such agencies' record of placing any employee for employment with any employer in any strike and/or lockout at any location at any time in the past, including but not limited to the number of times the entity has offered to place persons in temporary employment in strike and/or lockout situations.

8. With respect to the December 4 letter, please provide the following:

(a) The name(s) of the author(s)

(b) The date(s) the Hospital met to develop it

(c) The names of participants in those development meetings

9. To better understand the working conditions inside the Hospital during the strike and lockout, the Union requests the following:

(a) The names of bargaining unit Nurses scheduled to work December 3, 2013, separately by each patient unit or hospital department.

(b) The patient census for December 3, 2013, separately by each patient unit or hospital department.

(c) The number of replacement RNs who worked at the hospital on December 3, 2013, separately by patient unit or hospital department.

(d) The names of bargaining unit Nurses schedule to work December 4, 5, 6, and 7 2013, separately by each patient unit or hospital department.

(e) The patient census for December 4, 5, 6 and 7 2013, separately by each patient unit or hospital department.

(f) The number of replacement RNs who worked at the hospital on December 4, 5, 6 and/or 7 2013, separately by each patient unit or hospital department.

Given the current Lockout status, I would very much appreciate you arranging to provide the above-requested information by Friday, December 13, 2013. If, for any reason, all of the information cannot be produced by then, please produce all information that is readily available and advice when the remaining information will be produced and the reason(s) for the delay.

Respectfully,

Stephen Matthews, CNA/NNU

Labor Representative

CC: Fernando Losada, Northern CA Collective Bargaining Director

Damian Tryon, CNA/NNU Labor Representative

Barstow Community Hospital RN Facility Bargaining Council

From:	James Moy
To:	"Ellis, Jan"; "doncarmody@bellsouth.net"
Cc:	John Borsos
Subject:	Demand to Bargain and Information Request Re Support Staffing, Meal/Break Coverage, Rounding, Callback Pay
Date:	Monday, June 16, 2014 2:28:00 PM

Jan,

Please accept this letter as the Union's demand to bargain over the following changes to past practice:

1 - Reduction in Intensive Care Unit Telemetry Tech support personnel
2 – Reduction in Medical Surgical Support Personnel
3 - Reduction of Meal/Break MS RN coverage
4 – Introduction of patient rounding by non-clinical personnel
5 – New practice of denying RNs Callback Pay if an RN is called back to work within two hours of being placed on call

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

1 – Policy, including staffing matrix or other tool used to determine ICU Tele Tech and MS clinical support personnel staffing levels, and MS Break relief.
2 – Actual staffing logs, including patient census and acuity, since August 2013 for ICU Tele Tech, MS clinical support personnel, and MS RN staffing.
3 – Any communication to employees of among management regarding the above matters.
4 - Policy concerning patient rounding by non-clinical personnel including but not limited to:
- Manuals, presentations, RN internal management educational materials regarding the Community Cares Program
- Any and all Leader Weekly Wrap Up Reports
- Any and all "Because I CARE" Leader Rounding Reports
- Any other communication to RNs or among management regarding the above mentioned matters.

5 - Records of any RN disciplines or counseling resulting from rounding by non-clinical personnel
6 – Policy Regarding Callback Pay.
7 – Records of all RNs denied callback pay due to the implementation of the new Call Back Policy, including the number of hours and total pay denied.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing

Exhibit J

the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or jmoy@calnurses.org.

Sincerely,

James Moy

California Nurses Association / National Nurses United
Organizer
225 W. Broadway, Suite 500
Glendale, CA 91204
818.637.7121 – Office
818.433.2119 – Cell
818.240.8336 - Fax

I have endorsed and support The Robin Hood Tax on Wall Street. Please support this campaign:
Get more info at the Campaign web site: www.robinhoodtax.org
Join the RHT Twitter campaign at: @RobinHoodTax
Like the Robin Hood Tax on Wall Street Facebook page at: goo.gl/rHKDxz
Endorse and Volunteer for the Robin Hood Tax on Wall street at: goo.gl/aJBzmB

The time has come for a tax on Wall Street – Help Spread the Word!

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message. If you are not the intended recipient, any disclosure, copying, or distribution of this message, or the taking of any action based on it, is strictly prohibited.

5b

From: James Moy
To: "Ellis, Jan"
Cc: John Borsos; "Camo, Daniel"; "Donna_Smith2@chs.net"; Michelle Mahon; Mike Ziemer (mjloe@san.rr.com); Mary Moon (memoon231@yahoo.com); Amal Museitef (amalmuse12@gmail.com)
Subject: Demand to Bargain/Information Request Re: CPOE
Date: Thursday, July 24, 2014 6:25:00 PM

Jan,

Please accept this letter as the Union's demand to bargain over the following changes to past practice at both Barstow Community Hospital and Fallbrook Hospital:

1 – Implementation of Computer Physician Order Entry system.

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

CPOE System and Decision Making Process

1. The brand, version and other specifications of the Computer Physician Order Entry (CPOE) system implemented at Barstow Community Hospital and Fallbrook Hospital.
2. The alternatives to CPOE, or to other CPOE brands/systems/venders considered, and the rationale why CPOE, and this CPOE system, was selected.
3. A copy of the contract between CHS and CPOE vender for services and its application to Barstow Community Hospital and Fallbrook Hospital.
4. The amount of money paid to the CPOE vender to date, and projected future payments.
5. A copy of any and all documents provided by the CPOE that explain or describe the features of the various CPOE products purchased by Barstow Community Hospital and Fallbrook Hospital/CHS.
6. Any and all user guides, handbook, instruction manuals or similar document that provides use instructions for all CPOE products used at Barstow Community Hospital and Fallbrook Hospital.
7. Name(s) and Curriculum Vitae of people who are responsible for Health Information Technology at Barstow Community Hospital and Fallbrook Hospital.
8. The numerical designation of the Hub Barstow Community Hospital and Fallbrook Hospital belong to and the names of the hospitals and their representatives that included in that Hub.
9. Name(s) of people who are responsible for the oversight of Health Information Technology for CHS in this region or Hub, including the name(s) of the CPOE vender representatives, and/or other advisors or consultants participating in this project, including ongoing technical support.
10. The names of the hospitals and their representatives who participate in CHS system-wide calls related to the CPOE implementation.
11. Any and all written plans or policies for making changes to the CPOE system at Barstow Community Hospital and Fallbrook Hospital, or the CHS Region/Hub Barstow Community Hospital and Fallbrook Hospital/CHS belong to.

Exhibit K

12. Any document that reflects an evaluation of the CPOE system ensuring that data and information meet the needs of RN duty to comply with the CA Nurse Practice Act.
13. The name of the person who is responsible for ensuring that documentation in the CPOE system is designed to facilitate nursing practice.
14. A copy of response sent to CMS related to Stage 1 Meaningful Use Attestation for both Medicare and Medicaid.

Implementation and Training

15. Date of planned implementation of CPOE system at each Hospital
16. The names of individuals who are accountable for oversight of safe transition to CPOE.
17. Any timeline which details the roll-out of the CPOE and/or additional phases of the CPOE system at Barstow Community Hospital and Fallbrook Hospital.
18. Any and all educational material related to the CPOE system or details the training component of the implementation of the CPOE system for registered nurses.
19. The schedule the Employer provided, including provision of relief, for the training of registered nurses on the CPOE, and the ongoing requirements of additional staff time allocated for documentation as a result of the change to CPOE.
20. The process each hospital followed to determine the computer competencies of registered nurses, both for the CPOE implementation and the previous transition to the currently operating other EHR systems in each hospital.
21. The training that each individual RN was provided, including the times, dates, additional "skills labs" offered, during the most recent changes to EHR systems other than CPOE in each hospital.
22. The assessment criteria, and individual assessments of each RN's training in both the CPOE implementation and the transition to the currently operating other EHR systems in each hospital.
23. Past or planned additional training for individual RNs based on those assessments.
24. Date of planned pre- flight testing of the CPOE system and person responsible for overseeing this testing.
25. Any changes in employee policies related to performance as a result of the implementation of the CPOE system.
26. Documentation of the additional training provided to nurses who may float beyond their regularly-assigned unit.
27. A list of the nursing departments that decided the training needs were either greater than or less than the training recommended by the CPOE vender, and the justification for the difference.
28. The names of "Super User" registered nurses as determined by Barstow Community Hospital and Fallbrook Hospital.
29. The method by which the "Super Users" were selected.
30. The additional training provided to "Super Users," including the assessment criteria, individual assessments of each RN "Super User" and past or planned additional training based on those assessments.
31. Minutes of any meetings of the "Super Users" from their inception to the present.
32. The names of any RN who have been counseled, placed on a performance improvement plan or discipline or who have retired because of alleged performance issues related to usage of the CPOE system.

Evaluation and Troubleshooting

33. A copy of contracts that describe service plans, technology support or similar arrangement between Barstow Community Hospital and Fallbrook Hospital/CHS and the CPOE vender.
34. A copy of the down time plan for providing care during outages of CPOE.
35. A list of any and all quality measures that are being collected and evaluated using the CPOE system at Barstow Community Hospital and Fallbrook Hospital.
36. A list of benchmarks of nursing care which are being evaluated through the use of the CPOE system. Please include the detail level of the information being collected (i.e. System level, Unit level, provider level).
37. A description of which method is being used to evaluate the safety of the CPOE system at Barstow Community Hospital and Fallbrook Hospital, should any exist.
38. Any document that describes the facility plan for abiding by the SAFER guidelines for electronic health records issued by the Office of the National Coordinator of Health IT.
39. The method RNs use to report and documenting an error or problem with the CPOE system and a log of those submissions.
40. The mechanism for reporting back to RNs on the progress of a reported problem.
41. The method by which the Employer evaluates the adverse events that have been captured by the reporting method.
42. A copy of the Enhancement Requests that have been submitted to CPOE/CHS
43. A list of the Enhancement Requests that been denied by CPOE/CHS and the reason for the denial
44. A list of the Enhancement requests that been accepted and the date by which the enhancement request has been implemented
45. The structure of review of Enhancement Requests at the facility, HUB, and system level as well as the review process between CHS and the CPOE vender.

Interactions with other EHM Systems

46. The Employer's evaluation of the compatibility of the CPOE system with each of the other currently active EHR systems in the hospitals.
47. Any documentation that provides details of the changes to the existing EHR system as a result of the change to CPOE.
48. The Employer's evaluation of the compatibility of the CPOE system with Cerner EHR, when that system is implemented in the hospitals.
49. The timeline for the implementation of Cerner in the hospitals.
50. Copies of the training modules and training schedules proposed by the Employer related to the Cerner system implementation and Cerner's interaction with the CPOE system.
51. Any and all pharmacy policies and procedures related to the implementation of CPOE.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or jmoy@calnurses.org.

6

U-7 M
1/8/15

8/2/14

Mr. Camp:

Please accept this letter as the Union's demand to bargain over the elimination of the weekday Day Shift House Supervisors at Barstow Community Hospital.

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

1 – Records of personnel assigned to meal and break coverage, including the unit to which they were assigned, for day shift weekdays from April 1, 2014 through Aug 1, 2014.

2 – RN license information for personnel assigned to meal and break coverage on day shift weekdays from April 1, 2014 through Aug 1, 2014.

3 – Records of unit-specific competencies of personnel assigned to meal and break coverage on day shift weekdays from April 1, 2014 through Aug 1, 2014.

This list is not exhaustive and may be supplemented.

Sincerely,

James Moy

Organizer, California Nurses Association

Cc: Jan Ellis, CHS HR

John Borsos, CNA/NNU

Exhibit L

U-7 M 1/8/15

From: James Moy
To: Donna_Smith2@chs.net; Jan Ellis (Jan_ellis@chs.net); Jeana Christensen (Jeana_Christensen@CHS.net)
Cc: Vanessa Sylvester
Subject: BCH Vacation and Sick Time Demand to Bargain / Info Request
Date: Wednesday, November 26, 2014 11:44:27 AM

Jan, Jeana, and Donna,

Please accept this letter as the Union's demand to bargain over the following changes to past practice at BCH:

1 - Changes to sick and vacation time usage policies

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

1 - BCH's current policies regarding sick and vacation time, including but not limited to timelines for submission of requests, order in which requests are to be granted, doctor's note requirements, and supervisor's
2 - Records of vacation requests for vacation days from September 2014 - Feb 2015, including but not limited to the requests themselves, communication between RNs and Management regarding requests, and the date when the request were granted or denied.
3 - Records of sick time and FMLA leaves from Aug 2014 ~~Nov 26, 2014~~ Jan 8, 2015, including including but not limited to the requests themselves, communication between RNs and Management regarding requests, and the date when the request were granted or denied and appropriately redacted doctor's notes.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or jmoy@calnurses.org.

James Moy

Exhibit M

From:	James Moy
To:	James Moy; "Jan Ellis (Jan_ellis@chs.net)"; "Jeana Christensen (Jeana_Christensen@CHS.net)"
Cc:	Vanessa Sylvester; Nicole Dano
Subject:	BCH Katherine Painter Termination Demand to Bargain and Information Request
Date:	Tuesday, January 20, 2015 4:14:00 PM

Jan and Jeana,

Please accept this letter as the Union's demand to bargain over the recent termination of BCH ER RN Katherine Painter.

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

1. Ms. Painter's personnel file.

2. Any and all records of discipline or counseling of Ms. Painter including written discipline forms, records of verbal investigatory or discipline/counseling meetings, and internal correspondence related to the discipline/counseling.

3. The names, supporting material and copies of the disciplinary forms of other employees who were disciplined for the same offense(s), or disciplined due to the same incidents as those alleged against Ms. Painter.

4. All the information that the employer has relied upon to determine that discipline is warranted for Ms. Painter.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or jmoy@calnurses.org.

James Moy

California Nurses Association / National Nurses United
Organizer
225 W. Broadway, Suite 500
Glendale, CA 91204
818.637.7121 – Office
818.433.2119 – Cell

Exhibit N

From:	James Moy
To:	Michelle Miller
Cc:	Jan Ellis; Vanessa Sylvester; Jeana Christensen
Subject:	RN Referral and Bonus Program Demand to Bargain and Information Request
Date:	Friday, August 14, 2015 12:29:20 PM

Hi Michelle,

Please accept this letter as the Union's demand to bargain over unilateral imposition of the following change in policy:

1- RN Signing and referral bonuses.

In furtherance of the union's obligation as collective bargaining representative and in order to properly investigate and evaluate the above-mentioned matter, the union is requesting the following information within two (2) weeks of the date of this letter:

1- Any communication to RNs, among CHS management or to outside entities regarding the signing and referral bonuses
2- An account of the reasoning behind management's decision to institute the signing and referral bonuses, including but not limited to estimates of RN turnover at BCH, financial analysis of the viability of the program, and studies of signing and referral programs at other hospitals.
3- A copy of the written proposal referred to, but never sent, regarding the bonuses at our most recent bargaining session.
4- Copies of any referrals made by RNs or other staff under the program, and any associated documents including but not limited to management analysis of referrals, any and all documentation regarding RNs hired or considered for hire under the program.

This list is not exhaustive and may be supplemented. If I do not receive the requested information within two weeks of the date of this letter or you have not contacted me stating you will provide the information and giving the date it will be provided, I will assume the employer does not intend to provide it in which case the union will take appropriate action. If you are unable to meet that deadline, please contact me so we can make arrangements as to a reasonable date for providing the information. Thank you in advance for your cooperation in this matter. If you have any questions concerning the information requested herein, please contact me at 818 433 2119 or jmoy@calnurses.org.
Thank you.

James Moy

Sent from my iPhone

Exhibit O

CALIFORNIA NURSES ASSOCIATION
National Nurses United
A Voice for Nurses. A Vision for Healthcare.

OAKLAND
2000 Franklin Street
Oakland CA 94612
phone 510-273-2200
fax 510-663-1625

VIA FACSIMILE (813-724-3215), E-MAIL (jeri_Gilbert@chs.net) and Certified Mail

December 6, 2013

Jeri Gilbert, Director of Human Resources

Watsonville Community Hospital/CHS

75 Nielson Street

Watsonville, CA 95076

RE: Information Request – Agency Contract

Dear Ms. Gilbert:

This is in response to Watsonville Community Hospital/ CHS' letter of December 4, 2013, advising nurses that because they, "failed to report to work" during the California Nurses Association's lawfully noticed one-day strike, which commenced at 6:45 AM on Tuesday, December 3, 2013 and concluded at 6:44 AM December 4, that it has "taken the requisite measure to engage a qualified worker to temporarily replace you."

CNA notified the Employer that all RNs would be on strike via the 10-day notice to the acute care facility. Nurses had no obligation to advise Watsonville Community Hospital/CHS of their intention to honor the strike, nor were they obligated to report to work during the strike period. Yet the communication issued to Nurses following the conclusion of the strike advised that a lockout was being imposed because, "you failed to report to work to perform your scheduled, assigned duties due to participation in strike related activities. ."

In your letter you claim that the contract with the agency requires Watsonville Community Hospital/CHS to lock nurses out, "Due to the fact that we must fulfill certain obligations we have to the engagement of the person who has replaced you,

Exhibit P

temporarily, please report to your next scheduled shift after 6:45 AM on Friday, 12/6/2013." Ostensibly in reliance on this lockout period, you appear to have suspended various existing terms and conditions of RN employment, including those covering Staffing and Call Off procedures (without having obtained our prior consent or agreement, of course.)

In order to evaluate the Employer's claim that its "obligations" to temporary replacements required it to lock out RNs and unilaterally suspend important contractual guarantees, I am requesting that you provide the following information immediately:

1. A true, correct and complete copy of any contract or other agreement with the temporary replacements or staffing agencies referred to in paragraph 2 of your December 4, 2013 letter.

2. Any and all documents relating in any way to the negotiation of the agreement described in Item 1, above, including but not limited to correspondence, notes, emails, drafts, proposals, counterproposals, memoranda and any other writing between employees, agents and/or representatives of Watsonville Community Hospital, Community Health System, and the temporary staffing agency with whom the agreement was made.

3. True and correct copies of any and all advertising by Watsonville Community Hospital and/or Community Health System, and/or any person or entity with whom it has contracted for purposes of soliciting temporary replacement workers to cover for the strike noticed to take place on December 3, 2013 and/or the lockout which commenced on December 4, 2013.

4. Any and all documents relating to the advertising described immediately above in Item 3, including but not limited to correspondence, emails, notes, invoices and any other writing relating to the procurement or placement of said advertising.

5. Copies of any and all contracts Watsonville Community Hospital and/or Community Health System has entered into at any time within the past three years with any temporary employment agency or nurse registry for the provision of Registered Nursing services at its hospital in Watsonville.

6. In your letter, you claim that the temporary replacement workers are "qualified" to perform bargaining unit work. As you know, the only Registered Nurses who may provide nursing services in this state are those possessing a valid California RN license. The Union has a right to verify your representations to determine

whether the Employer has improperly engaged unqualified staff to perform bargaining unit work. Therefore, for each Registered Nurse scheduled to serve as a temporary replacement for locked out/striking workers at any time during the period of December 3, 2013 through December 10, 2013, provide the following information, as it becomes available:

(a) Name;
(b) State of residence;
(c) State(s) which have issued Registered Nursing license to said Registered Nurse;
(d) A list of all nursing related certifications;
(e) Any and all documents reflecting past service by the individual as a temporary strike replacement worker at any location; and
(f) A true and correct copy of the individual's application for temporary employment during the lockout/work stoppage scheduled for December 3, 2013 through December 7, 2013, whether or not that application was directly with Watsonville Community Hospital, or an agent, representative, agency or entity acting on behalf of the employer.

7. Any and all documents reflecting an investigation and/or inquiry by Community Health System/Watsonville Community Hospital of any and all temporary staffing agencies with whom it has consulted for purposes of procuring strike replacements at any time during November/December 2013, concerning such agencies' record of placing any employee for employment with any employer in any strike and/or lockout at any location at any time in the past, including but not limited to the number of times the entity has offered to place persons in temporary employment in strike and/or lockout situations.

8. With respect to the December 4 letter, please provide the following:

(a) The name(s) of the author(s)

(b) The date(s) the Hospital met to develop it

(c) The names of participants in those development meetings

9. To better understand the working conditions inside the Hospital during the strike and lockout, the Union requests the following:

(a) The names of bargaining unit Nurses scheduled to work December 3, 2013, separately by each patient unit or hospital department.

(b) The patient census for December 3, 2013, separately by each patient unit or hospital department.

(c) The number of replacement RNs who worked at the hospital on December 3, 2013, separately by patient unit or hospital department.

(d) The names of bargaining unit Nurses schedule to work December 4, 5, and 6, 2013, separately by each patient unit or hospital department.

(e) The patient census for December 4, 5, and 6, 2013, separately by each patient unit or hospital department.

(f) The number of replacement RNs who worked at the hospital on December 4, 5, and/or 6, 2013, separately by each patient unit or hospital department.

Given the current Lockout status, I would very much appreciate you arranging to provide the above-requested information by Tuesday, December 10, 2013. If, for any reason, all of the information cannot be produced by then, please produce all information that is readily available and advice when the remaining information will be produced and the reason(s) for the delay.

Respectfully,

Sue Fendley, CNA/NNU

Lead Labor Representative

CC: Tim Thomas, RN, Chief Nurse Representative

Joe Lindsay, Division Director Public Sector

Fernando Losada, Northern CA Collective Bargaining Director

Damian Tryon, CNA/NNU Labor Representative

EXHIBIT M

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 RENEWED MOTION FOR CONSENT ORDER ON DIRECT PARTICIPATION ALLEGATIONS

On March 1, 2018, Respondent CHSPSC filed a renewed and modified motion for consent order regarding the allegations that CHSPSC directly participated in unfair labor practices as follows:

> 73(A): Since on or about June 4, 2014, Respondent Affinity and Respondent CHSPSC, through Robert A. Horrar, Bud Wood, Bruce Hamilton and/or an unknown agent, unilaterally imposed new work rules in Affinity's Employee Handbook and Code of Conduct.
>
> 73(C): Respondent Affinity and Respondent CHSPSC engaged in the conduct described above in paragraph 73(A) without prior notice to the NNOC, without affording the NNOC an opportunity to bargain with respect to this conduct and the effects of this conduct, and without first bargaining with the NNOC to an overall good-faith impasse for a collective bargaining agreement.
>
> 79(B): About June 2013, Respondent Affinity and Respondent CHSPSC, through Sammy Cantrell and/or unknown agents, unilaterally implemented CERNER at Affinity.
>
> 79(D): About July 26, 2014, Respondent Affinity and Respondent CHSPSC, through Michael Yzerman and/or unknown agents, unilaterally implemented CPOE at Affinity.
>
> 79(G): Respondent Affinity and Respondent CHSPSC engaged in the conduct described in paragraphs 79(B) and 79(D) without providing the NNOC with the necessary and relevant information requested as described below in paragraph 91 (all CERNER/CPOE requests), and its subparagraphs.

> 80(A): In or about the first quarter of 2014, Respondent Affinity and Respondent CHSPSC, through Bud Wood, Bruce Hamilton and/or unknown agents, unilaterally discontinued the practice of granting merit wage increases.

These allegations were litigated in Nashville, Tennessee on August 21-23, 2017.

The proposed consent order reads:

> ORDER
> The Respondent, CHSPSC, LLC, shall be the guarantor of any remedies that the Board may order against DHSC, LLC with respect to Complaint paragraphs 73, 79 and 80. in the original decision in this case (JD-62-14). As the guarantor, Respondent CHSPSC, LLC must ensure that Respondent DHSC, LLC takes all steps necessary to comply with any remedies that may be contained in the Board's Order, including providing for any such remedies itself, if DHSC, LLC fails to do so, subject to CHSPSC, LLC's compliance rights to contest its ability to effectuate non-monetary remedies.
>
> IT IS FURTHER ORDERED that the allegations in the complaint that Respondent CHSPSC, LLC set forth in Complaint paragraphs 73, 79 and 80 are dismissed as, under the circumstances, it would not effectuate the policies of the Act to continue to litigate and reach a decision regarding these allegations.

The General Counsel and the Charging Party each filed responses opposing the motion, and CHSPSC filed a reply. For the reasons set forth below, I deny the motion.

An unfair labor practice complaint resolved by a unilateral agreement the Respondent proposes and the administrative law judge approves "is in the nature of a consent order, and not a true 'settlement' between parties to the dispute." See *Electrical Workers IUE Local 201 (General Electric Co.)*, 188 NLRB 855, 857 (1971). When evaluating proposed consent orders, the Board applies the factors set forth in *Independent Stave Co*., 287 NLRB 740 (1987). See *UPMC*, 365 NLRB No. 153 (2017).

Under Independent Stave, the Board considers all the circumstances surrounding a settlement agreement, including: (1) whether the charging party, the respondent, and any of the individual discriminatees have agreed to be bound, and the position taken by the General Counsel regarding the settlement; (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and (4) whether the respondent has engaged in a history of unlawful conduct or has breached previous settlement agreements resolving unfair labor practice disputes. 287 NLRB at 743.

First, the General Counsel opposes the proposed consent order, which is a significant factor weighing against its acceptance. See, e.g., *Clark Distribution Systems*, 336 NLRB 747, 750 (2001); *Iron Workers Local 27*, 313 NLRB 215, 217 (1993). The Charging Party also opposes the proposed consent order. The first factor therefore weighs against approving the motion for consent order.

Turning to the second factor, I find the proposed consent order is not reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of litigation. Most significantly, the direct participation allegations have been litigated. Settlement at this juncture will not save resources by negating the need for trial preparation, trial, and its associated costs. In addition, the proposed consent order only addresses CHSPSC as a guarantor of remedies, not as a direct participant in the alleged unfair labor practices. Given the posture of the case, along with potential shortcomings of the proposed consent order, I find this factor weighs against granting the motion for consent order.

Because the proposed settlement is in the nature of a consent decree, the third factor, i.e. whether there is evidence of fraud, coercion, or duress, is inapplicable.

Finally, though there have been unfair labor practices found at some of the hospitals previously affiliated with CHSPSC, there have been no unfair labor practice findings against CHSPC nor has CHSPSC breached previous settlement agreements. This factor weighs in favor of granting the motion for consent order.

On balance, I find the factors set forth in *Independent Stave* weigh in favor of deciding the direct participation allegations, which have already been litigated at trial, on their merits.

ORDER RE: RENEWED MOTION FOR CONSENT ORDER ON SINGLE/JOINT EMPLOYER ALLEGATIONS

On May 9, 2017, I granted CHSPSC's motion to bifurcate proceedings, severing issue of joint/single employer liability from the unfair labor practices complaint issues. As such, I will address this motion, as well as any other matters pertaining to the joint/single employer allegations, after I have issued my decision on the unfair labor practices complaint allegations.

Dated: April 9, 2018, San Francisco, California.

Eleanor Laws
Administrative Law Judge

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